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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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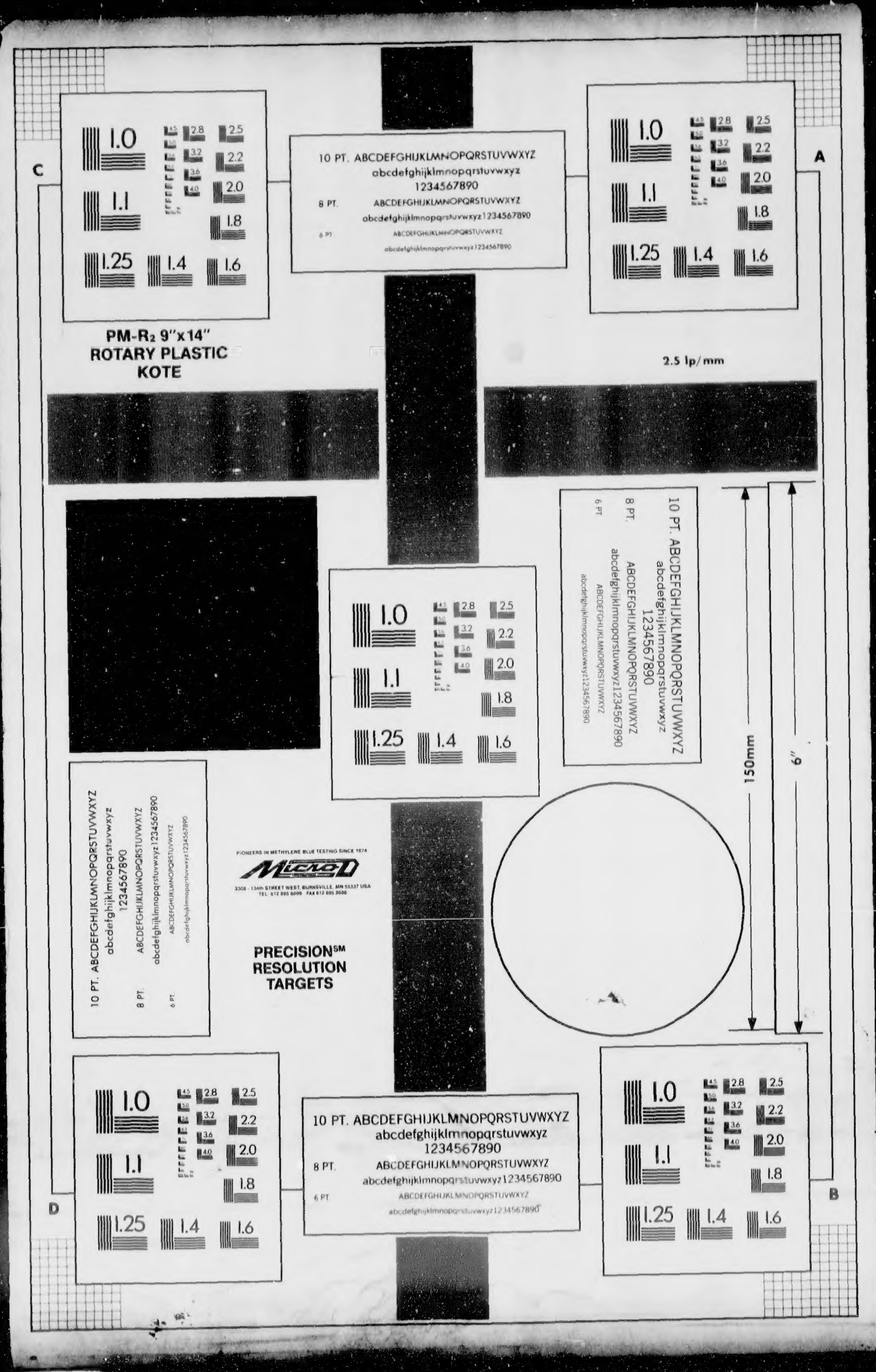
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PAGE: 244

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Analyst: Tom Vincent
Date: 1/20/2009

Name of the county or municipality, or other public body:

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City Council

Volume and page numbers included:

Vol. 72 (p. 244-501) - Vol. 83 (p. 1-465)

Exact dates of the records included:

4/3/2001 - 6/24/2008

Records are: ☒ Minutes ☐ Resolutions ☐ Ordinances

Other: ______

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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 72

(APRIL 3, 2001 -
AUGUST 21, 2001)
(PAGES: 244 – 501)

Tuesday – April 3, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor M. Charles Cloninger

CONSENT:

Police Department Equipment Storage

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the U.S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms regarding the use of an outdoor storage magazine.

The Asheville Police Department currently has a need to store equipment utilized by the Asheville Police Department Hazardous Device Team. The Bureau of Alcohol, Tobacco and Firearms (BATF) has designated funds to purchase a storage facility for our use at no cost to the City of Asheville. In return for the use of the storage facility, the City of Asheville must find a location to place the storage facility and allow the BATF access to one half of the storage facility.

A storage site has been identified and approved for facility placement which met federally mandated environmental guidelines, which include:

- Limited access to the facility
- Placement distances from inhabited areas
- Safety precautions

The BATF and the Asheville Police Department Hazardous Devices Team will utilize this storage facility.

The Asheville Police Department recommends that City Council authorize the City Manager to execute an agreement with the Bureau of Alcohol, Tobacco and Firearms to acquire and utilize this storage facility.

Upon inquiry of Councilwoman Bellamy, Police Chief Will Annarino described the types of things that would be stored in this facility.

Budget Amendment and Contract re: Urban Trail Station 2: Crossroads

Summary: The consideration of a budget amendment, in the amount of $59,000, for a grant appropriation for the Urban Trail's Station 2: "Crossroads" and a resolution authorizing the City Manager to enter into a contract with Grace Hanson Corporation and Knox Galleries to develop bronze sculptures of two wild turkeys, one sow pig and one piglet.

The Asheville Urban Trail Committee and the Parks and Recreation Department are working in partnership to complete construction of the Urban Trail. Station 2: "Crossroads" is one of the final stations leading to the completion of the Trail. "Crossroads" is located in front of the Vance Monument in downtown Asheville and signifies Asheville's early history of the Native American footpath of the Cherokee that later became the Buncombe Turnpike used by farmers to herd livestock on its way to southern markets.

The City of Asheville applied for a grant in December 2000 to the Janirve Foundation. The grant was recently awarded in the amount of $38,300. We have also received $15,000 in private donations and pledges for the remaining $5,700 balance. All funds are designated for cost associated with developing the bronze sculptures of turkeys and pigs at Station 2: "Crossroads".

The Urban Trail Committee drafted the turkey and pig concept for Crossroads, and reviewed works by bronze sculpture artists. Artist Grace Hanson through Knox Galleries was selected to develop life size, bronze sculptures of two wild turkeys, one sow pig and one piglet at a price of $36,500. The artist will commence work within five days of executing the contract agreement, and the work will be complete no later than December 2001.

The Parks and Recreation Department is responsible for the management and development of the Urban Trail along with the Urban Trail Committee.

The Parks and Recreation Department recommends City Council approve the budget amendment and resolution.

Downtown Milling Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asphalt Unlimited of Asheville, N.C. to mill streets located in the Central Business District.

Street milling is the removal of old surface material to reduce street elevation and allow new material to match existing infrastructure, such as curbs and storm drains.

The City is in need of a contractor to provide milling services for streets in the downtown area. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for paving and resurfacing services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Asphalt Unlimited Company	100%	Yes	Yes	$2.50 a square yard
Slurry Pavers Inc.	No Bid	No Bid	No Bid	No Bid
Apac	No Bid	No Bid	No Bid	No Bid

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into a contract with Asphalt Unlimited of Asheville Inc.

Budget Amendment re: Police Department Grant

Summary: The consideration of a budget amendment, in the amount of $139,346, to appropriate federal grant and local funds to the Police Department budget to reduce crime and improve public safety.

City Council authorized the City Manager to submit a grant application to the US Department of Justice, Local Law Enforcement Block Grant Program (LLEBG) on August 8, 2000 (Resolution No. 00-141). The grant in the amount of $125,411 has been awarded. A local match of $13,935 is required. The source of the local match is 110 0603 483 5315.

Under the conditions of the grant, funds are to be used to reduce crime and improve public safety.

City staff recommends Council adopt the budget amendment.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

CONDITIONAL USE PERMIT

Planning & Development Director Scott Shuford said that a minimum of two weeks before Council's consideration of a conditional use permit (CUP) case, Planning and Development staff will send to Council a brief information sheet on the CUP request, including the location of the subject property, the type of request, and pertinent factual information about the property and request, such as acreage and zoning of the property, the date of the public hearing at which you will consider the CUP, and any special issues associated with the request (such as whether the CUP was submitted to correct a violation as in the Grandview case from Council's last meeting). This summary information is intended to keep Council informed of upcoming CUP cases and give Council an opportunity to visit the site in advance of the meeting.

City Attorney Oast and Mr. Shuford then reviewed with Council general process concerns. Concerns discussed included that the quasi-judicial format does not allow Council an opportunity to adequately research issues outside the public hearing; items that City Council should disclosure on the record, i.e., that they have visited the site, special knowledge of a particular issue, etc.; staff recommendations in staff reports can compromise City Council's ability to act or cause second-guessing if Council overrules staff or the Planning & Zoning Commission; relevancy of speaker's comments; time limits for individuals and group speakers; Council should have general discussion prior to voting; on CUP's, delay the vote until the next meeting to give staff time to investigate claims and relevancy of specific comments or conditions; need for definitions of the seven conditional use standards that need to be met; and the possibility of re-instituting a "sign-in" sheet to better facilitate public comment.

It was the consensus of City Council to direct staff to create a "citizens guide" that can be updated for planning and development processes to better inform the public about the City's public hearing procedures and development review processes, as well as to provide answers to frequently asked questions. Said guide should be placed on the City's webpage. Items that can be included in the guide would be advising the public that the spokesperson for a group can call witnesses and that there is a possibility that the vote on conditional use permits may be delayed until the next formal meeting.

Staff was directed to clarify in their recommendation that their recommendation is based upon information they have received prior to the official public hearing, and does not take into account any information that may be presented to Council for the record at their public hearing. In addition, Mr Shuford assured City Council that if staff hears information at the public hearing that may change their recommendation, they would bring that to Council's attention at the public hearing. City Council could then continue the public hearing pending receipt of further information.

Staff summaries will include relevant information about possible development alternatives to the requested CUP or conditional use zoning. The purpose of this information is to ensure that Council is clearly aware of reasonably anticipated potential development alternatives available to the applicant.

Staff was directed to create an information sheet on relevant public hearing procedures and basic ground rules. This information should be sent to property owners in the notice area and will also be available to those who attend the public hearing. Information on the sheet could contain information that petitions are not relevant information to be presented because the people who signed the petition are usually not present at the public hearing and are not allowed to be cross-examined.

City Council encouraged organized and coordinated presentations. It was the consensus of City Council to allow groups that demonstrate substantial organization additional time to speak, up to the length of the time taken by the applicant or 30 minutes, whichever is great. The organized group would be allowed to speak first, after the applicant's presentation, in order to get pertinent issues on the table as early as possible in the meeting.

It was the consensus of Council that after the public hearing is closed, that City Council hold their discussions prior to any motions being made.

City Council always has the option to postpone action on any conditional use permit or conditional use zoning to obtain additional information. This fact needs to be reinforced in order to manage expectations on the part of the applicant or public hearing attendees regarding Council coming to an immediate decision at the conclusion of the public hearing. Requests by City Council for additional information that would result in a postponement will be handled on a case-by-case basis.

It was the consensus of City Council to pause discussion at 10:00 p.m. to determine the willingness of Council to complete the agenda given the remaining issues for consideration and the number of potential public speakers.

It was the consensus of City Council to have the Planning staff attempt to define the current seven conditional use standards and bring back for City Council consideration any other standards they feel need to be addressed, e.g., impacts on significant natural and topographic features.

City staff was directed to provide a presentation board listing the conditional use permit standards so that Council and the public can refer to them during the deliberations at the public hearing.

City Attorney Oast said that he would have to research the issue if Council can talk with the neighborhood and/or applicant if the public hearing is postponed.

It was the consensus of City Council to not apply these changes to the April 10, 2001, conditional use permit public hearing regarding a parking lot at the corner of Charlotte Street and Edwin Place.

Mr. Shuford advised the Council that he would compile the directions given to him at this meeting.

APPOINTMENT TO PACK SQUARE CONSERVANCY INC. BOARD OF DIRECTORS

Mayor Sitnick said that she received a letter from Ms. Carol King, Chair of the Pack Square Conservancy Inc., in which she wrote that the Pack Square Renaissance Task Force has created the Pack Square Conservancy Inc., a 501 (c) (3) organization dedicated to making Pack Square Renaissance a reality. Their by-laws call for the appointment of a City Council member to their Board of Directors and they recommend City Council appoint Charles Worley. She said that Councilman Worley has been a volunteer member of the Pack Square Renaissance Task Force and has been present and involved at most of their meetings.

Councilwoman Bellamy moved to waive the rules and take formal action at the meeting. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Bellamy moved to appoint Councilman Charles Worley to the Pack Square Conservancy Inc. Board of Directors. This motion was seconded by Councilman Hay and carried unanimously.

CLOSED SESSION

At 5:38 p.m., Councilman Worley moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease – G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 6:02 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Mayor Sitnick and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:02 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – April 10, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Bellamy gave the invocation.

ADDITIONS TO THE AGENDA

Councilwoman Field asked that a matter dealing with the Building Code be placed under "Other Business"

Councilman Peterson asked that a matter dealing with the Civic Center be placed under "Other Business"

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 8-14, 2001, AS "INTERNATIONAL BUILDING SAFETY WEEK"

Councilwoman Field read the proclamation proclaiming the week of April 8-14, 2001, as "International Building Safety Week" in the City of Asheville. She presented the proclamation to Director of Building Safety Terry Summey and Fire Chief Greg Grayson, who briefed City Council on some activities taking place during the week.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 27, 2000, AND THE WORKSESSION HELD ON ARIL 3, 2000

B. ORDINANCE NO. 2799 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE URBAN TRAIL'S STATION 2: "CROSSROADS"

Summary: The consideration of a budget amendment, in the amount of $59,000, for a grant appropriation for the Urban Trail's Station 2: "Crossroads" and a resolution authorizing the City Manager to enter into a contract with Grace Hanson Corporation and Knox Galleries to develop bronze sculptures of two wild turkeys, one sow pig and one piglet.

The Asheville Urban Trail Committee and the Parks and Recreation Department are working in partnership to complete construction of the Urban Trail. Station 2: "Crossroads" is one of the final stations leading to the completion of the Trail. "Crossroads" is located in front of the Vance Monument in downtown Asheville and signifies Asheville's early history of the Native American footpath of the Cherokee that later became the Buncombe Turnpike used by farmers to herd livestock on its way to southern markets.

The City of Asheville applied for a grant in December 2000 to the Janirve Foundation. The grant was recently awarded in the amount of $38,300. We have also received $15,000 in private donations and pledges for the remaining $5,700 balance. All funds are designated for cost associated with developing the bronze sculptures of turkeys and pigs at Station 2: "Crossroads".

The Urban Trail Committee drafted the turkey and pig concept for Crossroads, and reviewed works by bronze sculpture artists. Artist Grace Hanson through Knox Galleries was selected to develop life size, bronze sculptures of two wild turkeys, one sow pig and one piglet at a price of $36,500. The artist will commence work within five days of executing the contract agreement, and the work will be complete no later than December 2001.

The Parks and Recreation Department is responsible for the management and development of the Urban Trail along with the Urban Trail Committee.

The Parks and Recreation Department recommends City Council approve the budget amendment and resolution.

ORDINANCE BOOK NO. 19 – PAGE 121

C. RESOLUTION NO. 01-47 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GRACE HANSON CORPORATION THROUGH KNOX GALLERIES FOR SCULPTURES FOR THE URBAN TRAIL STATION 2: "CROSSROADS"

Summary: See Consent Agenda Item "B" above.

RESOLUTION BOOK NO. 26 – PAGE 327

D. RESOLUTION NO. 01-48 RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REGARDING THE USE OF AN OUTDOOR STORAGE MAGAZINE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the U.S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms regarding the use of an outdoor storage magazine.

The Asheville Police Department currently has a need to store equipment utilized by the Asheville Police Department Hazardous Device Team. The Bureau of Alcohol, Tobacco and Firearms (BATF) has designated funds to purchase a storage facility for our use at no cost to the City of Asheville. In return for the use of the storage facility, the City of Asheville must find a location to place the storage facility and allow the BATF access to one half of the storage facility.

A storage site has been identified and approved for facility placement which met federally mandated environmental guidelines, which include:

- Limited access to the facility
- Placement distances from inhabited areas
- Safety precautions

The BATF and the Asheville Police Department Hazardous Devices Team will utilize this storage facility.

The Asheville Police Department recommends that City Council authorize the City Manager to execute an agreement with the Bureau of Alcohol, Tobacco and Firearms to acquire and utilize this storage facility.

RESOLUTION BOOK NO. 26 – PAGE 328

E. RESOLUTION NO. 01-49 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ASPHALT UNLIMITED OF ASHEVILLE, N.C., TO MILL STREETS LOCATED IN THE CENTRAL BUSINESS DISTRICT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asphalt Unlimited of Asheville, N.C. to mill streets located in the Central Business District.

Street milling is the removal of old surface material to reduce street elevation and allow new material to match existing infrastructure, such as curbs and storm drains.

The City is in need of a contractor to provide milling services for streets in the downtown area. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for paving and resurfacing services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Asphalt Unlimited Company	100%	Yes	Yes	$2.50 a square yard
Slurry Pavers Inc.	No Bid	No Bid	No Bid	No Bid
Apac	No Bid	No Bid	No Bid	No Bid

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into a contract with Asphalt Unlimited of Asheville Inc.

RESOLUTION BOOK NO. 26 – PAGE 329

F. ORDINANCE NO. 2800 - BUDGET AMENDMENT TO APPROPRIATE FEDERAL GRANT AND LOCAL FUNDS TO THE POLICE DEPARTMENT BUDGET TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Summary: The consideration of a budget amendment, in the amount of $139,346, to appropriate federal grant and local funds to the Police Department budget to reduce crime and improve public safety.

City Council authorized the City Manager to submit a grant application to the US Department of Justice, Local Law Enforcement Block Grant Program (LLEBG) on August 8, 2000 (Resolution No. 00-141). The grant in the amount of $125,411 has been awarded. A local match of $13,935 is required. The source of the local match is 110 0603 483 5315.

Under the conditions of the grant, funds are to be used to reduce crime and improve public safety.

City staff recommends Council adopt the budget amendment.

ORDINANCE BOOK NO. 19 – PAGE 123

G. **MOTION SETTING A PUBLIC HEARING ON APRIL 24, 2001, FOR THE 2001 CONSOLIDATED ACTION PLAN**

H. **MOTION SETTING A PUBLIC HEARING ON MAY 8, 2001, TO EXTEND THE CITY'S EXTRATERRITORIAL JURISDICTION IN THE FAIRWAY GATEWAY AREA, THE LONG SHOALS ROAD GATEWAY AREA, AND AN AREA AROUND SARDIS ROAD HAVING INDUSTRIAL POTENTIAL** – This item was pulled from the Consent Agenda for further discussion.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

MOTION SETTING A PUBLIC HEARING ON MAY 8, 2001, TO EXTEND THE CITY'S EXTRATERRITORIAL JURISDICTION IN THE FAIRWAY GATEWAY AREA, THE LONG SHOALS ROAD GATEWAY AREA, AND AN AREA AROUND SARDIS ROAD HAVING INDUSTRIAL POTENTIAL

Councilman Peterson felt that it would be a good idea to have a meeting in these three areas prior to the actual zoning of the areas so that City staff can get input from those residents on how those areas should be zoned. Mr. Green said that they would try to have a community meeting scheduled prior to the assigning the zoning, but it will really depend on the scheduling of the meetings regarding the comprehensive plan.

Councilwoman Field moved to set a public hearing on May 8, 2001, to extend the City's extraterritorial jurisdiction in the Fairway gateway area, the Long Shoals Road gateway area, and an area around Sardis Road having industrial potential. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE AREA KNOWN AS OAKBROOK, PHASE 2, OF BILTMORE PARK LOCATED AT WHITE ASH DRIVE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

ORDINANCE NO. 2801 - ORDINANCE TO ZONE THE AREA KNOWN AS OAKBROOK, PHASE 2, OF BILTMORE PARK LOCATED AT WHITE ASH DRIVE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:15 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to zone Oakbrook, Phase 2, of Biltmore Park located at White Ash Drive to RS-8 Residential Single-Family High Density District. This public hearing was legally advertised on March 30 and April 6, 2001.

The Planning and Zoning Commission, at their March 7, 2001, meeting, reviewed and recommended zoning the recently annexed parcels known Oakbrook Phase 2 as RS-8 Residential Single-Family High Density District. The property is located in the Biltmore Park development on Schenck Parkway, White Ash Drive and Dianthus Drive. This is a 24 acre area, consisting of 41 parcels, platted and being developed for a single-family residential subdivision. The adjacent property lies within the Biltmore Park development and is being developed with a mixture of uses.

The RS-8 District is designed to establish a high density residential area for single family dwellings where adequate infrastructure is in place to support the density and to stabilize and protect the residential character of existing neighborhoods while providing for a balanced mix of uses compatible with residential uses. Maximum density is 8 units per acre.

The RS-8 zoning will allow for higher density residential development in accordance with the Biltmore Park master plan, and the dimensions of the platted lots.

The Planning and Development staff recommends approval of the initial zoning of Oakbrook, Phase 2, as RS-8.

Upon inquiry of Councilman Worley, Mr. Benson said he would check to see if the common area was included in the legal advertisement and if not, would be zoned when the adjacent area is zoned.

Mayor Sitnick closed the public hearing at 5:18 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2801 including the extra lot, if it was advertised. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 125

B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE AREA KNOWN AS BURNSIDE, PHASE 4, OF BILTMORE PARK LOCATED AT WHITE ASH DRIVE TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 2802 - ORDINANCE TO ZONE THE AREA KNOWN AS BURNSIDE, PHASE 4, OF BILTMORE PARK LOCATED AT WHITE ASH DRIVE TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:19 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to zone Burnside, Phase 4, of Biltmore Park located at White Ash Drive to RS-4 Residential Single-Family

Medium Density District. This public hearing was legally advertised on March 30 and April 6, 2001.

The Planning and Zoning Commission, at their March 7, 2001, meeting, reviewed and recommended zoning the recently annexed parcels known Burnside, Phase 4 as RS-4 Residential Single-Family Medium Density District. The property is located in the Biltmore Park development on White Ash Drive. This is an 11.4 acre area, consisting of 12 parcels, platted and being developed for a single-family residential subdivision. The adjacent property lies within the Biltmore Park development and is being developed with a mixture of uses.

The RS-4 District is designed to establish a medium density residential area for single family dwellings where adequate infrastructure is in place to support the density and to stabilize and protect the residential character of existing neighborhoods while providing for a balanced mix of uses compatible with residential uses. Maximum density is 4 units per acre.

The RS-4 zoning will allow for medium density residential development in accordance with the Biltmore Park master plan, and the dimensions of the platted lots.

The Planning and Development staff recommends approval of the initial zoning of Burnside, Phase 4 as RS-4.

Mayor Sitnick closed the public hearing at 5:21 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2802. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 127

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT THE CORNER OF CHARLOTTE STREET AND EDWIN PLACE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:25 p.m.

Chief Planner Gerald Green submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report dated March 27, 2001), City Exhibit 4 (Large Site Plans), City Exhibit 5 (Staff Report dated April 10, 2001), and City Exhibit 6 (Charlotte Street Corridor Plan). This public hearing was advertised on March 16 and 23, 2001.

Mr. Green then said that this is the consideration of issuance of a conditional use permit for a parking lot to be located on property zoned RS-4 Residential Single Family Medium Density

District at the intersection of Charlotte Street and Edwin Place. The subject property contains 0.32 acres.

The applicants (Mr. and Mrs. Reiser) are requesting a conditional use permit (CUP) for an 11 space parking lot to be located on a vacant lot located at the corner of Charlotte Street and Edwin Place. (City Exhibit 7) Parking spaces in the proposed lot will be used by the businesses and offices located in the adjacent mixed use building, which has been recently renovated. In addition, the applicants have agreed to permit the parking lot to be used by the church located just north of the site. The project site is located at the end of the commercial section of Charlotte Street and is not within the Charlotte Street Transition Overlay District, although it is located within the Charlotte Street Corridor Plan study area. The approval of this ancillary use in this residential district holds the line on commercial intrusion into the residential zone. The site meets all the location requirements for ancillary uses in residential districts. Approximately 5,000 square feet of the site will be graded for the construction of the parking area. (City Exhibit 8) The parking area itself will be approximately 3,700 square feet. The site plans call for the parking area to be graveled in an effort to reduce run-off and to minimize the aesthetic impacts of the project. There is a ravine that runs east to west lot making access directly to this site from Lennox Street or from the parking lot behind the existing building difficult, if not impossible. The ravine also precludes the opportunity to move the parking area closer to the existing building. A number of trees and shrubs will be planted to serve as street trees and to buffer the site from adjacent uses. (City Exhibit 9) (City Exhibit 10) Low intensity bollard lighting will be used to minimize light intrusion on adjacent properties. The proposed hours of operation for the parking lot are 7 a.m. to 9 p.m. The major challenge with the proposed use is the traffic at the intersection of Charlotte Street and Edwin Place.

In developing the lot, the applicants worked with the City Traffic Engineer to identify the best traffic routing for the lot. As a result of working with the City Traffic Engineer and in order to minimize the impacts of the proposed parking lot on the existing traffic, the flow of traffic in the lot will be one way (entrance on Charlotte Street and exit on Edwin Place), with the exit being right turn only. He explained some of the reasons for this traffic flow pattern. No Traffic Impact Analysis was required for this project due to the small scale of the parking lot and to the fact that the parking lot will not attract additional traffic; it will only provide a safe parking area for customers and clients of businesses already located in the adjacent building.

The parking for the adjacent mixed use building currently has 4 spaces to the west of the building on Lennox Street, 4-5 spaces behind the building and customers and clients use on-street parking on both the west and east side of Charlotte Street.

The site location at the intersection of Charlotte Street and Edwin Place, which has remained vacant for more than 20 years, poses challenges for determining the best land use. The lot serves as the point of transition from the commercial area to the residential/institutional area. Although there are residential uses in the area, there are also commercial and institutional uses located on the adjacent corners of the intersection. It is difficult to expect this lot to remain vacant forever or to have a single family home developed on it. Under this proposal, and as stipulated by the ancillary use standards, the zoning of the property will not change from its current RS-4 designation. Until such time as residential or other appropriate development of the lot is proposed, it is appropriate to allow this small parking lot.

The Technical Review Committee (TRC), who took action to approve it with conditions, reviewed this project for compliance with the technical requirements of the Unified Development Ordinance (UDO). The site plan has been revised to meet all the conditions except (1) Submittal of grading and stormwater management plans (must be submitted prior to issuance of any grading or construction permits); and (2) Driveway permit must be approved for each proposed driveway (to be obtained prior to construction of driveways). Both of those conditions would be met after a CUP is approved for the project.

The site plan submitted and the conditions identified by City staff assure that the impacts of the proposed project on the surrounding uses are mitigated.

The findings that must be made by City Council in the issuance of a CUP for the project are listed below with staff analysis for each standard (City Exhibit 11).

1. The proposed use or development of the land will not materially endanger the public health and safety. The proposed parking lot will provide a safe off-street parking area for clients and customers of the uses located in the adjacent mixed-use building. Both pedestrian and vehicular safety will be enhanced by the construction of the proposed parking lot.
2. The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region. The proposed parking lot will assure the successful operation of the adjacent mixed-use community businesses by providing adequate and safe off-street parking for customers and clients. The parking area will also be used by members of a neighboring church, lessening the amount of on-street parking in the area on Sunday mornings.
3. The proposed use or development of the land will not substantially injure the value of adjoining or abutting property. A parking lot at this location, constructed as designed, will not substantially injure the value of adjacent or abutting property. Similar parking lots in the area, including those at the Unitarian Church and the Manor Inn, have not injured the value of adjacent or abutting properties.
4. The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. The proposed 11-space parking lot will cover less than 5,000 square feet of the 0.32-acre lot on which it is proposed to be located. A similarly sized portion of the property will be used for landscaping and buffering. Other parking lots in the area, including those at the Unitarian Church and the Manor Inn, are similarly sized or larger. The applicant is proposing a graveled parking lot in order to assure that it is in harmony with the character of the area.
5. The proposed use or development of the land will generally conform with comprehensive plan and other official plans adopted by the City. The Charlotte Street Corridor Plan, adopted in 1999, established several goals for the development of the corridor. Among these goals were the encouragement of shared parking, promoting mixed uses, and improving pedestrian safety. The proposed parking lot furthers the accomplishment of these goals.
6. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. All services are available at this location, as confirmed during the review of the proposed development by the TRC.
7. The proposed use will not cause undue traffic congestion or create a traffic hazard. The proposed parking lot will not create traffic; it will provide a safe location for off-street parking for the customers and clients of businesses and offices already located in the adjacent mixed-use building, as well as for members of the neighboring church. In developing plans for the parking lot, the design professional worked closely with the City's Traffic Engineer. The traffic flow and location of the driveways were identified with the input of the City's Traffic Engineer. Plans for the parking lot were reviewed and approved by the City's Traffic Engineer, who has determined that it will not create a traffic problem. Recent traffic counts in this area are:

    - Intersection of Charlotte Street and Edwin Place (AM Peak Hour) – 1200
    - Intersection of Charlotte Street and Edwin Place (PM Peak Hour) – 1300
    - Intersection of Charlotte Street and Edwin Place – 13,000 vehicles per day

- Charlotte Street south of Hillside Street – 18,623 vehicles per day
- Charlotte Street north of Edwin Place – 5,000 vehicles per day

In accordance with the Charlotte Street Corridor Plan, a traffic study for the section of Charlotte Street from the I-240 interchange north is currently underway. Although the major focus of this study is the lane configuration on this section of the street, we have asked the consultants doing the study to carefully examine the intersection of Charlotte Street and Edwin Place, and the impact of the parking lot on the intersection, as part of the study. The study, which will be completed in 60 to 90 days, may provide additional information regarding the best design of the parking lot.

Under the ancillary use standards, no further expansion is possible. The residential zoning of this parcel reserves the parcel for residential use at some point in the future. Although surface parking is not the highest and best use of the property, allowing it in the interim is an appropriate use to provide transition between the commercial uses and the residential/ institutional uses. This plan identified several goals for the future development of the corridor, among them the use of shared parking, using parking as a transition between commercial and residential areas, and promoting mixed use development. The approval of the CUP for the proposed project would further the accomplishment of all these goals. In addition, this parking lot helps to accomplish some of the policies set forth in the City's Smart Growth Policy, e.g. encouraging mixed uses, encouraging neighborhood scaled community businesses, and providing businesses which can be used by surrounding residential uses near those residential uses. Conditions recommended for the approval of the CUP for this project will ensure that the impacts on surrounding property owners are mitigated.

At the March 27, 2001, meeting, the City Council referred this matter to the Planning and Zoning Commission (Commission) for their review and recommendation. The Commission reviewed the project, heard comments from staff and the public, and discussed the proposed project. At the Commission meeting, 30 people spoke, not counting Ms. Reiser and her representative, Clay Mooney. Of these, 16 were opposed to the request, 13 were in support and one person simply asked a question.

Those who opposed the project cited several issues, some being, but are not limited to: traffic safety; negative impacts on property values; parking lot does not conform to the Charlotte Street Small Area Plan; project is incompatible with the neighborhood; on-street parking is available nearby on Edwin Place; the loss of open space; Conditional Use Standards No. 2 and 4 are not met; a drop-off zone should be created to address the child safety issue; a crosswalk should be provided on the east side of Charlotte Street; the parking lot design will force pedestrians to use the driveway apron to access the sidewalk creating a safety problem; noise, trash, lighting and other negative impacts on the immediately-adjoining property owner; the Reisers were unwilling to accommodate neighborhood concerns; and more traffic information is needed before making a decision.

Mr. Green then said that persons speaking in favor of the parking lot raised the following points, some being, but are not limited to: the high quality of the associated building rehabilitation project ensures that the design quality of the parking lot will also be very good; the quality and extent of the proposed landscaping is several times greater than other nearby projects; the parking lot will increase safety for visitors to the Reisers' building; increased landscaping will improve the harmony of the lot with the surrounding land uses; property values will not be negatively impacted; the parking lot supports a mixed use development as called for in City Smart Growth policies and in the Charlotte Street Small Area Plan; a much-needed handicapped parking space will be provided; and the parking lot addresses an historic parking problem.

At the Commission hearing, the applicant and her representative made the following comments in addition to those raised above in support of the project: the parking lot access design is acceptable to the City Traffic Engineer; runoff will be carefully controlled through a swale system; grading will be minimized to create a level parking lot at the same grade as the adjoining sidewalk; unloading of musical instruments and children from on-street parking spaces is dangerous; creation of a drop-off zone on Charlotte Street would require the elimination of several on-street parking spaces, further compounding the overall parking problem; lighting and buffering will be designed to minimize impacts on adjoining properties; and the owners are willing to record a deed restriction that will limit use of the subject property to residential use and/or the parking lot in perpetuity.

After over five hours of public comment and deliberation, the Commission voted 2-2 on a motion to approve the proposed parking lot subject to staff recommendations, plus consideration of the traffic study. In accordance with the Commission's rules of procedure, a tie vote results in the defeat of the motion so the formal recommendation to the City Council from the Commission is to deny the request.

The Commission deliberation centered on the following issues. Those supporting the motion to approve felt the seven approval standards had been met and that, in general, the parking lot provided a safer environment for persons visiting the Reisers' building, especially handicapped persons and children. Even if the project did not improve the traffic situation in this area, there was no evidence that the lot would exacerbate it. Those opposed to the motion to approve felt that traffic safety issues were not adequately accommodated by the site design and that loss of this corner site for other development (primarily residential) was significant in light of the other concerns. There was a general desire on the part of the Commission to see if the results of the impending Charlotte Street Traffic Study would create changes in the street and intersection design and operational characteristics that would improve the overall safety of the parking lot access from both Charlotte Street and Edwin Place.

As a result of comments made at the Commission meeting, staff identified several possible additional conditions for Council consideration:

- The hours of parking lot operation shall be between 7:00 a.m. and 9:00 p.m., seven days a week (lights off during non-operating hours).
- Edging material to protect the landscaping and the driveway edge shall be specified by the applicant and, after approval by the City, shall be installed by the applicant.
- Preparation of the subgrade for the gravel parking lot shall be as substantial as that provided in City specifications and standards for paved lots.
- Maintenance of the gravel parking lot shall be consistent with a plan developed by the applicant and acceptable to the City Engineer.
- The applicant shall dedicate an easement over the northeast portion of the site to allow the installation of a gateway monument or other feature to be designed by the City with input from the applicant, the neighborhood and the Historic Resources Commission; the applicant shall not be responsible for the construction, installation or maintenance of the gateway feature except to the degree desired by the applicant in his/her sole discretion.
- If consistent with applicable traffic engineering standards, and if otherwise acceptable to the City (following the traffic study), a median shall be constructed on Edwin Place to eliminate left turning traffic exiting the parking lot; the median is to be constructed at the applicants' expense.
- A pedestrian walkway shall be constructed through the parking lot to provide an alternative access point to the sidewalk in addition to the paved driveway apron.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council issue the CUP for an ancillary use (parking lot) to be located at 246 Charlotte Street with the following conditions:

1. Submittal of grading and stormwater management plans (must be submitted prior to issuance of any grading or construction permits).
2. Driveway permit must be approved for each proposed driveway (to be obtained prior to construction of driveways).
3. The hours of parking lot operation shall be between 7:00 a.m. and 9:00 p.m., seven days a week (lights off during non-operating hours).
4. Edging material to protect the landscaping and the driveway edge shall be specified by the applicant and, after approval by the City, shall be installed by the applicant.
5. Preparation of the subgrade for the gravel parking lot shall be as substantial as that provided in City specifications and standards for paved lots.
6. Maintenance of the gravel parking lot shall be consistent with a plan developed by the applicant and acceptable to the City Engineer.
7. The applicant shall dedicate an easement over the northeast portion of the site to allow the installation of a gateway monument or other feature to be designed by the City with input from the applicant, the neighborhood and the Historic Resources Commission; the applicant shall not be responsible for the construction, installation or maintenance of the gateway feature except to the degree desired by the applicant in his/her sole discretion.
8. If consistent with applicable traffic engineering standards, and if otherwise acceptable to the City (following the traffic study), a median shall be constructed on Edwin Place to eliminate left turning traffic exiting the parking lot; the median is to be constructed at the applicants' expense.
9. A pedestrian walkway shall be constructed through the parking lot to provide an alternative access point to the sidewalk in addition to the paved driveway apron.

Vice-Mayor Cloninger asked if the Charlotte Street traffic study would have the potential for coming up with alternative means of improving the parking situation for this building. Mr. Green said that even though the study was not originally designed to address this issue, City staff has asked the consultants to focus on this area and to study the parking lot and it's access points as part of the study. One of the items addressed in the plan will be a need to look at the traffic flow on Charlotte Street with an assessment on whether reducing the number of lanes, creating on-street parking, or other traffic calming measures would be appropriate.

Upon inquiry of Councilwoman Bellamy, Mr. Green explained where the current on-street parking (City Exhibit 7) exits around the building. In addition, Edwin Place allows on-street parking.

Councilwoman Bellamy asked how the parking lot would alleviate on-street parking. (City Exhibit 9) Mr. Green said that the most direct manner in which the parking lot would help the on-street parking problem is by providing alternative spaces for people loading and unloading children and instruments. Currently that is done on the street, but if the parking lot were constructed, they could park in the parking lot to load and unload.

Councilwoman Bellamy stated that from personal experience, she has witnessed people parking on Edwin Street all the way up to the stop sign on Charlotte Street. She asked how that would be addressed if the right-turn out exit was constructed on Edwin Street. Mr. Green said that the City would install a "No Parking Here to Corner" sign to eliminate people from parking in the area from the exit on Edwin Street up to Charlotte Street.

Upon inquiry of Councilwoman Bellamy, Mr. Green explained the sidewalk design on Edwin Street (City Exhibit 10) with the right-turn out exit design.

When Mayor Sitnick asked about a tree recently cut down on Edwin Street in the proximity vicinity of the proposed right- turn out exit, Mr. Green responded that the City's Arborist examined the tree, found it was not healthy and had the Public Works Department cut the tree down. He said that the tree was cut down before the applicants submitted their application for a CUP.

With regard to site distance with the current trees and new trees on Edwin Street, Mr. Green said that the two existing trees are mature trees and their crown is up high enough that it does not pose a site distance problem.

Councilman Hay noted that in the Charlotte Street Corridor Plan (Plan) (City Exhibit 6) this intersection is identified as a gateway. Mr. Green said that "gateway" is used in that Plan and several other small area plans to denote the entrance to neighborhood or the entrance to a certain commercial district. As an attempt to acknowledge that as an entrance to the Grove Park neighborhood, one of the conditions staff has recommended is that the applicant dedicate a corner for some appropriate gateway identification.

Councilman Hay said that the Plan states that the transition at Edwin Place and Charlotte Street "clearly transitions into a predominantly residential area. This transition should be articulated by creating landscaped medians on Edwin Place and Charlotte Street. The creation of medians would also serve to better channelize traffic at this location." He wondered if it is a specific part of the Plan that there be landscaped medians on Edwin Place and Charlotte Street. Mr. Green said that will be studied more closely as part of the traffic study that has just been initiated to determine if those would increase safety, where they should be located, the size, etc. This new traffic study will have to confirm that the medians will not create a less safe environment by putting the medians in. If the study indicates that the medians will impede the traffic flow, the Plan would have to be amended.

City Attorney Oast reminded Council that they are required to make its decision on the basis of the information that they receive at this public hearing. If a Council member has any special knowledge outside the context of this public hearing, other than visiting the site, they should divulge that at this time. All Council members stated that they had visited the site, and have received numerous faxes, e-mails and letters. Mayor Sitnick noted that she has recently moved out of the area which she lived for 16 years and is very familiar with the property in question. Councilwoman Field said that she attended a social in which Mrs. Reiser was attending also, however, they were careful not to talk about the proposed CUP.

Councilwoman Bellamy said that she received several phone calls regarding the Commission vote. One of the Commission members said they would not vote because they had a conflict. However, that Commission member did end up voting and created the tie vote. Some residents in the community felt that was not fair. City Attorney Oast responded that he did not hear anyone mention that they would not vote because of a conflict. One Commission member did appear at the TRC meeting and expressed some concern, but in his opinion, that did not disqualify that Commission member from participating in the discussion at the Commission's meeting.

Mr. Clay Mooney, landscape architect with Design Associates in Asheville representing the Reisers on this project, said that they are requesting a CUP to allow an 11 space gravel surface parking lot on a residentially zoned lot at the corner of Charlotte Street and Edwin Place. The property is just outside the Charlotte Street Transition Overlay District, they feel that the proposed parking lot will address, in a positive way, some of the goals of the Charlotte Street Corridor Plan (Plan). Shared parking which would serve multiple uses and users is encouraged in the Plan. The parking lot would serve mixed use neighborhood businesses which is another goal in the Plan. The parking lot would also be made available to other adjacent users, such as the church which has a severe parking shortage. The plans for the parking lot also incorporate bicycle parking and other pedestrian amenities, e.g. benches, etc. The parking lot also provides a handicapped parking space and access to the building, which presently doesn't exist. From an appearance standpoint, you only have to look at the level of quality and detail that the Reisers have put into the renovation of their building to see the degree of importance that they put on aesthetics. He presented a before and after photograph of the building. (Applicant Exhibit 1) The construction of the parking lot will be no different. The parking lot will be buffered from the adjacent property owner by a 20-foot wide buffer strip, as required by the UDO, and a 10-foot planting strip between the parking lot and Charlotte Street and Edwin Place also required by the UDO and recommended by the Plan. A minimum of 82 trees and shrubs will be installed to meet these buffering, screening and vehicular use area requirements. There are existing plant materials, trees and shrubs within the buffer area which will remain. He presented into evidence 14 site photographs which show the existing plant materials (Applicant Exhibit 2). The quantities of plant material shown for the buffer area were calculated as if no plants existed there. The UDO allows for a reduction in buffer planting if existing vegetation is preserved within the buffer area. To maximize the buffering and visual separation between the parking lot and the neighbors, they have chosen not to take advantage of this option. In effect the buffer plantings significantly exceeds the requirements of the UDO. The plant materials specified are in keeping with the quality and character of the neighborhood. The six large trees which will be removed for this project are black locust. Black locust trees are not listed in the existing City of Asheville Recommended Plant Material List, nor are they listed on the draft copy of the new expanded Recommended Plant Material List. The proposed hours of operation are from 7:00 a.m. to 9:00 p.m. Lighting for the parking lot will be approximately four feet in height. This is in an effort to minimize lighting on the adjacent property owners and to provide a more pedestrian and residential feel in character. Surfacing for the parking lot is gravel with a handicapped parking space and asphalt aprons at the entrance and exit. This is being done, as called for in the Plan, to minimize both large areas of asphalt and storm runoff volume. The asphalt aprons were requested by the City Traffic Engineer to minimize travel from the parking lot, migrating to the sidewalks and to the street. With regard to traffic and parking issues, they feel that a parking lot itself does not generate traffic -- they accommodate traffic from the businesses that occupy the building. In this case, the existing building dates back to the late 1920's. Of the businesses within the building, one has been there since 1975. The Music School, which utilizes the most square footage, has been there since 1996. The other three tenants are relatively new dating back to June and September of 2000. The building totals 7,900 square feet has 8 off-street parking spaces behind the building. There are 8 on-street public parallel parking spaces in front and beside the building on Charlotte and Lennox Street. There exists no handicapped parking. Across Charlotte Street is an unstripped, on-street parking area which is actually private property and intended for use by the adjacent businesses in the Manor office complex. However, it is used by everyone, including patrons to the Reisers' building and the Jewish Community Center. If a new building were to be constructed of the same square footage as the Reisers' building, within this same zoning district, it would be required by UDO standards, to have a minimum number of 19 off-street parking spaces. This figure includes a 25% reduction in the number of required spaces when the project is located within the CB-1 zoning district. No further provision is allowed within the UDO to reduce the required number of spaces, whether or not on-street parking exists. The proposed 11 parking spaces, plus the existing 8 parking spaces behind the building total 19 spaces -- precisely the minimum number of spaces the UDO requires for a building this size. This proposed parking lot is intended to alleviate some of the existing need for parking along Charlotte Street and also provide a safer means to access the Reisers' building, instead of parallel parking or having to cross Charlotte Street. Pedestrian safety was an important issue and goal in the Plan and we feel that this parking lot will help that situation. The Reisers' have been accused of not compromising with opponents of this project. The compromises they have been offered were the purchase of the lot and free legal services for the dedication of the lot as a conservation easement. Neither compromise offer addressed the Reisers' need for additional parking spaces to support the businesses within the building. To the contrary, the offered compromises were no parking area at all. Another discussed compromise was the installation of additional buffer plantings beside and behind the Van Buskirk residence, however, no further discussions regarding a specific request or amount was ever received from the Van Buskirks. During the preliminary design phase of the project, there were several compromises that the Reisers chose prior to the plans ever being submitted. The original number of parking spaces was 13, which was reduced to 11 in order to provide reduced impact to the site as well as provide better circulation. Gravel surfacing was chosen over asphalt to minimize visual and stormwater impacts to the area and available buffer credits were not utilized as they could have been. Another area of criticism for the project, particularly during the Planning & Zoning Commission meeting, was that the parking lot was designed to maximize this site and therefore out of scale with the surrounding area. The parking areas and sidewalks, as designed and submitted, utilized 32.2% of the 0.32 acre lot. In contrast, the amount of area required by the UDO for the 20-foot buffer and 10-foot wide planting strips along Charlotte Street and Edwin Place is 38.9% of the lot. Even portions of the remaining 17% of the lot received plantings to comply with requirements of the UDO. It is clear by these figures that the criticism regarding maximizing the site and the project being out of scale are unfounded. In summary, the key issues regarding the development of this parking lot are the zoning of this property will not change with the construction of this lot, it will remain an RS-4 zoned lot. In fact, the owners are willing to record a deed restriction that will limit the use of the property to residential use and/or the parking lot in perpetuity. The proposed parking spaces are needed to support the continued viability of mixed neighborhood-serving businesses that will also be available for shared parking, both of which are important components of smart growth and the Plan. The parking lot would serve as an appropriate transition use between commercial and residential uses. The lot is designed to be as unobtrusive as possible, particularly with respect to paving, runoff, lighting and landscaping. The lot will have a minimal impact with respect to increased traffic. The traffic flow pattern for the lot, as well as the entrance and exit configurations, were determined by two consultation meetings with the City Traffic Engineer. The parking lot area will afford increase safety to patrons of these neighborhood businesses who will be able to park there and not have to parallel park or to cross Charlotte Street. This is particularly important to patrons of the Music School, many of which have to cross Charlotte Street with their children to access the building. The landscaping, particularly the buffer, exceeds the minimum requirements of the UDO. The area required for UDO buffer and landscape strips exceeds the area of the parking lot and the sidewalk for the project. They comply and meet all of the City of Asheville's conditional use standards. There is no building on Charlotte Street that compares with the Reisers' building from a construction quality and detailing standpoint. In fact, this is the first building renovation or new construction project on Charlotte Street since the adoption of the Plan. This is an opportunity to provide a small parking area which will be attractively landscaped, sensitively lit, be pedestrian and amenity friendly, and minimizes it's impact from paving and runoff. Most importantly, we feel it addresses and exemplifies many of the goals of the Plan to the degree that it can be looked upon as the benchmark for future development and renovation projects on Charlotte Street. They request that they concur with the findings of the TRC and the recommendation of Planning & Development staff for approval of this CUP request.

Upon inquiry of Councilman Worley, Mr. Mooney said that the heaviest times of day that would generate the highest use of the parking lot would be approximately 3:30 p.m. to 7:00 p.m.

When Councilwoman Field asked about the dirt compaction on the lot, Mr. Mooney said that there will be very little water seeping through it so that you don't really get the penetration for a pervious surface. Mr. Mooney said that a concern was raised that the parking lot would become a mud hole. He felt that issue is more addressed with maintenance than with construction. However, the quickest way to assure that it would not become a mud hole, aside from maintenance, would be to compact it, as we would if it was a paved lot. He said that he would be happy to design the parking lot to be as previous as it can be as an effort to alleviate that concern.

Councilman Peterson asked if the gully adjacent to the building could be filled in for access. Mr. Mooney said that was looked at briefly, however, there is a 48-inch culvert with flowing water at all times. There would be substantial cost and issues regarding the piping of that. There is also an existing 12-inch sanitary sewer line that runs adjacent to that which could be potentially impacted. He said the grade change between those two will facilitate the extent of grading to such a degree that the potential would exist for construction of retaining walls and it was felt that that would be a more obtrusive eyesore than the design as submitted.

The following individuals spoke in favor of the proposed parking lot for several reasons, some being, but are not limited to: the high quality of the Reisers' building they have renovated ensures that the design quality of the parking lot will also be of high quality; the proposed area now is a ditch and with landscaping the area, it will almost look like a park; this area, after designed, will be a beautiful landscaped parking lot; over the years this lot has collected trash; dog-owners let their dogs defecate on the lot; parents with children trying to cross Charlotte Street need a safe place to load and unload; the parking lot complies with all seven conditional use standards; the owners should be praised in their willingness to take an eyesore lot and make it a beautiful improvement to the neighborhood; the apartment parking lots in the area have not hurt any of the property values in the area as evidenced by the fact that tax values constantly go up; the development of this lot will not have a negative impact on property values; this is an ideal use of this property since there needs to be development of mixed uses; property has been scrutinized at least 6 times by the professional City staff and it continues to be favorably approved by them; with no less than 15 parking lots on 4 streets within the area and none of them meeting the UDO standards, there has been no ill effect on property values because of those lots; people are concerned about the aesthetic value of the parking lot should realize that between 5 p.m. and 8:00 a.m. there is no less than 120 cars that are parked in the area on the streets and in front yards; the UDO standards are so good that the lot will be 250% better than the Manor across the street and at least 5 times better than all five parking lots surrounding this lot in the neighborhood; this will be the garden spot of the neighborhood; this parking lot will provide safety to children, elderly, handicapped and citizens of the community every day of the week; the Reisers have provided a sensitive solution without cost to anyone; parking is needed for that area; Reisers have been good custodians and caretakers of all their property; parking lot will be a beautiful gateway to the neighborhood; the parking lot will not create more traffic or contribute to it – but it will do the opposite; tenants and clientele of the Reisers' building need safe and accessible parking; the parking lot will take 11 cars off the street and will be safer for the students in the Music School; tenants of the Reisers' building have had to relocate due to parking problems; there is currently no handicapped parking; retail tenants in the Reiser building especially need to have adequate parking for their customers; some employees in the Reiser building currently have to park at the Jewish Community Center; this kind of renovation is something this community should support; the Neighborhood Association has not taken action to increase safety in the area by opposing the Grove Park Inn expansions or pursuing sidewalks, crosswalks, traffic signals, buried power lines, speed bumps, better law enforcement, meaningful traffic reduction, or any other improvement to the quality of life; and the Reisers could sell the property and who knows what could be built on that corner:

Mr. Chris Peterson, resident on Edwin Place
Ms. Dotty Stickney, area resident
Mr. Bob Long Jr., resident on Kimberly Avenue
Mr. Crawford Murphy, resident on Macon Avenue
Ms. Sherry Davis, speaking on behalf of elderly mother who lives in neighborhood
Mr. Bruce McTaggart, teacher at the Asheville Music School (Applicant Exhibit 3)
Ms. Anne Coombs, owner of the Asheville Music School
Dr. Thomas Burger, area resident
Ms. Norma Jean Snyder, owner Manor Gate Salon
Ms. Bee Seaburg, resident on Club Knoll Road and owner of The Gardeners Corner

Mr. Thurmond Williams, owner of an executive search firm that is a tenant of the Reisers and area resident

City Attorney Oast reminded City Council that some of the information Council has heard is hearsay, is not competent evidence. He cautioned City Council to base their decision on information that is not hearsay evidence. Also, any consideration of who the owners are of the property should not be taken into account because the property can change hands and the fact that the Reisers currently own it will be irrelevant.

Ms. Wanda Adams, President of the Grove Park-Sunset Association (Neighborhood Exhibits 1 and 2), requested a little more time than 10 minutes to address Council. Mayor Sitnick granted her request. Ms. Adams noted that the UDO states that City Council shall not approve a conditional use application unless all of the seven conditional use standards are met. If just one of the standards is not met, then City Council should not approve the conditional use application. This proposed parking lot does not meet six of the seven standards, therefore, City Council should not approve this request. The developer's plan does not meet Condition Nos. 1 or 7.

Ms. Adams said that with regard to Standard No. 7, the intersection of Charlotte Street and Edwin Place is already a congested corner where traffic backs up. The City's Traffic Engineer, Mr. Moule, provided her with a traffic count performed in 1999 at 105 Edwin Place (just down the street from the proposed curb-cut) noting that the peak traffic count was close to 10,000 cars per day. At this meeting she realized another traffic count has been performed showing 13,000 vehicles per day. This problem has not gotten better in the last two years. The parking lot plan has a one-way entrance from Charlotte Street and a one-way exit onto Edwin Place which would only add to this congestion and create a serious safety problem. The one-way exit onto Edwin Place is too close to the intersection not to cause safety problems. As noted in the minutes of the April 4, 2001, Planning & Zoning Commission (Commission) minutes, the City regulations require a distance of 40 feet from the tangent line of the intersection to the tangent line of the exit. However, the Planning staff has approved this plan with only 27.5 feet between those lines. After measuring these distances, the curb-cut is barely more than a car's length from the stop sign. Mr. Moule stated at the Commission meeting that he can grant variances to the City's traffic standards, however, Section 3.02 of the Asheville Standard Specification and Details Manual states "Driveways close to street intersections shall be at least 40 feet from the point of tangency of the radius curvature of the intersection street" and does not give the Traffic Engineer the right to vary this requirement. She questioned why this plan was approved by City staff if it did not meet City standards. She asked how can they feel assured that City staff has not disregarded other City regulations in approving this conditional use application. Also, if City staff did not require the developers to meet City requirements in this situation, how can they rely on them to enforce City regulations regarding the construction and future upkeep of this parking lot. To minimize the traffic hazard caused by the Edwin Place exit, the Engineering Department wants to limit use of this curb-cut for exit only and right-turn only. She feels that once the curb-cut is in place there is no guarantee that drivers will not disregard the sign and enter and exit as they please. The Police Department rarely enforces the existing signs posted along Edwin Place and Charlotte Street, such as the speed limit signs on Edwin Place or the "No Parking" and "No Thru Trucks" signs on Charlotte Street. She didn't feel they would enforce a right-turn only sign at this exit. Drivers will likely turn onto Edwin Place, spot the one-way exit from the parking lot and simply turn across traffic to enter the lot. She felt this curb-cut on Edwin will create a significant traffic hazard. For years residents along Kimberly Avenue and Edwin Place have asked the City to take steps to decrease the heavy traffic flow on these streets for the safety of their children and families. The current safety problems are not going to be corrected by putting 11 parking spaces on this residential lot. She felt that these safety problems could be corrected if Kimberly Avenue and Edwin Place were included in the City's traffic calming project, however, they were not.

Ms. Adams said that with regard to Standard No. 2, the developer's plan does not meet this standard as well. Additional parking is not needed because adequate parking already exists in this area. She drives the area frequently and has witnessed cars parked illegally on the vacant lot while there is plenty of available parking on Edwin Place. The developer and parents that are patrons of the music studio argue that it is dangerous for children to cross the street and that it is necessary to have the parking lot for their safety. It is not necessary for a child to cross a street at this location. All the parents have to do is to parallel park on Edwin Place, on the same side of the street as the commercial building, let the child get out of the car onto the sidewalk and simply walk a short distance to the music studio. The developers of this property overfilled the building with the apparent thought that the City would be sympathetic to this application and not force the use of the available on-street parking. Their use of children's safety as an issue is pretty transparent. The developers are the only ones that have a vested interest in this property being developed as a commercial parking lot.

With regard to Condition No. 3, Ms. Adams stated that this condition as not been met. She felt that if a person is looking to buy a residential home in the Grove Park area, they are not going to buy a house that is next door to a commercial parking lot, unless they are able to get it at a lower price than other available homes in the area. If this conditional use is approved and the property is used as a commercial parking lot for several years, it will be much more likely that a future city council will be pressured to rezone this lot as commercial property. The neighborhood residents are very opposed to this potential commercial creep into the neighborhood. When the Reisers purchased this property and while they were doing renovations on their building and leasing spaces to businesses, they knew it was a split use property with the corner lot zoned residential. The use of the commercial building should have been limited to businesses that could be accommodated by the existing parking spaces. After talking with Ms. Reiser and asking her what use she had planned for the residential lot when she purchased it, Ms. Reiser stated "a parking lot" and that she never had any plans to use the lot as it was zoned at the time of purchase. Developers should not be allowed to buy, build and then plead to change the zoning because they want additional parking to increase the value of their property while decreasing the property value of the adjacent property owner.

Ms. Adams stated that the developer's plan does not meet Standard No. 4. The corner of Charlotte Street and Edwin Place is an entrance to the Grove Park residential neighborhood and Association members are concerned about commercial encroachment and the erosion of the character of the Grove Park area which is listed in the National Registry of Historic Property. The Van Buskirks (adjoining property owners at 2 Edwin Place) have done a wonderful job in restoring and maintaining the William James Jr. House which is listed in the United States Department of Interior's National Register of Historic Places. Not only will there be increased traffic congestion, noise and outdoor lighting next door to their home, but the impervious surface to be created by the gravel and hard surface parking area will likely create stormwater drainage on their property, which is downhill to the proposed parking lot. There are also concerns about increased water drainage into the existing tributary of Reed Creek which flows through a culvert prior to surfacing behind homes on Murdock Avenue. Since the developer of this property is a real estate broker and owner of Appalachian Realty, after improvements are made to the property, it can be sold at a nice profit. Who knows what the next owner would want to do with the property. This also opens the door for a future owner of 2 Edwin Place, who is not neighborhood friendly, to request that the lot be rezoned commercial because it is next to a commercial parking lot. The line that marks where commercial development ends and where the residential neighborhood begins in this area is the edge of this commercial lot. Once this line is breached, where will this commercial encroachment end?

Standard No. 5 has not been met, Ms. Adams stated. Nearly a year has passed since the Charlotte Street Overlay District was adopted by City Council. At that time, Mayor Sitnick had requested that the speed limit reduction and the traffic analysis be performed on Charlotte Street as soon as possible. When Mr. Moule was asked about the progress on this, he stated that it would take at least another 60 days.

Ms. Adams summarized by stating that Council vote to protect the integrity of the neighborhood. More importantly, she requested Council vote for the safety of the children, senior citizens, residents of and visitors to their neighborhood as well as the thousands of people who walk and drive through this intersection on a daily basis by voting "no" to this application.

Ms. Adams entered into the record Neighborhood Exhibit 3, which is an e-mail regarding several inaccuracies in the minutes of the Planning & Zoning Commission meeting of April 4, 2001. She said the minutes are not an accurate representation of the comments from the Commission meeting. Chief Planner Gerald Green responded that the Commission was aware and agreed to having the draft minutes forwarded to City Council for information for this meeting. City Attorney Oast stated that the timeframe of the Commission meeting and this meeting did not permit the Commission to approve the minutes prior to being forwarded to City Council. He also noted that only the Planning & Zoning Commission has the right to correct the minutes.

Mr. Roger James Jr., resident of Albemarle Park said that he was speaking on behalf of Albemarle Park/Manor Grounds neighborhood. Sixty people in his neighborhood have registered their strong opposition to this parking lot and four people were in favor of it. (Neighborhood Exhibit 4) They requested City Council to revisit the ancillary use process as a whole. When Mr. Shuford was asked if the conditional use process was a success, he responded that there have been several recorded success stories for the CUP, however, he indicated that there have been negative results from the ancillary use process. We have a serious question about a person's ability to buy a residential lot and use it for a commercial purpose. He said that six of the seven conditional use standards have not been met. Even if one of the standards have not been met, the City Council must deny the application. The burden rests upon the applicant to show that the application is in compliance with all seven standards. (Neighborhood Exhibit 5).

With regard to Condition No. 1, Mr. James said the parking lot will materially endanger public health and safety by way of increased traffic congestion and accidents, as well as materially endangering a highly traveled pedestrian area.

With regard to Condition No. 7, Mr. James said that the proposed lot will cause undue traffic congestion and create further traffic hazards in a location which already has such congestion and traffic hazards. (Neighborhood Exhibit 6) He explained how this parking lot is a traffic congestion issue (1) lining up of cars at three immediate points; (2) circling affect of cars going through the lot to find, or not find a place to park; (3) addition of two more arteries into an already congested area of 13,000 cars that has three bus stops in the immediate area; and (4) significant number of traffic accidents at this location.

With regard to Condition No. 2, Mr. James stated that Ms. Reiser has stated to him that the parking lot is for the tenants of her building, not for the community. With 38 people working in the Reisers' building, is it not reasonable to assume that the 11 spaces will be filled at the beginning of the day by tenants and employees, leaving no available spaces for customers or clients of the building? This is a temporary business decision on the part of the Reisers but a permanent decision for the neighborhoods.

With regard to Condition No. 3, Mr. James entered into the record Neighborhood Exhibit 7, which is a letter from Randy Guess, State Certified General Real Estate Appraiser, which in part read "I have made an inspection of the site, as well as the plans for the proposed parking lot should the variance be allowed. In my professional opinion, the development of a parking lot such as the proposed lot would have a negative impact on the market value of 2 Edwin Place. ... as to whether the damage to the market value of the property would be 'substantial' ... my experience indicates that the very nature of the purchase of real estate dictates that any negative change in the market value of a property is substantial." There will be increased traffic, increased congestion, lights shining into the homes, and a number of other issues. Who will monitor the parking lot after 9:00 p.m.

With regard to Condition No. 4, Mr. James said there are no other parking lots on Edwin Place, therefore, it is not in keeping with the character, density or scale of the neighborhood.

With regard to Condition No. 5, Mr. James noted the City does have a comprehensive plan for this area – the Charlotte Street Corridor Plan. Neighbors and business owners have spent years coming up with that Plan. The Plan (City Exhibit 6) called for no additional curb cuts; encouraged less dominance by the automobile; promoted pedestrian activity/circulation and alternative means of transportation; and preserving green space.

Mr. James said that two alternative solutions is the 24 spaces of available parking on Edwin Place and the alternative of a turn out for parents to drop off children in front of the building. With regard to the Reisers compromising, the neighborhood has met with the Reisers on three separate occasions. The neighborhood has proposed changing the direction of the lot, reducing the number of spaces, buying the lot under the agreement that the neighborhood would turn it over to the City to be preserved as a greenspace, and placing a conservation easement on the property which the neighborhood would pay for and maintain. Every suggestion made, the Reisers did not acknowledge.

In summary, Mr. James urged City Council to deny the CUP, to revisit the ancillary use process, and to vote in keeping with the Planning & Zoning Commission to deny the permit (Neighborhood Exhibit 8).

The following individuals spoke in opposition of the proposed parking lot for several reasons, some being, but are not limited to: in 1998 there were two accidents, in 1999 there were seven accidents and in 2000 there were five accidents at this intersection – national average at any one intersection on a residential street in the United States is .026 per year and the intersection of Charlotte Street and Edwin Place in 2000 had an accident rate over 192 times higher than the national average; the designated handicapped space will require the driver to back into the entrance way of the lot in order to turn and exit; there are two bus stops in the immediate area which will affect the flow of traffic and hinder visibility; ingress and egress create traffic congestion; the parking lot will constitute a threat to the integrity of the National Register Grove Park Historic District through commercial encroachment; the parking lot or any other commercial use of this site will not be in harmony with the historic or residential character of the Grove Park neighborhood as defined in the original plan, the City of Asheville and the U.S. Dept. of Interior, the parking lot does not conform with the Charlotte Street Corridor Plan in that the Plan calls for open space and encourages green areas or 'pocket parks' to be created in areas with limited development potential; the lot will destroy the only open space from Edwin Place to Charlotte Street which would eliminate a variable from the balance of uses called for in the Charlotte Street Corridor Plan; the Planning & Zoning Commission did not recommend approval of this CUP; parking lot would decrease residential and historical values; residents are still dealing with problems caused by the issuance of a CUP granted in August of 1999 in another area of the city; the Reisers' building resides already in an island of ample, safe and unrestricted parking; pedestrians and vehicular safety are enhanced because this green space is zoned residential and because commercial parking does not exist on this site; there are already 9 marked spaces behind the Reisers' building on Lennox Street, 3 spaces next to the building and 5 cut-out spaces in front of the building for a total of 17 spaces; on Edwin Place there is plenty of unused parking all week long; there is a total of 37 parking spaces within a 3 minute walk to the Reisers' building, without crossing a street; pedestrians could face the possible hazard of a vehicle suddenly existing from a heavily landscaped curb-cut or a vehicle blocking the walkway during peak hours when traffic is backed up at the nearby stop sign; City should mark spaces on Edwin Place to show that ample parking is available; proposal conflicts with Charlotte Street Corridor Plan on many points and endangers public safety; curb-cuts are hazards and the curb-cuts from Charlotte Street to Edwin Place represent 30% of the distance from those two streets; the parking lot does not comply with the Charlotte Street Corridor Plan in that the Plan calls for the improvement of safety for all modes of transportation to less dominance of the automobile and promote pedestrian activity and circulation; if the CUP is granted, the corner will be permanently changed; a parking lot with all its negative effects for does not improve the appearance of Charlotte Street as another parking lot is not unique; once a parking lot is established and the use of the land is clearly commercial, the likelihood that the land will become residential again is remote; the gateway transition called for in the Plan will be destroyed by the encroachment of the clear commercial use of the property; this parking lot conflicts with City's adopted Smart Growth Policy which outlines taking a sustainable approach to development; there will be a loss of 4 on-street parking spaces on Edwin Street; there will be a loss of open space, trees, safe pedestrian pathway, as well as more attractive potential for in-fill housing development compatible to the surrounding neighborhood; the commercial parking lot is inconsistent with the goals of the City's Smart Growth Policy, the 2010 Plan, and the Consolidated Housing Plan; the exit and entrances on the proposed lot will be potentially blocked by on-street parked cars; graphic of trees circulated by the applicant on the parking lot misrepresents the true height at installation; there is a true value to mature trees; loss of trees will increase pollution, increase noise, potentially create a heat island in this area until the canopy of trees can reestablish itself to the maturity at that site; there is no active enforcement of zoning in the City of Asheville so there is an undue hardship on taxpayers to have the ordinance enforced; the area church is currently accommodated by on-street parking and the addition of 11 spaces will not substantially alter that need; since Charlotte Street is a major thoroughfare, if you put left-turn traffic against on-coming traffic then there will be more traffic congestion; need for cross-walks at that intersection; Reisers knew when they purchased the lot that it was zoned residential; the left turn into the Manor entrance from Charlotte Street and the left hand turn into the proposed parking lot from Charlotte Street would be too close to each other, if not directly at the same spot, causing a dangerous traffic bottleneck in both directions; there will be a loss of 4 spaces to gain 11 spaces; traffic study needs to be done before this issue is voted on by Council; who will enforce the non-use of the parking lot after 9:00 p.m.; the parking lot's 11 spaces will create confusion; one of the conditions suggested by staff for a deed restriction is unenforceable by the City; look to the Charlotte Street Corridor Plan and the Smart Growth Policies for other possible solutions to the Reisers' parking problems; reduce the four lanes on Charlotte Street to three lanes and put in a turning lane to allow more parking on Charlotte Street or a bicycle lane; need to cultivate residential uses in the City; traditional neighborhood development patterns should be recognized and encouraged as outlined in the City's Smart Growth Policies; we must recognize alternatives to development that protect private property rights as stated in the City's Smart Growth Policies; the adjoining property owner may not be able to obtain adequate home equity financing due to decreased valuation of home; parking lot will increase dirt, dust, noise, car lights and parking lot trash; there will be water run-off problems and erosion of gravel onto adjacent property; as gravel sinks into the ground the parking lot may turn into a mud hole; constant flow of traffic from parking lot onto Edwin Place will make those exiting rely on the kindness of other motorists to let them onto Edwin Place; Ms. Reiser stated that the proposed lot would be for the use of her tenants so how would that benefit the music students and other clients of the Reisers' building; possibility of turning the parking in front of the building to a 5-minute loading zone for dropping off students; the lot should be left alone until a more fitting use can be found for it; tenants chose to lease in the Reisers' building despite the parking situation; tenants of the Reisers' building have chosen not to share the parking behind the building with their customers, there is no place for parents to unload or load their children behind the building, nor is there a handicapped parking space behind that building; and Section 7.2.5 states that the parking lot can only be used for staff and customers – not for the church parking:

Ms. Eileen Warshaw, former construction manager for a City who administered a multi-million dollar project for street calming, traffic study and directional traffic flow (Neighborhood Exhibits 9 and 10) - noted she was not given ample opportunity to present information other than reading it in Neighborhood Exhibit 10.
Ms. Barbara Hodgson, area resident (Neighborhood Exhibits 11 and 12)
Ms. Jeanne' H. Warner, resident of Albemarle Park (Neighborhood Exhibit 13) – also read letter from Ms. Claire Payne (Neighborhood Exhibit 14)
Mr. Scott Riviere, area resident (Neighborhood Exhibits 15 and 16)
Mr. Mike Ward, Albemarle Park resident (Neighborhood Exhibits 17 and 18)
Ms. Juanita Landolfi, area resident (Neighborhood Exhibit 19)
Ms. Jane Mathews, Albemarle Park resident (Neighborhood Exhibit 20) – also presented letter from Esther and Leonard Pardue (Neighborhood Exhibit 21)
Mr. Mike Lewis, resident on Gracelyn Road
Mr. Phil Freeman, area resident (Neighborhood Exhibit 22)
Ms. Laurel Eide, South Asheville resident
Mr. Doug Michaels, area resident
Ms. Maggie Rotman, area resident
Mr. Bill Wescott, area resident
Ms. Mary Lois Kirby, Macon Avenue resident
Mr. Henry Kirby, Macon Avenue resident (Neighborhood Exhibit 23)
Mr. Charles Van Buskirk, adjacent property owner to proposed parking lot on Edwin Place (Neighborhood Exhibit 24)
Ms. Barbara Van Buskirk, adjacent property owner to proposed parking lot on Edwin Place
Mr. Joe Adams, resident on Lawrence Place – Objected to time limitations (Neighborhood Exhibit 25)

City Attorney Oast then explained the rebuttal process.

Mr. Clay Mooney responded to the following issues: (1) curb-cut issue on Edwin Place and the distance from the tangent point from the radius. Originally that design was 40 feet. Following the TRC meeting and a meeting with the City's Traffic Engineer, it was determined that to improve the desired circulation path and pattern and working of that exit, that by increasing that interior radius, that a right-turn only movement would be reinforced by decreasing that 40 foot distance; (2) regarding the overfilled building, they do not qualify under the City's current parking requirements as being overfilled; (3) regarding how the parking lot will detract from the historic area, he used the example of the New Morning Gallery in historic Biltmore Village as a shining example of how a parking lot can designed in an historic district; (4) regarding the parking spaces being used by tenants, it's common to have tenants be required to park elsewhere; (5) with regard to a change in direction for the parking lot, that was discussed several times with the City's Traffic Engineer and was examined in both directions. Frankly they didn't care which direction was used, and only through discussions with the City's Traffic Engineer was the present direction was decided upon; (6) regarding lack of compromise on the reduction of parking spaces, he noted that they were already reduced from 13 to 11 spaces. The landscaping strips and buffer areas take up more area than what the parking does. If a new building of this size were constructed in that zone, they would require to have 19 off-street parking spaces; (7) no matter how the lot is developed, it will require a curb-cut. There is no curb-cut from Edwin Place to Lennox Street and there will be only one curb-cut which is not uncommon between two streets; (8) the City of Asheville requires that an erosion and stormwater control plan be submitted and approved prior to the beginning of any work on this site. They meet and exceed all the requirements of the UDO without requesting any variances; (9) they wish to share the spaces with the church because that was one of the goals of the Charlotte Street Corridor Plan – to provide shared parking that would support mixed use neighborhood businesses with is what occupies the Reisers' building; (10) regarding the loss of any on-street parking spaces, they lose no parallel parking spaces on Charlotte Street nor Lennox Street; and (11) to provide a drop-off zone, they would lose all five parking spaces in front of the building. Also a drop-off zone is not a benefit to all of the users for the Reisers' building.

Mr. Joe Adams said the driveway has to be 20 feet wide and the plan shows it is only 16 feet wide. If Mr. Mooney had actually put the driveway down 40 feet, with 20 feet, he would not have enough for his additional 20 feet of buffer.

Ms. Wanda Adams stated that Mr. Mooney said a compromise had been reached and that they had made a change in the plans. She didn't know who the compromise was with – it was not with neighborhood representatives or with the adjoining property owner. No attempt was made by the developer applying for this CUP to meet with neighborhood representatives. Prior to the TRC meeting on November 20, 2000, she contacted the developer and asked her to meet with neighborhood representatives prior to the TRC meeting. Despite the UDO's recommendation that the developer meet in a pre-application stage, the developer responded that she was unable to arrange a time to meet with neighborhood representatives prior to the meeting. She did agree, however, to meet after the meeting (twice) but the opinion from the developer was that TRC has passed it, affixed conditions and felt they could get it passed with just the TRC conditions and it was not necessary to negotiate with neighborhood representative/ They would simply negotiate with the City's Traffic Engineer.

Mr. Roger James noted that the parking lot in Biltmore Village for New Morning Gallery is not zoned residential. He said that there was a residential driveway there, we would not expect 11 cars to be turning over periodically throughout the day. He asked for clarification on how many spots will actually be lost on Edwin Place and on Charlotte Street.

Ms. Jane Mathews clarified that the lot was grandfathered without the required off-street parking because of it's current zoning and lot's boundaries. She did not believe this was adequately advertised because the two "Z" signs are still out there on the property which were for the March meeting of City Council. She also asked for an exact date on when the tree on the property on Edwin Street was cut down because it was her recollection that it was after the TRC meeting. She said that the tree was not dead.

Mr. Green responded that there will be no parking spaces on Charlotte Street removed for the construction of the parking lot. He did not know the exact date on when the tree was cut down, but he thought it was sometime in November. The City's Arborist did examine the tree and it was slated for removal. Typically those issues are taken to the Tree Commission prior to removal and he will check with the Public Works Department to have them review the Tree Commission's minutes to find when that was discussed. With regard to the "Z" signs, since this meeting was continued from the City Council meeting in March, no new "Z" signs were put up. With regard to the comments made about not being able to trust City staff, he did not feel that was an appropriate statement in that staff does the utmost to assure that all plans that are brought before City Council meet all the standards of the ordinance. Staff will continue to work with the post-construction process to assure that everything shown on the site plan are in fact part of the project when it is constructed. In cases where the staff has the power to modify a requirement, it is only done in cases when it improves the safety of the situation.

Mr. Michael Moule, City's Traffic Engineer, said that approximately 3-5 spaces will need to be removed from the intersection on Edwin Place. In fact, it would be prudent to remove those spaces anyway since they are only used on a regular basis on Sundays.

Upon inquiry of Councilwoman Bellamy about the 3-5 spaces near the intersection of Edwin Place, Mr. Moule said that if the area is not signed for "No Parking" then it is legal to park there, except there are some other restrictions, e.g., fire hydrants, etc.

Upon inquiry of Vice-Mayor Cloninger, Ms. Coombs said that she has renewed her lease in the Reisers' building within the last five years.

Upon inquiry of Councilwoman Bellamy, Mr. James explained why he felt it was safer to have a right turn lane into the parking lot on Edwin Place and then have a right-turn lane out of the parking lot onto Charlotte Street, even though cut-through traffic is a valid point.

Mayor Sitnick asked if Mr. James was implying that if the Reisers agreed to the directional change of ingress and egress that the Albemarle Park Neighborhood Association would have voted in favor of this. Mr. James said that he could not speak for the Association, however, if there had been at least any dialogue from the Reisers, that would have shown the neighborhood a good faith effort but there was no good faith effort shown.

Councilwoman Field asked Ms. Warshaw if, when she talked to Urban Land Institute for the statistics she quoted, she told them that this is a major thoroughfare and not a neighborhood street. Mr. Warshaw said she told them it is not a major four-lane thoroughfare in a municipality, but it is used as a four-lane auxiliary street to avoid a major thoroughfare, i.e. Merrimon Avenue. Councilwoman Field noted that that Charlotte Street has been designated as a major thoroughfare.

Councilman Peterson questioned the 40 feet requirement from the tangent line of the intersection to the tangent line of the exit and the actual 27.5 foot distance. Mr. Moule said that the original plan was for 40 feet. In order to try to encourage the right-turn only out of that driveway and discourage the turn-in, he worked with the developer to reconfigure that driveway to encourage that movement. It did decrease the distance radius on Edwin Place for the driveway. With regard to City staff being able to vary the standards, he referred to Chapter 3 of the Asheville Standard Specifications and Details Manual (Manual) , in which it says that the City Engineer must approve standards which vary from this section or standards which are not contained herein. The City Engineer, Cathy Ball, has delegated issues having to deal with traffic and driveways to him as he has more expertise in those matter. Therefore, he can approve variations from the Manual. With that said, there are some things that they can do with the driveway to bring it a little further back as far as the actual radius. It's a fact that people exiting that driveway are going to have to rely on the courtesy of drivers to let them out.

When Councilman Peterson asked what the reason was for the 40 feet from the intersection, Mr. Moule said that conflicts are created when vehicles are turning from driveways near intersections. Since the exit is only right-turn only onto Edwin Place, that is one of the reasons why he felt he could reconfigure the driveway to get it further from the intersection.

Councilman Worley asked Mr. Moule what he felt an average turn-over rate in a parking lot of this nature would be on a per hour basis during the heaviest part of the day. Mr. Moule said this was very difficult to estimate based on the fact that the uses in the Reiser building are not common land uses in their manuals. He estimated that on the order of between 6 –15 entering vehicles during the peak p.m. hour and between 9-18 exiting vehicles in that p.m. peak hour. Anytime you add a curb-cut to a street, you increase a conflict point.

Upon inquiry of Councilman Worley, Mr. Moule said that there is always the possibility of the circling effect in the parking lot. It certainly would be hard to know before entering the lot whether there are empty spaces in the lot.

Upon inquiry of Mayor Sitnick, Mr. Moule said the only parking space that someone backing up could block the entrance to the lot would be the handicapped space (City Exhibits 12 and 13). Even though that is a possibility, the probability is low.

Mr. Moule then responded to questions regarding crash data.

Councilman Worley asked Mr. Moule if he thought that the traffic study that is underway on Charlotte Street would yield any useful information in connection with this particular project. Mr. Moule responded that he didn't think there would be any significant changes as to how this parking lot might more safely operate. He said the study should be completed in about 2-3 months.

Upon inquiry of Councilwoman Field, Mr. Green explained the issue of the mature trees vs. the buffering that the City requires.

Councilman Worley asked about the comment that the church could not share the parking lot. Mr. Green said that the definition for ancillary non-residential use states that "ancillary non-residential use means employee or customer parking ... associated with the principle non-residential use." The principle use will be those mixed-used businesses and offices in the Reiser building. The Unitarian Church parking would be a secondary use, only on Sunday mornings. Allowing it to be used a few hours a week for a secondary use does not limit it to the strict definition here.

Upon inquiry of Councilman Field, Mr. Green said that he has not heard anything from the testimony at this hearing to change staff's recommendation to City Council.

Upon inquiry of Mayor Sitnick regarding the definition of "value", City Attorney Oast said that if the value being referred to is in Condition No. 3, then he felt the term "value" means monetary value. All of the cases he has looked at suggests that it does mean that and he would strongly recommend City Council use that term to mean monetary value in the context of conditional use standards.

Mayor Sitnick closed the public hearing at 10:25 p.m.

Councilman Peterson said that based on the information provided by staff and evidence and testimony received at this public hearing, he was not convinced that the application meets the seven standards. He felt the proposed use would injure the value of the adjoining and abutting property. It's clear that even an 11 space parking lot that close to a residential home of that character and quality would decrease its value. Also looking at the Charlotte Street Corridor Plan and other plans that the City has adopted, it appears that it was clearly contemplated that this property would not be used for a commercial use – that it be used as residential. He didn't think it has been shown that this use conforms with the Comprehensive Plan or other official plans adopted by the City. He also had concerns that the proposed use potentially could endanger public health and safety or could create a traffic hazard, especially if the City's own standards require 40 feet from the driveway to the intersection. He said there are clearly reasons for those standards (to protect public safety and traffic prevent hazards).

Councilman Peterson moved to deny the application for a conditional use permit for ancillary use (parking lot) in a residential district at the corner of Charlotte Street and Edwin Place, based upon the evidence and testimony received at the public hearing. This motion was seconded by Vice-Mayor Cloninger.

Vice-Mayor Cloninger said that this was a very difficult decision for him. He thanked the Reisers for doing such an excellent job in developing their property. The concern that he has is in Condition No. 4. He is concerned that the parking lot will not be in harmony with the scale, bulk, density, and character of the area or neighborhood in which it is located. He knows it's not feasible, but if there were some way to put the parking lot up against the building and have access only from Charlotte Street, then he could support that. However, he understands that may not be possible. But given this is a gateway for the Edwin, Kimberly and Grove Park area, even with a conscientious attempt to landscape that parking lot, he was concerned the parking lot would not be the right kind of gateway for that area. A related concern he has with that is while he has no doubt that the Reisers would be very conscientious in maintaining the landscape in the parking lot, that property could change hands at anytime and there is no guarantee that subsequent owners would be as diligent as the Reisers would be in trying to keep that attractive. That corner could become deteriorated quickly. The Reisers did know at the time they purchased the property there was a parking problem. Similarly, the Music School has been in that building for five years and they have renewed the lease during that period of time. He did not question any concerns they have about traffic, they must feel that the situation is not so bad that they don't want to have their business there. Nevertheless, some genuine legitimate concerns were raised about safety. If this CUP is denied, he hoped that our traffic study would look that very carefully and try to come up with some alternative solutions in that area to make it safer.

Councilman Hay said that his expectation coming into this, based on what the Reisers did to their building, was that it would be a thoughtful project and that it would fit in the neighborhood in an appropriate way. It is well-designed and exactly the kind of thing we want people to be doing. Unfortunately, he cannot vote for the conditional use permit. His primary reason for voting against it was how it fits into the Charlotte Street Corridor Plan. An integral part of that plan is the traffic study. A lot of energy and intensive planning went into the Plan and we have an obligation to stick with the Plan. The Plan calls for medians at Charlotte Street and Edwin Place. If we are to preempt some of the Plan provisions by putting in a driveway and therefore having to build around decisions we make now, we are in effect not complying with the Plan. This would have been an easier project to review after the traffic study was done and after the recommendations about medians were decided upon. Whether we build the medians right away or not, at least driveway entrances could take into account what the Plan says. He did not feel the parking lot conforms with City plans.

Councilman Worley agreed this has been a difficult decision. He felt the parking lot will enhance the successful operation of the surrounding area. With regard to Condition No. 3 when the condition reads the proposed use ... will not substantially injure the value of adjoining property, he felt the only real adjoining property in question is the Van Buskirk property. He sees a graveled, well-buffered parking lot and particularly given the description of the buffering, he felt the buffering will very substantially hide this property from the adjoining properties so that the appearance of a parking lot next door will be minimal. He felt the parking lot does confirm with the Comprehensive Plan in that the Plan encourages shared parking, encourages pedestrian safety and walkability. This certainly does not create undue traffic congestion. It doesn't even create congestion – the traffic is already there. He didn't think it creates a traffic hazard, particularly with regard to the one-way in/one-way out. The only thing that does concern him is the possibility of medians being recommended by the traffic study currently underway. He regrets Council is having to deal with this now as opposed to after the results of those traffic studies. But, Council is dealing with this now and we have to deal with this on the basis of what we have now and what we know now. Based on his findings, he will vote against the motion.

Councilwoman Bellamy felt this does conform with City plans. When we look at the Smart Growth Policies, this piece of property conforms. The definition of smart growth reads in part that "it is a proposed City of Asheville development pattern that makes efficient use of our limited land, fully utilizing our urban services and infrastructure." She felt the developer has taken a good piece of property and presented a good plan. They went above and beyond what staff has requested as far as landscaping. City Council has to rely on City staff and their expertise in making the best decisions to vary from policies. She felt staff did take into consideration statistical information, policies, procedures and plans and also emotions, and they are recommending what they feel is conducive to that neighborhood. She felt the developer is invested in the neighborhood. The parking lot is not the disease of the neighborhood and may actually may help some of the diseased intersection. She said that she will trust the Traffic Engineer's findings in that he has the best interests for all the citizens in that area. This is a designated major thoroughfare, so it may require a little more than a purely neighborhood lot. She felt she could not support the motion because she felt they presented a very good case for a very good project.

Councilwoman Field said that she has tried for 10 years to support smart growth. She strongly believes that any use can be buffered appropriately from any other use. She said we must have transition districts and areas that are walkable. This kind of development is exactly what we need. She feels it is very appropriate in this area. She thoroughly understands protecting neighborhoods and she felt the neighborhoods are protected. But every neighborhood has a border and those borders require transitions. She felt this was an appropriate transition. This will leave an open space better designed than it is now.

Mayor Sitnick thanked the Reisers for their commitment to excellence in the renovation of their building. Regardless of how the vote is, she asked that (1) Edwin Place be marked and made more user friendly for parking; (2) one or two handicapped spaces be marked on Charlotte Street in front of the Reisers' building; and (3) the traffic study be completed as soon as possible. She felt that the lot could be improved with landscaping and a footpath could be created. Recognizing the difficulty of this area, especially in the summer when the Jewish Community Center is in full swing, and recognizing that this is already a major thoroughfare with a well-used intersection, and giving consideration from corners and intersections and curb-cuts and buffers, she has no doubt that if anyone can create a magnificent parking lot, it would be the Reisers. But, she would have to vote against the conditional use permit application. Condition No. 1 has not been met. The public health and safety is the most important issue. She also has concerns about Condition No. 3. She felt there is a great subjectivity to the defining of the word "value" to the Van Buskirks. With regard to Condition No. 5, she didn't know if the mixed use and sharing of lots in the Charlotte Street Corridor Plan was really what was intended. She felt there are enough parking lots in that area and there are enough curb-cuts in that area. With regard to Condition No. 7, she was not convinced that the traffic congestion caused by going in and out is the best solution for the parking needs of the Reisers' building and she would like to see those needs met. She said we already have a major thoroughfare that runs parallel to Charlotte Street and she doesn't want to create another Merrimon Avenue. We are already working on solutions to deal with the curb-cuts and the ins and outs on Merrimon Avenue. She does want to create an opportunity for the Reisers, the tenants and the users of the building to have safe, adequate, convenient, user-friendly parking but she doesn't feel that a parking lot on that corner is going to create it any better than the other possible solutions. She would support the motion denying the conditional use permit.

The motion made by Councilman Peterson and seconded by Vice-Mayor Cloninger to deny the application for a conditional use permit for ancillary use (parking lot) in a residential district at the corner of Charlotte Street and Edwin Place carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Cloninger, Councilman Hay and Councilman Peterson voting "yes" and Councilwoman Bellamy, Councilwoman Field and Councilman Worley voting "no".

City Attorney Oast said that the would bring back an ordinance denying the conditional use permit with the conditions outlined above for City Council consideration at their next formal meeting on April 24, 2001.

At 11:01 p.m., Mayor Sitnick announced a 15 minute break.

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 01-50 - RESOLUTION INSTRUCTING CITY STAFF TO WORK WITH THE N.D. DEPT. OF TRANSPORTATION AND THE HAW CREEK COMMUNITY ASSOCIATION TO DEVELOP PEDESTRIAN CONNECTIVITY IN THE HAW CREEK COMMUNITY

City Engineer Cathy Ball said that on February 27, 2001, the Haw Creek Homeowners Association presented a resolution to City Council asking the City to request that the N. C. Dept. of Transportation (NC DOT) install a 3-foot paved shoulder as a "demonstration pedestrian safety initiative." City staff requested the opportunity to work with the neighborhood association to reach a more feasible pedestrian improvement in the Haw Creek Valley.

City staff met with members of the Haw Creek Homeowners Association to discuss options. Staff recommends that a resolution supporting an effort for the City to work with NC DOT and the Haw Creek Homeowners Association to develop a pedestrian connection in the Haw Creek community be presented to City Council for their approval. The members of the Haw Creek Homeowners Association were agreeable to a resolution with that intent.

Staff recommends that Council adopt a resolution requesting that a team be formed composed of City staff, NC DOT staff and the Haw Creek community officials. Said team will meet regularly to develop and implement short and long term goals to increase safety in the Haw Creek Valley and will review the progress of implementation of this overall plan until such time that sufficient pedestrian issues are addressed. The team will make an annual report to City Council.

Mr. Chris Pelly, member of the Haw Creek Community Association, said that the Association welcomes the partnership with the City.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-50. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 330

B. ORDINANCE NO. 2803 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PARKING LOT IN A RESIDENTIAL DISTRICT AT 2 GRANDVIEW PLACE

Mayor Sitnick said that this public hearing was held on March 27, 2001.

City Attorney Oast said that City Council asked City staff to develop some conditions to address some of the concerns that were expressed at the public hearing.

Chief Planner Gerald Green passed out some photographs of the area. He said that this is the consideration of a motion to issue a Conditional Use Permit (CUP) for an ancillary parking lot in an RS-8 Residential Single-Family Medium Density District for property located at 2 Grandview Place off Tunnel Road.

The applicants are requesting a conditional use permit for a 17 space parking lot to be located on a vacant lot located at 2 Grandview Place. The customers of the adjacent restaurant (East Village Grill) located on Tunnel Road will use parking spaces in the proposed lot. The project site is located behind the commercial strip development located on Tunnel Road. The subject property contains approximately 0.3 acres. The site meets all the location requirements

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for ancillary uses in residential districts. Grading and paving of the site has occurred in violation of the regulations and standards of the City of Asheville. The owner is seeking a conditional use permit to correct the violation. More than 10,000 square feet of the site has been graded for the construction of the parking area. Measures will be taken to minimize stormwater impact onto adjacent property. A number of trees will be planted to serve as street trees and buffer trees for the parking area.

He said that as a result of comments made at the City Council public hearing, staff recommends the following conditions be added to approval of the conditional use permit (CUP) for this project:

- The dumpsters must be moved south on the property to the edge of the lot for which the ancillary use is proposed so as not to block the view from the adjacent business. They must be screened as indicated on the site plan;
- A fence (chain link acceptable) must be installed from a point parallel to the northwest corner of the adjacent residential structure, located on property owned by C.L. Henderson, Inc., northward along the property line for a distance of 40 feet; and
- Extended operating hours, to coincide with hours of operation for the restaurant, must be approved for the parking lot. Parking lot lighting must be turned off when the parking lot is not in operation.

Based on information available to the Planning and Development Department in advance of the public hearing, staff recommended that the City Council issue the CUP for an ancillary use (parking lot) to be located at 2 Grandview Place with the following conditions:

1. Remove existing asphalt as required to install required landscaping;
2. The existing parking lot lighting must be shielded and/or directed away from adjacent residential uses;
3. Pedestrian access from upper lot to the restaurant must be provided in a location other than the driveway;
4. The west side of the lot must be curbed to direct stormwater into the stormwater drain;
5. Remove the chain link fence currently located at the rear of the property;
6. The existing water meter on the lot must be abandoned;
7. The dumpsters must be moved south on the property to the edge of the lot for which the ancillary use is proposed so as not to block the view from the adjacent business. They must be screened as indicated on the site plan;
8. A fence (chain link acceptable) must be installed from a point parallel to the northwest corner of the adjacent residential structure, located on property owned by C.L. Henderson, Inc., northward along the property line for a distance of 40 feet;
9. Extended operating hours, to coincide with hours of operation for the restaurant, must be approved for the parking lot. Parking lot lighting must be turned off when the parking lot is not in operation; and
10. The required improvements to the parking lot, as shown on the site plans and identified in the conditions attached to the Conditional Use Permit, must be completed within 60 days. If not completed within this time period, the CUP will be revoked and the site shall never be used for parking for commercial uses.

Upon inquiry of Vice-Mayor Cloninger, Mr. Green explained why landscaping islands are not required in this parking lot.

Councilman Worley moved to adopt Ordinance No. 2803, with the ten conditions outlined above as recommended by City staff, in addition to the following three conditions: (2) The dumpsters must be moved south on the property to the edge of the lot for which the ancillary use is proposed so as not to block the view from the adjacent business. They must be screened as indicated on the site plan; (2) A fence (chain link acceptable) must be installed from a point parallel to the northwest corner of the adjacent residential structure, located on property owned by C.L. Henderson, Inc., northward along the property line for a distance of 40 feet; and (3) Operating hours may be extended to coincide with hours of operation for the restaurant, but in no case past Midnight. Parking lot lighting must be turned off when the parking lot is not in operation. This motion was seconded by Councilwoman Bellamy.

Vice-Mayor Cloninger said that he would have to vote against this CUP. He would have no trouble voting in favor of it if the owner had followed the required steps in getting the appropriate permits. The fact is that the owner did not submit an erosion control plan or get an issuance of a grading permit, prior to the grading being done. Also, paving requires a conditional use permit that was not applied for prior to the initiation of the paving. He was concerned about the precedent this will set in that he fears that if other people find out that this has been approved, they may get impatient or won't feel like applying for a permit. Then they might decide to go ahead and do it and then go back to City Council and get approval for it after the fact. He just doesn't want to send that signal out. Sooner or later someone may do the paving in a manner that does not meet City standards and Council would not want to approve it. Because of the precedent this will sent, he will vote against it.

Councilman Hay appreciates Vice-Mayor Cloninger's concerns, but based on staff's recommendations, it is otherwise a good idea.

Councilman Worley also noted that City staff is looking at some penalties for moving forward in a situation like this without all the permits being approved.

Councilman Peterson felt that if this came before City Council prior to the work being done, Council may have approved some parking, but maybe not approved as much parking as the applicant has paved. He agreed with Vice-Mayor Cloninger that if City Council approves this, then we are sending a clear message that it's okay to develop your property and then once it's done City Council will give permission. He has a problem in that this looks to be clearly commercial intrusion into a residential area. He felt that City Council is sending the wrong message in approving the CUP with no limitations or penalties for violation of the ordinance.

Mr. Green said that the penalty that City staff is looking at for starting work without a zoning permit is doubling of the application fee (in this case it's $250 or $300).

The motion made by Councilman Worley and seconded by Councilwoman Bellamy to approve Ordnance No. 2803, granting the conditional use permit for ancillary use (parking lot) in a residential district at 2 Grandview Place with the 13 conditions listed above, was carried on a 4-3 vote, with Councilwoman Bellamy, Councilwoman Field, Councilman Hay and Councilwoman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger and Councilman Peterson voting "no".

ORDINANCE BOOK NO. 19 - PAGE 129

V. NEW BUSINESS:

A. ORDINANCE NO. 2804 - ORDINANCE WAIVING THE UNIFIED DEVELOPMENT ORDINANCE REQUIREMENT FOR A SIDEWALK AT 655 BREVARD ROAD

Pedestrian and Bicycle Coordinator Oliver Gajda said that this is the consideration of a request to allow a partial fee waiver for the new commercial project located at 655 Brevard Road.

Section 7-11-6 of the Unified Development Ordinance (UDO) requires that new construction place sidewalks as specified in the Asheville Standard Specifications along street rights-of-way or pay a fee in lieu of constructing a sidewalk.

The developer for a new commercial project located at 655 Brevard Road is requesting consideration of an ordinance waiving the amount of the fee specified within Section 7-11-6 of the Unified Development Ordinance (UDO).

This development meets the requirements for paying a fee in lieu of construction per the UDO Section 7-11-6(c)(2) based upon the condition that sidewalks are scheduled to be installed as part State project which has been funded for construction. The State plans to widen this portion of Brevard Road within the next four years as outlined in the Transportation Improvement Plan (TIP). However, the developer is requesting a waiver of Section 7-11-6 of the UDO and that only 40% of the required fee in lieu of construction be paid. Per the NCDOT's Pedestrian Policy Guidelines, the City would be required to pay 40% of the costs of sidewalks to the State's matching contribution of 60%.

City staff recommends that City Council allow a partial fee waiver of 60% requiring the developer to pay the remaining 40% of the fee in lieu of construction for the new commercial project located at 655 Brevard Road.

Mr. Gajda said that City staff is looking to amend the Fees and Charges Manual to include this type of ruling where there is some sort of measure (like on the State's TIP) that City staff wouldn't need to bring these issues to City Council for approval.

Councilman Peterson said that City Council needs to be pretty certain at this stage that projects will be completed by NC DOT, so the City doesn't set a precedent of waiving the fees and the sidewalks don't get built.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2804. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 134

VI. OTHER BUSINESS:

Amendment to N. C. State Building Code

Councilwoman Field said that in 1996 City Council approved an amendment to Volume 5 of the N. C. State Building Code which is called the Asheville Amendment. That amendment was adopted by the Building Code Council. We are now in the process of adopting a new International Building Code and our amendment is no longer in compliance. The easiest way for us to amend it is to withdraw the amendment and that can be done by an administrative action.

It was the consensus of City Council to instruct the City Manager and City Attorney to draft a letter to the Building Code Council, for City Council approval at their April 24, 2001, meeting, asking them to withdraw the amendment.

Legislative Requests

Councilman Peterson stated that the cross-over deadline is April 26, 2001, and as yet there have been no bills introduced about additional funding sources for the Civic Center. There are a number of blank bills from our delegation that they have introduced. In addition, the City of Monroe has introduced a bill for a prepared food tax. Given the deadline is April 26, he suggested we ask one or more of our delegates to fill in one of their blank bills with similar sort of legislation or ask Senator Carter or Senator Metcalf if they might be able to amend the City of Monroe's prepared food tax bill to include Asheville. He was concerned that in two weeks from now we will not be able to get any kind of funding for the next two years. He also noted that the City of Charlotte advisory referendum bill was filed March 13, passed the House about 15 days later, and then passed the Senate about 2 days after that. His preference would be to do what the City of Monroe has done. They have asked that the City be given the authority to levy a prepared meals tax. If our legislators do not want to support giving Asheville the authority directly, then we should ask them to do something that the City of Charlotte did – with the advisory referendum for this fall.

He would like to formally ask our legislative delegation to take one of their blank bills and insert a straight prepared meals tax. And since they have indicated they want to see public support, we should ask them to include in that bill something similar to what Charlotte had regarding an advisory referendum.

Councilwoman Bellamy said her choice would be to have an advisory referendum.

Councilman Worley said that we have already formally asked them to introduce the bill and we have been following up and will continue to follow-up. He has no problem with that follow-up including a referendum if they won't introduce just a straight up bill.

Councilman Hay felt that a referendum sounds like a good way to get it done, but we want to make sure we do it at the right time. If we ask the question the wrong way, or the wrong time or without the proper development of the idea, we may not get the answer we want. He wanted to make sure we had a clearly articulated plan for what we were asking people to do, how we were going to spend the money, and what they are going to get for their money. He thinks we're well on the way to being at that point, but would hate to get the ball rolling towards a referendum and then find that we're not ready to present it,

Upon inquiry of Vice-Mayor Cloninger, City Attorney Oast said that one of the proposals that is in the legislature now, but he didn't think it's been introduced, is the County requested introduction of a bill that the City would benefit from which would be a local option sales tax.

It was the consensus of City Council to have staff report back to City Council at the April 17, 2001, worksession as to what the status of our legislative requests are with regard to the additional funding sources for the Civic Center.

Film Board Funding Request

At the request of Film Board Chairman David Quinn, Mayor Sitnick moved to appropriate up to $2,000 from the Contingency account to assist with the development of the Film Board website. The costs include the purchase of software needed to keep the site updated, a training program for the Board member who is voluntarily maintaining the site, and an "as needed" consulting service to provide back-up assistance as needed. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

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Claims

The following claims were received by the City of Asheville during the period of March 23 – April 5, 2001: Wendy Dayton (Streets), Marilyn Briggs (Water), Stanley Combs (Water), BellSouth (Water), Marcus Robinson (Police), Brenda Graham (Parks & Recreation), Jeanine Helms (Fire), Ryan Lander (Asheville Transit) and Maximino Marales (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 12:07 a.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – April 17, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Edward C. Hay Jr.

CONSENT:

Schnabel Engineering Associates Task Force for Bee Tree Dam Construction Phase Engineering – For Information Only

Summary: The Regional Water Authority will consider authorizing the Chairman to execute Task Order No. 6 amending the Authority's contract with Schnabel Engineering Associates at their regular meeting on April 17, 2001.

The Regional Water Authority authorized an engineering services contract with Schnabel Engineering Associates in 1997 under the company's former name of Applied Geosciences & Engineering. Services were related to the needed reconstruction of a spillway for the Bee Tree Dam and other repairs and rehabilitation to both the Bee Tree Dam and the Burnette (North Fork) Dam. Since 1997, five Task Orders have been executed authorizing engineering services through the design and bidding phases of the project, and including the construction of the grouting of the Burnette Tunnel.

The project will be moving to the construction phase this month as Hickory Construction Company mobilizes to the sites. Task Order No. 6 addresses the engineering services for the construction phase. These services include contract administration, shop drawing review, field construction observation services, and quality control for concrete, geotechnical, and structural engineering. As part of these services, Schnabel will evaluate the construction quality closely enough to properly administer the construction contract and to provide an important engineering certification to the North Carolina Land Quality Section as required by Dam Safety regulations.

Schnabel initially requested a fee just over $750,000 for construction phase services. Through discussions of the service, the staff and Schnabel have been able to agree on a ceiling of $693,144, with fees billable based on the actual services provided which to some degree is a function of the length of the contract period (if the project is finished early, which is Hickory Construction Company's intention, the actual engineering fees will be less). The staff has also identified points where the engineer must get the Owner's permission to increase the level of observation services.

Article IV of the Supplemental Water Agreement authorizes the Regional Water Authority to award and amend contracts for engineering services. No action is required by the City Council but this report is offered for information only.

Semi-Annual Report of the Regional Water Authority – For Information Only

Summary: This is the semi-annual report for the Water Resources Department and the Regional Water Authority for July 1, 2000 – December 31, 2000.

Article IV, Section D of the Water Agreement states that the Authority shall make semi-annual reports to the City and County. Each year, in the early spring, staff provides a brief semi-annual update of the accomplishments of the Water Resources Department and the Authority. A more detailed annual report is provided in approximately October.

The semi-annual update for July 1, 2000, through December 31, 2000, highlights Phase I Water Distribution Improvements that were completed in December 2000, a $27 Million Five-Year Capital Improvements Plan that will be funded with two revenue bond issues in 2001 and 2002, and Critical Needs Projects that will be substantially funded with NC State Grants. This semi-annual update also summarizes the Watershed Projection Project, routine system maintenance, water supply and quality, and the education and efficiency program.

No action by the City Council is required.

Budget Amendment re: Grant for Carolinas Preservation Commission Conference

Summary: The consideration of a budget amendment, in the amount of $14,750, for the Carolinas Historic Preservation Commission Conference hosted by the Historic Resources Commission of Asheville and Buncombe County (HRC).

The purposes of the conference are to provide training for new commission members and staff and continuing education for those more experienced. This is the first year that this event is being offered jointly by North and South Carolina. The program reflects the experiences, expertise, and strengths of both states.

The University of North Carolina at Asheville will serve as conference headquarters. Sessions will be held on campus and in the historic districts. With six National Register districts, three locally designated districts, and over sixty individual National Register listings and landmarks, Asheville offers an especially rich environment for the field sessions and special events.

This conference will be a superb commissions-to-commissions training event. The North Carolina State Historic Preservation Office has awarded the HRC a $2,000 grant to cover the cost of the bus tour and honorarium. All other expenses will be covered by the $55 registration fee and includes all sessions, meals, and events.

City staff recommends adoption of the budget amendment.

Preventive Maintenance Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Paving Enterprises Inc. for the Preventative Maintenance Contract 2000-2001.

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose six streets to be maintained by application of both crack seal and a full coverage resurfacing treatment based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for preventative maintenance for Phifer Street, Kensington Drive, Jeffress Avenue, Mt. Vernon Place, Lucerne Avenue and Mountain Terrace.

The engineer's estimate for Contracted Pavement Preventative Maintenance 2000-2001, was $204,804 for these streets. Money for the project is currently budgeted in the Public Works Department's operating budget.

The project was advertised for one month. The Engineering Department received bids on February 28, 2001. Only one bid was received at this bid opening. The sealed bid was returned to the bidder unopened. The project was immediately re-advertised for one week. The Engineering

Department held a second bid opening on March 14, 2001. One bid was received and opened. The bid was $198,040.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff requests City Council authorize the City Manager to execute a contract with Paving Enterprises, Inc. in the amount of $198,040.00.

Contracted Paving Contract

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. for the Contracted Paving 2000-2001.

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose six streets to be resurfaced based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for resurfacing Grindstaff Road, Hilliard Avenue (from Clingman Avenue to West Haywood Street), Melton Drive, Brookcliff Drive, Starmount Drive, and Russell Street.

The engineer's estimate for Contracted Paving 2000-2001 was $350,800 for these streets. Money for the project is currently budgeted in the Public Works Department's operating budget.

The project was advertised for one month. The Engineering Department received bids on February 28, 2001. Only one bid was received at this bid opening. The project was re-advertised for one week. The Engineering Department held a second bid opening on March 14, 2001. Two bids were received and opened. One bid was from APAC Carolina Inc. in the amount of $260,325.00, and the other bid was from Paving Enterprises Inc. in the amount of $304,643.39.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. in the amount of $260,325.00 for the Contracted Paving 2000-2001.

Upon inquiry of Councilwoman Bellamy, City Engineer Cathy Ball said that she would contact Mountain Housing Opportunities for possible coordination of projects in the Clingman Avenue area.

Grant Application to HUD for Lead Based Paint Hazard Control

Summary: The consideration of an application to the U. S. Department of Housing and Urban Development for a Lead-Based Paint Hazard Control Grant.

City staff is developing an application to the U.S. Department of Housing and Urban Development for approximately $1,700,000 to fund a three year program to reduce Lead-Based Paint Hazards in the City of Asheville and the Asheville Regional Housing Consortium Area (Buncombe, Henderson, Madison and Transylvania Counties).

This program, which is being developed in close coordination with UNC-A's Environmental Quality Institute (EQI) and other governmental and non-profit agencies, will identify housing units

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occupied by low- and moderate-income families which contain lead-based paint. The level of risk in each unit will be assessed, and appropriate, cost-effective, hazard control measures will be carried out, followed by a clearance test to demonstrate that the unit is safe for occupancy.

This application will benefit greatly from its association with a national program, under development by EQI, to distribute do-it-yourself lead test kits to homeowners and renters and to follow up positive tests with advice and materials for the residents to carry out their own preventive controls. The partnership with EQI will provide both matching funds and a competitive edge for this application compared with others nationwide. The City will also partner with other non-profit agencies active in housing rehabilitation and repair.

The due date for the application is May 17, 2001.

City staff recommends approval of the resolution authorizing the grant application.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

METROPOLITAN SEWERAGE DISTRICT BOARD

Mr. Billy Clarke, attorney for the Metropolitan Sewerage District Board of Directors, briefed Council on exactly what the Metropolitan Sewerage District is and the Sewer Consolidation Agreement.

Mr. Tom Hartye, General Manager of the Metropolitan Sewerage District of Buncombe County (MSD), reviewed with Council their Capital Improvement Program, finances, and their Master Plan initiatives.

Mr. Hartye, along with former General Manager Bill Mull, answered various questions from City Council, some being but are not limited to: what is MSD's policy regarding extension of lines and why does MSD have that policy in place; does the Board take into account smart growth principles; and are there any plans to serve residents in the City limits who do not have sewer.

Councilwoman Field, MSD Board member, advised City Council on some other issues the MSD Board is dealing with at this time.

On behalf of City Council, Mayor Sitnick thanked the members and MSD staff for meeting with City Council.

REPORT FROM THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE

Mr. Jack Cecil, Chairman of the Sustainable Economic Development Plan (SEDP) Implementation Task Force said that City Council simultaneously adopted the SEDP and appointed the Implementation Task Force (ITF) on May 23, 2000. The ITF held its first meeting June 16, 2000, and has been meeting on a monthly basis ever since.

The Plan is oriented toward a goal of positioning Asheville to attract "knowledge-based" enterprises; and, it lists approximately fifty specific action strategies, divided among four broad priority areas, determined by citizens to be important to achieving that goal. The broad priority areas include: The Development Process, Real Estate, Riverfront, and Workforce/Education.

The ITF was appointed to serve in an advisory capacity. It was to prioritize the strategies outlined in the Plan, work with city staff on implementation options, and make recommendations to Council. In that capacity, and following that direction, the ITF has approved and is making a project recommendation for Council's endorsement.

Mr. Cecil then provided the following update on the work to date of the ITF in each of these areas:

DEVELOPMENT PROCESS: (1) The Task Force is recommending the city Planning Department encourage and provide for higher density, mixed use development via performance based ordinances and standards; and (2) Continued regular meetings with the development community are encouraged for input regarding specific proposals for changes, improvements, etc. to processes, standards, and ordinances. Both of these are the primary responsibility of internal city staff.

REAL ESTATE: (1) Addressing the shortage of industrial real estate is a key priority. Within the City, the Task Force recommends evaluating appropriate areas for redevelopment for industrial use as well as adapting zoning to permit light assembly and/or high tech manufacturing uses in some office or commercial areas; (2) The Task Force feels the longer term solution is to work cooperatively with Buncombe County and other adjacent jurisdictions on a regional approach for developing major industrial parks; (3) The Task Force recommends the city assist AB Tech in the development of the proposed incubator; and (4) The Task Force supports development of a sustainable land use pattern and has recommended the city Planning Department incorporate this approach in their new Comprehensive Plan. This approach would preserve quality neighborhoods, reserve areas for business and industry, continue a viable downtown, develop connecting transportation corridors, build greenways, and protect environmentally sensitive areas. As with the Development Process recommendations, these are also primarily the responsibility of city staff.

WORKFORCE EDUCATION & TRAINING: (1) A workforce skills assessment coupled with a business/industry needs assessment is recommended; (2) Cooperation between business & industry and education is needed to improve education & training service delivery; (3) Review current master plans at area institutions to determine how future workplace needs are being met; and (4) The Task Force recommends convening a "think tank" of retired and active CEOs to explore ways to improve workforce education and training. Frankly, most of these initiatives are already underway through the actions of the Asheville Area Chamber of Commerce, AdvantageWest, and A-B Technical Community College. The Task Force is currently determining what role, if any, the City has in any of these particular initiatives. Regardless of the extent of the City's involvement in this area, the fact that workforce education and training was deemed to be a priority area in the Plan is testament to the importance of labor force skills in attracting and retaining economic development activity. This is particularly true as the community tries to move toward competing in a more knowledge-based economy.

RIVERFRONT DEVELOPMENT: The Task Force recommends development of the Asheville Riverside Parkway. The Implementation Task Force is proposing that the collection of existing roads (roughly 9 miles) currently serving the riverfront corridor be renamed and redesigned into a unified, continuous, multi-lane "parkway" type roadway between the two points between the intersections of Swannanoa River Road at Tunnel Road in east Asheville and Broadway at 19-23 in northwest Asheville. It also includes that portion of the French Broad River that parallels Amboy Road between I-240 and Meadow Road. The "Riverside Parkway" would have a single name along the entire corridor (currently there are four different road names – Riverside Drive, Lyman St., Meadow Road, and Swannanoa River Road) and state and local signage would be created to identify the corridor and, placed so as to direct traffic to and through it. Redesign would incorporate a planted median, landscaping, pedestrian, bicycle, and transit facilities, and at various locations, public parking providing convenient access to a greenway. The group also advocates the city begin immediately to identify the specific "footprint" and fund construction of the greenway along both rivers. Amboy Road would remain so named but would also be redesigned and upgraded in a manner consistent with the Parkway. Finally, planning should integrate necessary improvements to other local "feeder" streets and roads connected to this corridor. The Task Force suggests that only after this infrastructure is planned, funding put in place, and construction underway, can a wholesale redevelopment of the corridor be advanced to the full extent of the vision as expressed in the goal statement.

ITF members held a meeting to discuss the proposal with staff in the Planning and Engineering Departments, and with the approval of the City Manager, those departments are preparing to incorporate the project into their work plans.

The ITF and City staff is recommending Council endorsement of the Riverside Parkway concept and granting staff authority to begin project planning.

Mr. Cecil responded to various questions from Council specifically noting that the ITF will be seeking public input into this project.

Mayor Sitnick suggested Mr. Cecil make this presentation to the Transportation Advisory Committee and the Transportation Coordinating Committee .

Mayor Sitnick suggested a representative from the ITF be involved with the green building roundtable which will be held in October. The roundtable will be to develop information for a green building guide which will contain information for to the community for green buildings. Mr. Cecil said that he would ask the ITF at their next meeting if someone would be interested in participating in that roundtable discussion.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

2001 CONSOLIDATED ACTION PLAN

Due to a conflict of interest, Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilman Peterson and carried unanimously.

Ms. Charlotte Caplan, Community Development Coordinator, said that the City expects to have available $1,839,656 in CDBG funds and $1,422,966 in HOME funds to spend on housing and community development activities in the fiscal year beginning July 1, 2001. The City's Housing and Community Development Committee (HCD) and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 22 CDBG-assisted and 14-HOME assisted projects.

In addition, the HCD Committee recommends that the City apply for a CDBG Section 108 Guaranteed Loan in the amount of $850,000 to assist Eagle/Market Streets Development Corporation in a major redevelopment effort in South Pack Square. A draft loan application is in preparation. It can be made part of the Action Plan or it can be submitted separately.

If approved, the funding will assist in adding or preserving 188 affordable housing units in the City and 162 units in the rest of the Consortium area (Buncombe, Henderson, Madison, and Transylvania Counties), will provide 3,300 Asheville residents with other needed services, and will assist in a major revitalization of the South Pack Square neighborhood.

Notice of the public hearing and a summary of the draft plan was published on April 6. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD on or before May 15, 2001.

No action is needed at the public hearing scheduled for April 24, 2001. Approval of the draft Action Plan is recommended at the May 8, 2001, Council Meeting.

UPDATE ON THE FEASIBILITY OF TWO-WAYING COLLEGE AND PATTON

City Engineer Cathy Ball said that this is an update from City staff on the status of the feasibility study evaluating the possibility of converting College Street and Patton Avenue from one-ways pairs back to two-way streets. She said that this information will be made available to the public and she wanted City Council to be briefed on the report first.

During the design of Prichard Park, staff recommended an evaluation of converting College Street and Patton Avenue from one-way pairs back to two-way streets. The reason for this request was to improve traffic access to some areas, to allow for an improved pedestrian environment, and to enhance the downtown as a destination. The consultant for the Prichard Park project briefly examined the possibility of the conversion but did not finalize the report due to budget and time constraints.

The City recently contracted with Kimley-Horn Associates to complete the feasibility study for converting College Street and Patton Avenue to two-way streets. Their study to date has determined that it is feasible to convert those streets to two-way traffic and still maintain an acceptable level of service at all of the intersections.

Mr. Mark McDonald, consultant with Kimley-Horn Associates, said that the study's purpose was to determine the operational feasibility of converting the existing College Street-Patton Avenue one-way pair in Asheville's Central Business District to a configuration that will reasonably accommodate two-way traffic patterns.

The study methodology included: (1) assemble data: traffic counts, intersection geometrics, timings, etc.; (2) grow and restrict volumes for horizon year 2003; (3) assume basic lane configurations and run preliminary analyses; (4) check needs against assumptions, revise and re-analyze; (5) identify critical conditions and develop recommendations; and (6) prepare intersection schematics and report.

Objectives included (1) accommodating traffic flow through the Central Business District; (2) retaining on-street parking wherever possible; (3) maintaining and enhancing a pedestrian-friendly atmosphere; and (4) coordination with plans for Pritchard Park and Pack Square.

The study results revealed that (1) conversion is feasible with the following traffic-related impacts: (a) reduced capacity and a general decline in level-of-service ratings; (b) more vehicle-vehicle and vehicle-pedestrian conflicts; and (c) the loss of 10-12 on-street parking spaces and several loading areas; and (2) implementation will require (a) the reconstruction of most intersections; and (b) significant upgrades to traffic signals, signing, and pavement markings.

Areas of concern were (1) "Ground Zero" at Pack Square (a) modify signal phasing for westbound N. Pack Square traffic; and (b) Biltmore Avenue/Broadway Street is a state route; changes must be approved by the N. C. Dept. of Transportation; and (2) Pritchard Park Triangle (a) divert primary through traffic eastbound onto College Street; and (b) direct northbound traffic onto Patton, then left onto Haywood.

Preliminary recommendations include (1) restrict northbound left turns from Biltmore Avenue at Patton Avenue; (2) restrict eastbound left turns from College Street at Haywood Street; (3) enlarge corner radii to accommodate new turning movements; (4) remove traffic signals at South Pack Square and Market Street; and Patton Avenue and Haywood Street/Church Street; (5) upgrade remaining signals to conform with MUTCD guidelines; (6) revise timing to accommodate new two-way patterns; (7) provide advance directional signing for eastbound through traffic; and (8) upgrade all pavement markings and signing.

Planning & Development Director Scott Shuford briefly explained some benefits for this change. They included: destination concept, improved access to businesses and parks along roadway and an improved pedestrian environment with calmed traffic.

Mr. Shuford explained that even though this is a feasible project, staff will report back to Council after analyzing the pros and cons of this possible conversion so City Council can make an informed decision.

Discussion surrounded whether we want people to come into downtown and look at the shops or just to get them through the downtown area as quickly as possible to get to another part of town. In addition, the cost for this project will be very important because there are many other areas in the community that need attention.

Ms. Ball said that the City is working with the N. C. Dept. of Transportation to study the feasibility of replacing traffic signal hardware and software in the City and if Council decides to proceed with this project, it could all be tied together to reduce the cost.

POLICY RE: APPOINTMENT OF COUNCIL MEMBERS TO BOARDS & COMMISSIONS

Mayor Sitnick said that she asked City Attorney Oast to prepare a policy regarding termination of Council member appointments to Boards and Commissions. Said policy reads:
"The Asheville City Council from time to time appoints one of its own members to serve on boards and commissions, and to represent Council's interest in the business that comes before that board or commission. It is not Council's practice to terminate its appointments prior to the expiration of the term for which the appointment was made, even where the authority exists to do so. However, with respect to any appointment of a Council member where that appointment is at the pleasure or discretion of Council, or with respect to which Council's power to terminate the appointment is not prescribed or limited by law or ordinance, Council reserves the right, in the event that the Council member appointed ceases to serve on the City Council, to terminate the appointment, and appoint a current member of the City Council. Nothing herein shall be construed to limit Council's appointment power, or the power to terminate appointments, with or without cause, with respect to any board or commission to which it may appointment members."

Mayor Sitnick pointed out that the reason that a Council member is appointed to a board is because some of our boards are authority-making boards and Council needs to make sure that their interests are being represented.

City Attorney Oast noted that this proposed policy doesn't give City Council any more power than they already have.

Vice-Mayor Cloninger said he would want to make the policy prospective.

Councilman Worley said that this policy will at least put each Council member on notice. However, he felt City Council should have the flexibility in dealing with each appointment on a case by case basis.

Councilwoman Field felt that just because a person is no longer a member of Council doesn't mean that they cease to be able to represent the Council.

Mayor Sitnick personally favored a policy that a Council member is automatically removed from a board if they are not reelected to Council and that it be effective at the next election. That way, the person going off the board won't feel like they have been assessed to be inadequate. She didn't think the proposed policy outlined above gives City Council the representation they need.

Councilman Peterson felt that having a current Council member on a board not only serves the board better, but City Council better as well. The current Council member has the knowledge of everything that is going on and that experience will serve the board better.

Vice-Mayor Cloninger felt that an automatic removal if not re-elected to Council is narrowing Council's options.

City Attorney Oast suggested not making this amendment to the City Council's Rules, but that it be a policy outside of the rules.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CITY WATER AUTHORITY REPRESENTATIVES

At the request of Mayor Sitnick, it was the consensus of City Council to invite the three City representatives to the Regional Water Authority to the May 1, 2001, worksession to discuss water-related issues.

The City Manager was also instructed to advise the Council when he would be ready to bring a comprehensive report to Council regarding the Water Authority, in particular problems with the Water Agreement and the issue the Water Authority is discussing of being a separate Authority.

CLOSED SESSION

At 6:35 p.m., Councilman Peterson moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease – G.S. 143-318.11 (a) (5) and that the meeting be moved to Room 209 of the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

At 7:19 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:19 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – April 24, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson (left meeting at 7:02 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

City Manager Westbrook asked that an item be added under "Other Business" regarding the May 1, 2001, worksession.

Mayor Sitnick requested that an item be added under "Other Business" regarding a request of Council.

Councilman Peterson stated that he would need to leave the meeting at 6:30 p.m. as he will be travelling to Durham, N.C.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 2001 AS "MOTORCYCLE AWARENESS MONTH"

Mayor Sitnick read the proclamation proclaiming May 2001 "Motorcycle Awareness Month " in the City of Asheville. She presented the proclamation to Mr. Eldon Moore who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 29-MAY 5, 2001, AS "ASHEVILLE FIREFIGHTERS APPRECIATION WEEK"

Mayor Sitnick read the proclamation proclaiming April 29-May 5, 2001, as "Asheville Firefighters Appreciation Week" in the City of Asheville. She presented the proclamation to Fire Chief Greg Grayson and Captain David McFee, President of the Asheville Firefighters Association. Captain McFee briefed City Council on some activities taking place during the week.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 10, 2001, AND THE WORKSESSION HELD ON APRIL 17, 2001

B. ORDINANCE NO. 2805 – BUDGET AMENDMENT FOR THE CAROLINAS HISTORIC PRESERVATION COMMISSION CONFERENCE

Summary: The consideration of a budget amendment, in the amount of $14,750, for the Carolinas Historic Preservation Commission Conference hosted by the Historic Resources Commission of Asheville and Buncombe County (HRC).

The purposes of the conference are to provide training for new commission members and staff and continuing education for those more experienced. This is the first year that this event is being offered jointly by North and South Carolina. The program reflects the experiences, expertise, and strengths of both states.

The University of North Carolina at Asheville will serve as conference headquarters. Sessions will be held on campus and in the historic districts. With six National Register districts, three locally designated districts, and over sixty individual National Register listings and landmarks, Asheville offers an especially rich environment for the field sessions and special events.

This conference will be a superb commissions-to-commissions training event. The North Carolina State Historic Preservation Office has awarded the HRC a $2,000 grant to cover the cost of the bus tour and honorarium. All other expenses will be covered by the $55 registration fee and includes all sessions, meals, and events.

City staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 19 – PAGE 135

C. RESOLUTION NO. 01-51 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PAVING ENTERPRISES INC. FOR THE CONTRACTED PAVEMENT PREVENTIVE MAINTENANCE 2000-01 PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Paving Enterprises Inc. for the Preventative Maintenance Contract 2000-2001.

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose six streets to be maintained by application of both crack seal and a full coverage resurfacing treatment based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for preventative maintenance for Phifer Street, Kensington Drive, Jeffress Avenue, Mt. Vernon Place, Lucerne Avenue and Mountain Terrace.

The engineer's estimate for Contracted Pavement Preventative Maintenance 2000-2001, was $204,804 for these streets. Money for the project is currently budgeted in the Public Works Department's operating budget.

The project was advertised for one month. The Engineering Department received bids on February 28, 2001. Only one bid was received at this bid opening. The sealed bid was returned to the bidder unopened. The project was immediately re-advertised for one week. The Engineering Department held a second bid opening on March 14, 2001. One bid was received and opened. The bid was $198,040.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff requests City Council authorize the City Manager to execute a contract with Paving Enterprises, Inc. in the amount of $198,040.00.

RESOLUTION BOOK NO. 26 – PAGE 331

D. RESOLUTION NO. 01-52 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH APAC CAROLINA INC. FOR THE CONTRACTED PAVING 2001-01 PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. for the Contracted Paving 2000-2001.

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose six streets to be resurfaced based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for resurfacing Grindstaff Road, Hilliard Avenue (from Clingman Avenue to West Haywood Street), Melton Drive, Brookcliff Drive, Starmount Drive, and Russell Street.

The engineer's estimate for Contracted Paving 2000-2001 was $350,800 for these streets. Money for the project is currently budgeted in the Public Works Department's operating budget.

The project was advertised for one month. The Engineering Department received bids on February 28, 2001. Only one bid was received at this bid opening. The project was re-advertised for one week. The Engineering Department held a second bid opening on March 14, 2001. Two bids were received and opened. One bid was from APAC Carolina Inc. in the amount of $260,325.00, and the other bid was from Paving Enterprises Inc. in the amount of $304,643.39.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. in the amount of $260,325.00 for the Contracted Paving 2000-2001.

RESOLUTION BOOK NO. 26 – PAGE 333

E. MOTION SETTING A PUBLIC HEARING ON MAY 8, 2001, TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT 56 SHILOH ROAD

F. RESOLUTION NO. 01-53 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM AND ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT TO FUND A LEAD-BASED PAINT HAZARD CONTROL PROGRAM

Summary: The consideration of an application to the U. S. Department of Housing and Urban Development for a Lead-Based Paint Hazard Control Grant.

City staff is developing an application to the U.S. Department of Housing and Urban Development for approximately $1,700,000 to fund a three year program to reduce Lead-Based

Paint Hazards in the City of Asheville and the Asheville Regional Housing Consortium Area (Buncombe, Henderson, Madison and Transylvania Counties).

This program, which is being developed in close coordination with UNC-A's Environmental Quality Institute (EQI) and other governmental and non-profit agencies, will identify housing units occupied by low- and moderate-income families which contain lead-based paint. The level of risk in each unit will be assessed, and appropriate, cost-effective, hazard control measures will be carried out, followed by a clearance test to demonstrate that the unit is safe for occupancy.

This application will benefit greatly from its association with a national program, under development by EQI, to distribute do-it-yourself lead test kits to homeowners and renters and to follow up positive tests with advice and materials for the residents to carry out their own preventive controls. The partnership with EQI will provide both matching funds and a competitive edge for this application compared with others nationwide. The City will also partner with other non-profit agencies active in housing rehabilitation and repair.

The due date for the application is May 17, 2001.

City staff recommends approval of the resolution authorizing the grant application.

RESOLUTION BOOK NO. 26 – PAGE 335

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING FOR THE 2001 CONSOLIDATED ACTION PLAN

Due to a conflict of interest, Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 5:20 p.m.

Ms. Charlotte Caplan, Community Development Coordinator, said that the City expects to have available $1,839,656 in CDBG funds and $1,422,966 in HOME funds to spend on housing and community development activities in the fiscal year beginning July 1, 2001. The City's Housing and Community Development Committee (HCD) and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 22 CDBG-assisted and 14-HOME assisted projects.

In addition, the HCD Committee recommends that the City apply for a CDBG Section 108 Guaranteed Loan in the amount of $850,000 to assist Eagle/Market Streets Development Corporation in a major redevelopment effort in South Pack Square. A draft loan application will be submitted separately.

If approved, the funding will assist in adding or preserving 188 affordable housing units in the City and 162 units in the rest of the Consortium area (Buncombe, Henderson, Madison, and

Transylvania Counties), will provide 3,300 Asheville residents with other needed services, and will assist in a major revitalization of the South Pack Square neighborhood.

Notice of the public hearing and a summary of the draft plan was published on April 6. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD on or before May 15, 2001.

The State Housing Finance Agency has completed it's first round of evaluation of tax credit applications as a result of which it looks like one of the applications (Mountain Housing Opportunities' Northpoint Commons development in Woodfin) stands very little chance of success at the State level. That being the case, Mountain Housing Opportunities has requested reallocating $188,000 from this development to the higher ranked (by the State Finance Agency) Compton Place development in Asheville. City staff supports this and the Asheville Regional Housing Consortium Board is in favor as well. They would like to propose that this be included as an amendment to the Plan as originally proposed to reduce the funding for the Northpoint Commons by $188,000 and increase the HOME funding for Compton Place by $188,000.

City Attorney Oast recommended City Council vote on May 8 to amend the Plan to include the proposal by Mountain Housing Opportunities, if City Council wishes to support that amendment.

Upon inquiry of Councilman Peterson about Neighborhood Housing Services' financial status, Councilwoman Field explained that the City is going to allocate money to them, however, they will not release those funds until they are more stable. Ms. Caplan will monitor that closely.

Ms. Caplan said that Neighborhood Housing Services has done an excellent job in the past and they have taken necessary steps to reduce their overhead and salaries while they re-group and plan their next year's projects. She said that they have completed good, quality projects but some financial planning done at the start of the projects was not as far-sighted as it might have been.

Mayor Sitnick closed the public hearing at 5:36 p.m.

Mayor Sitnick said that approval of the draft Action Plan and any amendments will be considered by City Council at the May 8, 2001, City Council meeting.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2806 – ORDINANCE DENYING THE CONDITIONAL USE PERMIT FOR AN ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT THE CORNER OF CHARLOTTE STREET AND EDWIN PLACE

City Attorney Oast said that City Council held a public hearing on April 10, 2001, on this matter.

City Attorney Oast passed out a revised draft Order in which he explained the changes: (1) in Finding of Fact No. 4, he clarified where the vehicle counts occurred; (2) in the Conclusions (4) (d), he corrected the Section Number of Chapter 7; (3) in the ordinance, the addition of a repealer clause; (4) in the ordinance, the addition of the following language "if any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, then the entire ordinance shall likewise be invalid, and subject to modification or re-adoption as provided by law."' and (5) in the caption of the Order he removed the Reisers name and just left the address.

As recommended by Councilwoman Field, City Attorney Oast would amend the Conclusions No. 4 (e) to read: "There already exists on-street parking on Edwin Place ...."

City Attorney Oast responded to a clarification question from Councilman Worley regarding Finding of Fact No. 16.

As recommended by Vice-Mayor Cloninger, City Attorney Oast would amend Conclusion No. 4 to read: "The proposed parking lot is permissible as a conditional use on the subject property ...."

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that what City Council will be voting on is whether the Findings and Conclusions reflect the sense of Council from the evidence presented at the public hearing on April 10, 2001.

Mayor Sitnick said that Conclusion No. 4 (c), states that "the proposed use fails to comply with official plans of the City in that it introduces a commercial use onto a lot that is zoned to a residential classification ...." She asked that at a future worksession City Council determine whether or not a parking lot should be included as an ancillary use in a residential district. Councilwoman Field responded that the Planning & Zoning Commission will be considering that issue.

As recommended by Councilwoman Field, City Attorney Oast said that he would amend Conclusion No. 4 (c) to read: "The proposed use fails to comply with official plans of the City in that the corner serves as a transitional gateway between the residential uses to the north and the commercial uses to the south ...."

Mayor Sitnick personally felt that the "penalty" for a person who grades and paves a parking lot before obtaining permits is not a sufficient deterrent to make sure that it doesn't happen again. City Attorney Oast responded that he is working with the Planning & Development Department and will be bringing a report to City Council in the near future.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2806, with amendments outlined above. This motion was seconded by Councilman Peterson and carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Cloninger, Councilman Hay and Councilman Peterson voting "yes" and Councilwoman Bellamy, Councilwoman Field and Councilman Worley voting "no."

ORDINANCE BOOK NO. 19 - PAGE 137

V. NEW BUSINESS:

A. RESOLUTION NO. 01-54 - RESOLUTION ENDORSING THE ASHEVILLE RIVERSIDE PARKWAY PROJECT

Economic Development Director Mac Williams said that at the April 17, 2001, City Council worksession, Mr. Jack Cecil, Chairman of the Sustainable Economic Development Plan (SEDP) Implementation Task Force provided an update on the activities of the Task Force. He also requested approval of a resolution endorsing a project proposal that addresses a number of strategies outlined in the Plan concerning Riverfront Redevelopment.

He said the Plan is oriented toward a goal of positioning Asheville to attract "knowledge-based" enterprises; and, it lists approximately fifty specific action strategies, divided among four broad priority areas, determined by citizens to be important to achieving that goal. The broad priority areas include: The Development Process, Real Estate, Riverfront, and Workforce/Education.

The ITF was appointed to serve in an advisory capacity. It was to prioritize the strategies outlined in the Plan, work with City staff on implementation options, and make recommendations to Council. In that capacity, and following that direction, the ITF has approved and is making a project recommendation for Council's endorsement. The project, a Riverside Parkway, was explained in detail at the April 17, 2001, worksession.

ITF members held a meeting to discuss the proposal with staff in the Planning and Engineering Departments, and with the approval of the City Manager, those departments are preparing to incorporate the project into their work plans.

The ITF and City staff is recommending Council endorsement of the Riverside Parkway concept and granting staff authority to begin project planning.

Mayor Sitnick said that last week at the Technical Advisory Committee meeting of the Metropolitan Planning Organization, she brought this issue up as requested by the ITF Committee Chair. She asked for the opportunity to get it on the Transportation Improvement Plan so that we can move forward with it.

Upon inquiry of Councilman Peterson, Mr. Williams stated this is an endorsement of a concept that ultimately would involve redesign, reconstruction and renaming of that corridor in the future. The actual changes may not occur for some time until after the public input process and the engineering, planning and funding is in place. City Manager Westbrook also explained that there will be City funding involved, but not in the next couple of years. He said the City has to get the N. C. Dept. of Transportation to get it on their projects list and fund it.

Mayor Sitnick said this is something for the established economy on the river corridors as well as inspiring future business, retail and residential.

Councilman Peterson questioned how many lanes are proposed. Mr. Williams said he didn't know in that this is just at the point of getting the process started so that engineering can start looking at a footprint.

After Ms. Hazel Fobes expressed concerns regarding the project, Mayor Sitnick explained that this is about beautifying existing roads and improving them, rather than digging them up or widening them. This is really just endorsement of a concept to explore the improvement of the roads on the river corridor.

Ms. Sharon Martin asked how much the study will cost the City taxpayers who will not be consulted on whether or not to spend the money on a study. Mr. Williams responded that City staff in the Planning and Development Department, the Engineering Departments, and other appropriate City departments will incorporate the project into their work plans.

Ms. Martin also expressed concern that the City is putting this as a priority, as far as development is concerned, when there are pressing infrastructure and sidewalks needs throughout the City.

Councilman Hay said that nothing in this concept building new streets or reallocates sidewalk dollars. Once City Council endorses the concept, as opportunities present themselves, there is a plan in place that they can relate to as other projects are started.

Mr. Sakata Brokaw felt that with more redevelopment on the river corridor with service-type businesses and parks, some of the older industrial businesses currently located there may feel pressured to move out.

Mr. Adam Baylus was concerned that this is all about growth and growth is not sustainable. He felt our tax dollars will finance economic development for a very small group of people who own property and businesses. He didn't see the job opportunities being generated through this kind of economic development as really having the trickle down effect that we are after. He felt there is a huge section of our population that wants sustainability but not in the context that is being presented by the City here.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 01-54. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

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B. RESOLUTION NO. 01-55 – RESOLUTION ADOPTING POLICY REGARDING APPOINTMENT OF COUNCIL MEMBERS TO BOARDS AND COMMISSIONS

Mayor Sitnick said that she asked City Attorney Oast to prepare a policy regarding termination of Council member appointments to boards/commissions/authorities ("board"). Said policy reads: "The Asheville City Council from time to time appoints one of its own members to serve on boards and commissions, and to represent Council's interest in the business that comes before that board or commission. It is not Council's practice to terminate its appointments prior to the expiration of the term for which the appointment was made, even where the authority exists to do so. However, with respect to any appointment of a Council member where that appointment is at the pleasure or discretion of Council, or with respect to which Council's power to terminate the appointment is not prescribed or limited by law or ordinance, Council reserves the right, in the event that the Council member appointed ceases to serve on the City Council, to terminate the appointment, and appoint a current member of the City Council. Nothing herein shall be construed to limit Council's appointment power, or the power to terminate appointments, with or without cause, with respect to any board or commission to which it may appointment members."

Mayor Sitnick said that in the past City Council has had a policy that said when we make appointments to certain boards that a Council member must be represented on that board as the appointments are made. She said those are the A-B Crime Stoppers Board of Directors (one must be a Council member), the ADA Compliance Committee (one must be a Council member), the Asheville Downtown Commission (two must be Council members), the Citizens-Police Advisory Committee (one must be a Council member), the Film Board (one must be a Council member), the Police Officers & Firefighters Disability Review Board (one must be a Council member), the Regional Water Authority (two of the three City's appointments may be Council members), and the Tourism Development Authority (TDA) (one must be a Council member). She finds it curious that the a Council member "may" be appointed to the Water Authority - a group that has a very serious impact on the City and on our rate-payers and an appointment that really requires signification communication and liaison activity with the Council.

Mayor Sitnick said that City Council doesn't have a specific policy about what happens to a Council member appointed to a board that does not seek reelection or was not re-elected. She said that because there are certain things occurring in the community, she personally felt there was a need to explore this policy especially with an appointment like to the Water Authority or MSD, because a lot of things that City Council does are impacted by the Water Authority or sewer issues, e.g. economic development. Therefore, she felt there was a need to explore this appointment process about whether that former Council member remains on the board, whether that person remove themselves from the board, or whether the Council should have that authority.

City Attorney Oast said that for most of the boards that Council makes appoints to, those members including Council members, serve at the pleasure of Council. What is suggested here is a policy that essentially tells Council they can do what they already have the power to do, but it may serve to put those people on notice that at least part of the basis for their appointment is the fact they are Council members and if they lose that status, then their appointment may be subject for reconsideration.

Mayor Sitnick said that the two options discussed at the April 17, 2001, worksession was that if a person is not re-elected or has sought re-election, that (1) the former Council member is automatically removed from the board and replaced by a sitting member of Council; or (2) the Council has the option to review that appointment and either let it stand or replace that person with a sitting Council member.

Councilman Hay asked if Council made an appointment to the Metropolitan Sewerage District (MSD) Board, could Council revoke that appointment at some point, or if once the appointment is made, would it fall within MSD's rules on how to remove Board members. City Attorney Oast said that he would need to look at the rules or enabling authority for any particular board. However, typically most of those kinds of appointments are appointments that are at the pleasure of the appointing body, so they be revoked at anytime. There are some boards however, like the Board of Adjustment, that are for a specific term and Council can't revoke them.

Mayor Sitnick said that the philosophy behind appointing a City Council member to these boards is that the actual board is very involved in things that impact a lot of what City Council does and Council wants that direct connection. Those appointed members come back to the regular City Council meetings and let Council know what goes on at the board meetings.

Mayor Sitnick said that there is so much going on right now, this issue, with regard to the Water Authority, needs to be addressed now because she feels there is not a direct-enough line of communication and City Council has been in the dark. She didn't feel that calling representatives to the Water Authority in once or twice a year or quarterly is sufficient to keep Council up-to-date on what is going on with the Water Authority. There should be a general policy on the boards that Council feels strongly enough to appoint a member of Council that when that person is no longer a member of Council, that an automatic reappointment should occur. She personally feels that there are boards that City Council makes appointments to that really requires a direct link, e.g. Water Authority, MSD, TDA, and Economic Development Commission (EDC).

Councilwoman Bellamy agreed with Mayor Sitnick, however, she did not feel that Council should replace that member in the middle of their term. The next City Water Authority representative's term is up September 30, 2001 (Tommy Sellers).

Mayor Sitnick asked that if Council adopts this policy for the future that they don't do it at the discretion of Council, but that if a member from the Council is appointed and they don't get reappointed again, that it is an automatic replacement.

Councilman Peterson felt that because of the significant role that the Water Authority and MSD plays in the lives of our constituents that they expect City Council to have some more direct control. He felt Council might just want to focus on the Water Authority and MSD. He would be in favor of amending Council's policy to make it consistent with, for instance, the Film Board in which one member must be a Council member. He felt that not only will City Council be served better, but the board is served better as well because the current Council member has the knowledge of everything that is going on and that experience will serve them better.

Councilman Worley agreed that Council should have a policy to have Council members serving on these critical boards. However, he was not sure Council has the ability to set a policy, for example with the Water Authority, where we make an appointment and then we have the ability to remove that person if they cease to be a council member. One of the things you run up against are the creating documents that set up the appointment process of that particular board. The Water Authority by-laws set a three year term and there is a procedure by which a member may be removed. He didn't think there was any policy City Council could establish that would supercede that unless the City goes back to the County and re-negotiates a change in the Water Authority by-laws. He was in favor of adopting a policy that may ask or even encourage Council members who no longer sitting Council members who are appointed on some of these boards to step down, but he didn't think we can require it or make it automatic.

Vice-Mayor Cloninger said it only makes sense that Council have a policy where they reserve the right if they so choose to remove someone who is on a board who is no longer a member of City Council. But, Council should have the discretion to leave that person on that board if they want to. By having a closed door policy when someone is no longer on Council that they automatically have to leave the board is not in the best interests of the City. There may be a situation where someone is no longer on City Council but is a very effective advocate for the City's interest and may be more effective than any current member of Council. Also, if you lock it in that a position must be a member of Council, you could have a situation where, for some reason, no one on City Council is able to attend those meetings. Or, the one member of Council who is interested would not be as an effective advocate than the person already on the board. He felt Council should reserve the right to ask someone to step down, but not tie Council's hands.

Councilwoman Field felt City Council should have the flexibility and ability to make the best decision possible.

Mr. Jim Bannon, representing Smart Growth Partners, spoke in favor of having a Council member on the critical boards, such as the Water Authority and MSD, since they deal with water quality, land use planning and infrastructure.

Councilwoman Bellamy felt that all Council members should have the opportunity to serve on a board.

Mr. Hazel Fobes felt it was important for Council to have a liaison to all boards.

Ms. Sharon Martin said that the purpose of having a sitting Council member on a board is to ensure that information flows to facilitate good decisions. If a Council member is not on the board, the direct communication is not there. Also, the citizens elect City Council and City Council turns around and appoints a member to a board. If that person is no longer a member of Council, then they are not accountable to the people who elected them.

Mr. Peter Dawes felt City Council should require one of their three appointments to the Water Authority a member of City Council.

Councilman Hay moved to adopt Resolution No. 01-55 as prepared by City Attorney Oast above. This motion was seconded by Vice-Mayor Cloninger and carried on a 5-1 vote, with Mayor Sitnick voting "no". (Councilman Peterson left the meeting at 7:02 p.m.)

When Mayor Sitnick moved that City Council consider appointing a member of City Council to the Water Authority immediately, City Attorney Oast responded that he felt City Council would have to revoke one of it's appointments in order to create a vacancy on the Water Authority. Mayor Sitnick then requested at the next meeting that the City Attorney report back on how City Council can remove a member from the Water Authority whose term will be expiring September 30, 2001, and appoint a sitting Council member to that board.

Vice-Mayor Cloninger acknowledged the Mayor's right to ask the City Attorney for that information but opposed taking such action.

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C. CONSIDERATION OF MODIFICATIONS TO STATE BUILDING CODE APPLICABLE TO CITY OF ASHEVILLE

City Attorney Bob Oast said that at the City Council worksession on April 17, 2001, Councilwoman Field asked that he draft a letter to the N. C. Office of the State Fire Marshal asking that the Asheville amendments to the N. C. State Building Code Council be removed. That letter has been drafted and he asked for approval of that letter to be signed by the Mayor.

Fire Chief Greg Grayson reviewed with Council the following history of the fire protection water supply requirements for the City of Asheville and his recommendations:

- The state fire prevention code does not include fire protection water supply requirements, except for hazardous occupancies and for outdoor tire storage facilities. Facilities that are required to install automatic fire sprinkler systems must have adequate water supply to operate the systems.

- Within the state fire prevention code there are specific City of Asheville amendments, which do describe fire protection water supply requirements.

- These amendments were passed as a part of a local ordinance by the City Council then approved by the North Carolina State Building Code Council. The City ordinance covering fire protection water supply was passed by City Council on July 25, 1995. The ordinance became part of the State Building Code – Volume V – Fire Prevention on March 12, 1996.

- These amendments are a part of the state code therefore they are law. To deviate from the amendments in any way requires action by the State Building Code Council. Appeals are to the State Building Code Council.

- The standard used by the City of Asheville is amended from the National Fire Academy. The other top fifteen cities in North Carolina currently use the ISO schedule, the NFPA schedule or City Engineering Specifications to address water supply requirements. The amended National Fire Academy standard is less restrictive than the ISO schedule.

- Some cities do not have water supply gallons per minute minimum requirements. Instead, they use minimum water line sizing and water line looping and griding requirements as a substitute.

- Asheville determined water flow requirements were more effective for this community because the water line sizing is under the auspices of the regional water authority, not

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directly under city government. Most North Carolina cities directly manage water line sizing without a regional water authority.

- Advantages for the Asheville standard being an integral part of the state code include formal acknowledgement across the state of established standards in Asheville. In addition, the local elected officials do not have to address this issue on a case-by-case basis.

- Disadvantages for the Asheville standard being a part of the state code is that some cities do not have a standard. In addition, the local elected officials cannot address the issue on a case-by-case basis. The standard is then under the control of the State Building Code Council.

- At this point, Asheville is the only North Carolina city which has fire protection water supply requirements as a part of the State Fire Prevention Code. Other cities did use this method in past years, but have removed the requirements from the state code in lieu of engineering specifications or ordinances.

- It is important to establish water supply requirements or line size requirements. Failure to do this will result in non-sprinkled commercial buildings that will have a negative effect on the city's overall fire insurance (ISO) rating. In addition, we strongly advocate automatic fire sprinkler systems as offering a superior level of fire protection while keeping the city's fire protection costs to a minimum.

- The state building code is changing as of January 1, 2002. We will need to take action before that time regarding our ordinance and amendments in order to be compatible with the new state building code.

- Should our fire protection water supply requirements move from state control to local control, it would be prudent for the established standard to apply to all buildings and facilities equally. To not take this approach would open the city up to a significant amount of liability in the event of a fire or other emergency.

Should the City Council decide to take action to change the fire protection water supply requirements, he suggested the following steps:

1. City Council makes the decision to remove the water supply requirements from the State Building Code. (City Ordinance – Appendix E of Chapter 6.)

2. Mayor Sitnick sends a letter to the State Building Code Council via the Office of State Fire Marshal indicating that the City Council desires to remove the fire protection water supply requirements from the State Building Code – Volume V – Fire Prevention, with a requested effective date.

3. Before the Building Code Council makes the request official, the City Council will need to approve fire protection water supply requirements be added to the City Engineering Standards and Specifications.

   (To reduce confusion, we would suggest that if we make this change that we go ahead and implement the fire protection water supply requirements consistent with the new State Building Code , which will become effective January, 2002).

This would move the fire protection water supply standards from control at the state level to control at the local level. We do have some other fire protection requirements that are in our ordinance that are also in the State Fire Prevention Code. Prior to January, 2002, we will need to approach Council to carry forward any items necessary with the implementation of the new state building code. These items include lock box requirements, required fire district designations and other related items.

Councilwoman Field stressed that we will not be less safe or do anything different than we are doing now – we will just remove it from the Fire Code so we will be in conformance with the International Code. She recommended that as soon as possible, that a group of individuals made up of the Building Safety Department, Fire Department, Engineering Department, and representatives from the architectural community and engineering community to sit down and figure out what is the best way to handle this.

Councilman Worley moved to authorize the Mayor to send a letter to the N. C. Office of the State Fire Marshal asking that the Asheville amendments to the N. C. State Building Code Council be removed. This motion was secondea by Councilwoman and carried unanimously.

VI. OTHER BUSINESS:

A. RESOLUTION NO. 01-56 – RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE

Upon request of City Manager Westbrook, Councilwoman Bellamy moved to adopt Resolution No. 01-56 to (1) cancel the May 1, 2001, worksession, and (2) schedule the joint meeting with the Buncombe County Commissioners on May 29, 2001, at the Asheville Civic Center. Said meeting will begin at 3:00 p.m. in the Asheville Civic Center Banquet Room with a tour beginning at 2:30 p.m. in the lobby of the Asheville Civic Center. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

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B. NON-BETTERMENT COSTS

Upon request of Mayor Sitnick, Councilwoman Bellamy moved to send a request in writing to Buncombe County, Henderson County and the Regional Water Authority that they support the non-betterment legislation that is currently in Raleigh by making phone calls, sending letters or personal contact with our state delegation. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Mickey Mahaffee

Mr. Mickey Mahaffee, representing Peacemakers, stated that, in his opinion, the 1995 Water Agreement with Henderson County has not been fair to Henderson County.

Comments by Lola Fay

Ms. Lola Fay, representing the Asheville Area War Tax Resistors, stated that 47% of our tax dollars goes to past and current military. Since the group won't use their money for death and destruction, incarceration and obliteration, six years ago their war tax resistance group was formed around a common theme of taxes for life, not for death. They believe in paying taxes for the betterment of their society. She presented checks of resistant war taxes to a representative of Prison Books, Asheville Global Report, and Shunyata.

Comments by Sakata Brokaw

Mr. Sakata Brokaw felt that two lanes should be adequate for the Asheville Riverside Parkway Project, not multi-lanes similar to Broadway.

Comments by Dan Waterman

Mr. Dan Waterman, representing N.C. Hemp, felt there was a need for an audit of the City.

Comments by Dave Mitler

Mr. Dave Mitler, representing Asheville People for Cannabis Education, complained about a parking ticket he received and questioned the City's penalty provisions.

Comments by Hazel Fobes

Ms. Hazel Fobes, representing Citizens for Safe Drinking Water and Air, thanked City Council for beginning their appointment process to the Clean Air Community Trust Board. With regard to the Asheville Riverside Parkway Project, she was in favor of the Project, however, was concerned that there were no drawings available to see what the nine-mile project would look like. She announced a public hearing on May 9, 2001, at 5:30 p.m. in the First Floor North Conference Room in City Hall regarding the Regional Water Authority's budget.

Claims

The following claims were received by the City of Asheville during the period of April 6-19, 2001: Sandra Wells (Water), James R. Dutton (Water), Dale Houck (Water), Faith McCallister (Water), Deanna McClain (Streets), Brady Blackburn (Streets), BellSouth (Traffic Engineering) and Doris Richardson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City has received the following Complaint on April 19, 2001, regarding Ginny Godfrey v. Asheville Police Department and William Annarino as Agent. The nature of the proceeding is a complaint for participating in the undue felonious assault and battery upon a civilian female, and failure to follow proper and reasonable procedure when criminal activity has been reported. This matter will be handled in-house.

Closed Session

At 8:25 p.m., Councilman Hay moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - G.S. 143-318.11(a)(4); (2) To prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is N. C. Gen. Stat. 160A-168, the Personnel Privacy Act. - G.S. 143-318.11(a)(1); and (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Henderson County, Cane Creek Water and Sewer District, Asheville-Buncombe-

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Henderson Water Authority, Buncombe County, City of Asheville, Frances C. Briggs, Myrna R. Hendrix, Rose Investments, Travis M. Bach, Haywood and Ruth Plott, Howard and Doris Meece, Mary Ann Quarngesser, Allyn Family Real Estate Limited Partnership, Thantex Specialties, Hubbell Realty Development, Alliance-Carolina Tool & Mold, Medical Action Industries, Cutler-Hammer, Eaton Corporation, City of Asheville, and Carolina Power & Light - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley and carried unanimously.

At 9:18 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

OTHER MATTERS

There followed a brief discussion about the extraterritorial jurisdiction/annexation moratorium bills that had been introduced by Representative Crawford and that they had been "killed" on reconsideration in committee.

There was also a brief discussion of the closed session bills regarding their effects on current processes. City Manager Westbrook briefly discussed our legislative proposals for this session.

In response to a question from Councilwoman Field, City Manager Westbrook explained that millions of dollars had been given to the now-departed developer of the private portions of the Grove Arcade were not true.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9: 32 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – May 8, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

On behalf of City Council, Mayor Sitnick and Councilman Peterson expressed their sympathy on the recent death of Mr. E. Benson Slosman.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 10, 2001, AS "PARKS AND RECREATION VOLUNTEER RECOGNITION DAY"

Mayor Sitnick read the proclamation proclaiming May 10, 2001, as "Parks and Recreation Volunteer Recognition Day " in the City of Asheville. She presented the proclamation to Mr. Buster Brown, Bill Fulp Community Service Award Recipient; Mr. Irby Brinson, Mr. Jeff Joyce, Ms. Laura Loftis and Mr. Bill Fulp.

B. PROCLAMATION PROCLAIMING MAY 19-25, 2001, AS "NATIONAL SAFE BOATING WEEK"

Mayor Sitnick read the proclamation proclaiming May 19-25, 2001, as "National Safe Boating Week" in the City of Asheville. She presented the proclamation to Mr. Bill Swan, who thanked City Council for taking time to recognize the week.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 24, 2001

B. RESOLUTION NO. 01-57 - RESOLUTION SETTING A PUBLIC HEARING FOR MAY 22, 2001, TO CONSIDER THE DEMOLITION OF A DWELLING LOCATED ON WYATT STREET

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C. RESOLUTION NO. 01-58 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH LUMINA BUILDERS INC. TO FURNISH AND INSTALL THE FINISHED SURFACE TREATMENT AND DASHERBOARDS FOR THE OUTDOOR ROLLER HOCKEY RINK AT THE FRENCH BROAD RIVER PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Lumina Builders Inc. to furnish and install the finished surface treatment and dasherboards for the outdoor roller hockey rink at the French Broad River Park.

The City of Asheville is continuing its development of the French Broad River Park which entails numerous recreational activities within the westernmost tract of land along Amboy Road. Among these activities is an outdoor roller hockey rink that will be a unique asset to the community. The project is funded through City of Asheville funds which are supplemented by the Parks and Recreation Trust Fund Grant. City staff is preparing the site to be paved via a private contractor. In order to complete the construction of this rink, staff has put out to bid the materials and installation of the finished skating surface treatment (a plexifor system) and dasherboards (fiberglass). Lumina Builders, Inc., was the lowest responsible bidder to furnish and install these elements at a cost of $74,780.

The Parks and Recreation Department recommends that City Council authorize a contract for the outdoor roller hockey rink at the French Broad River Park.

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D. RESOLUTION NO. 01-59 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED AGREEMENT WITH CAROLINA POWER & LIGHT COMPANY TO INSTALL ATHLETIC FIELD LIGHTING AT THE FRENCH BROAD RIVER PARK – PHASE IV

Summary: The consideration of a resolution authorizing the City Manager to amend the agreement with Carolina Power & Light (CP&L) to install athletic field lighting at the French Broad River Park – Phase IV.

Several years ago, the City entered into an agreement with CP&L to install ballfield lights at Murphy-Oakley and Weaver Parks. This agreement allowed for the City to pay a monthly fee for the installation of the lights; therefore, reducing capital expenditures. After review by the City Attorney's Office, it has been determined that an amendment can be made to the existing contract which will allow us to enter into an agreement with CP&L to provide athletic lighting at French Broad River Park – Phase IV. This lighting will include lights for the volleyball area, roller hockey/basketball arena, and soccer/baseball field. These features will be included in the first phase of development and will be ready for use as early as July of this year. The cost associated for lighting the area will include the following breakdown:

Volleyball	$ 58,000
Roller hockey/basketball	$ 50,000
Soccer/baseball	$115,800

The Department is currently negotiating a fee structure which will include an up front base payment. With future monthly installment payments, this will allow for the City to receive the best possible price for the installation of the lights and will allow for the lights to be paid for over a period of years.

The Parks and Recreation Department staff requests City Council authorize an amendment to the existing CP&L contract.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT 56 SHILOH ROAD

Mayor Sitnick announced that a letter dated May 2, 2001, has been received by Mr. George W. Morosani requesting "a two week's continuance of this matter until May 22."

When Mr. Jim Brooks, owner of 56 Shiloh Road, advised Council that his house address is 56 Shiloh Road and he is not asking for any type of conditional use permit, Planning & Development Director Scott Shuford advised City Council that they will ascertain if there is a problem with the street address and if necessary, will re-advertise.

Vice-Mayor Cloninger moved to continue this public hearing until May 22, 2001. This motion was seconded by Councilwoman Field and carried unanimously.

CLOSED SESSION

City Attorney Oast said that in light of the action that Buncombe County took last week with respect to zoning parts of the County, he felt like City Council needs to hear from him about some of the legal aspects of that and he requested Council move to go into a brief closed session for that purpose.

At 5:26 p.m., Councilman Hay moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including consultation regarding the legal effect of Buncombe County's action of May 1, 2001, to establish zoning for parts of the County. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley.

Councilwoman Bellamy said this was abnormal to go into closed session in the middle of a regular Council meeting. She suggested City Council hear the closed session issue after the meeting and then consider the issue in two weeks.

Vice-Mayor Cloninger said that he didn't think he would be in a position to vote on the issue of the extraterritorial jurisdiction tonight, so he would favor a two week postponement of the hearing as well.

Councilman Worley said Council may not want to consider making any decision today but Council could go forward with the public hearing and then continue remainder of public hearing for two weeks. This would give Council the opportunity to digest the information received by the City Attorney and take into account the comments from the public hearing.

Councilman Hay said he was not sure, until he hears the City Attorney's report, what the legal issues are about whether there is a consequence in postponing the hearing. He was not in any hurry to hold the public hearing, but he did want to know if there any legal consequences of not making any decisions tonight.

Mayor Sitnick said that since this is such an unusual request by the City Attorney, that there must be a good reason for it. She preferred going into closed session for a brief period of time and then come back out and make a decision on whether to hold the public hearing. Her general thought is that if people come for the advertised public hearing, then Council should afford them the opportunity to speak and not inconvenience them and make them come back.

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Councilwoman Bellamy again expressed her concern of going into closed session in the middle of a formal meeting, especially when prior closed session matters have traditionally been longer than 10-15 minutes.

Councilwoman Field felt that if the closed session would be limited to 10 minutes, she would have no problem in voting to go into closed session at this time.

At 5:37 p.m., Councilman Hay moved to amend his motion to go into closed session for no longer than 10 minutes. This amendment was accepted by Councilman Worley. Said amended motion carried on a 6-1 vote, with Councilwoman Bellamy voting "no".

At 5:45 p.m., Councilman Hay moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

Councilwoman Bellamy pointed out for the record that her objection for voting against the closed session was not for the consideration of the extraterritorial jurisdiction, but for the procedure.

B. PUBLIC HEARING TO EXTEND THE CITY'S EXTRATERRITORIAL JURISDICTION IN THE FAIRWAY ROAD/US 74 AREA, THE LONG SHOALS ROAD AREA, AND THE US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA

Urban Planner Paul Benson opened the general public hearing at 5:47 p.m. He said the public hearing was advertised on April 27 and May 4, 2001.

Using a map, Mr. Benson said Planning staff has prepared three ordinances that would extend the City of Asheville's extraterritorial planning jurisdiction (ETJ) in three separate areas: Fairview Road/US 74; Long Shoals Road; and US 19-23/Sarids Road/Sand Hill Road/Brevard Road.

State law permits cities to extend extraterritorial jurisdiction at least one mile beyond their corporate limits in areas of critical concern to the City based upon existing or projected urban development. There are three reasons for extending ETJ into these areas: (1) protection of land suitable for industrial development; (2) management of growth in rapidly developing areas; and (3) control of growth along key city gateways. Each of these areas meet some of this criteria. These extensions are supported by officially adopted plans and policies as evidenced in the 1989 Addendum to the 2010 Plan and by the Sustainable Economic Development Task Force Report.

Totals for all three areas are: 5,869 acres and 1,612 properties. By way of comparison, the City's existing ETJ is about 7,300 acres, and the entire existing planning jurisdiction of the City, including the corporate limits and the existing ETJ, is about 33,700 acres.

Zoning will be assigned to these areas based on an evaluation of existing land uses, relationship to development in the City, existing and planned infrastructure, and any other relevant factors.

ORDINANCE NO. 2807 - ORDINANCE EXTENDING THE CITY'S EXTRATERRITORIAL JURISDICTION TO INCLUDE AN AREA KNOWN AS THE FAIRWAY ROAD/US 74 AREA

Mayor Sitnick opened the public hearing at 5:55 p.m.

Mr. Benson said this area, to the east of the City, includes a large stretch of the Blue Ridge Parkway right-of-way, and land extending southeast on both the north and south sides of US Highway 74 (Charlotte Highway), as shown of the Highway 74 Area ETJ Extension map. The area includes residential areas off Avondale Road and areas to the north off Hemphill Drive. This area includes 832 acres and 273 properties. Generally the boundaries are described by property lines and the center of the Blue Ridge Parkway extending to the south. This is a gateway area to the City and an area that is also experiencing rapid urban development.

Councilman Peterson asked if there was any consideration given to extending the ETJ on the east side of the Blue Ridge Parkway. Mr. Benson responded that state law stipulates that they follow features that are readily identifiable on the ground to the maximum extent possible. He said they could have followed the eastern right-of-way for the Blue Ridge Parkway, but they wanted to use a feature that was very clear on the ground. He said a property line can be identified, but not as readily identifiable. So, to make the boundary as strong as possible, they tried to follow road centerlines wherever possible.

Mayor Sitnick said that there are some small farms in this area. She was concerned they will be out of compliance if the ETJ is extended into their area and if at some point in the future it becomes more urbanized. She wants to make sure that the small privately owned family farms are preserved, allowed to expand, and allowed to continue their operations. She wondered if a special zoning designation of "agri-land" or "small farms" could be created in order to preserve those family farms that have been in existence for a long time. The thought driving them out is not acceptable to her.

Mr. Benson said that there is an interpretation issued by former Planning & Development Director Julia Cogburn that bona fide farms are exempt from our zoning regulations and the Planning Department has been operating under that interpretation. In addition, as we get into the zoning of the area, there are a number of options that can be looked at and certainly drafting a new rural residential zoning district would be a possibility. During the Unified Development Ordinance discussions, that issue was looked at and decided that, at that time, that they were not including enough agricultural land to justify the district.

Planning & Development Director Scott Shuford said that City Council is only voting on zoning the areas at this time, only on whether to extend the ETJ into the areas. He said they are operating under an interpretation with farms inside the City in that they are not regulating their use for these small-type farms. That would be an interpretation they will continue, unless they find that they need to create a separate zoning district as Mr. Benson indicated to accommodate those uses. One of the purposes behind extending the ETJ is to go after land uses which are facing development pressure and changes in their pattern. If there are small farms in somewhat isolated circumstances that need protection, they are not likely to faced with the same level of development pressure anyway and so accommodating them would make sense. One qualification, however, is one of the purposes of this is to establish, in effect, an industrial-only zoning designation for land that would be considered prime industrial and there may be farms in those areas, but they could continue as non-conforming uses.

City Attorney Oast said that any existing farm, as any other kind of existing use, would be allowed to continue under the non-conforming use provisions of our Code. As Mr. Shuford pointed out, the City is currently operating under an interpretation with respect to small farms that would extend into this area.

Councilman Worley said that he felt the concern is not so much as grandfathering, but in the case of a small farm, if the owner of the small farm wants to expand. If that interpretation permits that, then that is fine.

Mr. Shuford said that is a valid concern and one shared by City staff. There is a farm in this particular area and the owner has talked with the Planning staff about her plans to expand her operation. Mr. Shuford said that he feels she is covered by that interpretation and will be happy to put that in writing for her protection.

Councilwoman Field said that the area along the Blue Ridge Parkway looks very undeveloped and wondered what the zoning designation would be. Mr. Benson responded that is a very steep hillside and that the area is all within the right-of-way of the Blue Ridge Parkway. Without having done a lot of study, he said it would probably be RS-2

Councilwoman Field said that maybe at the same time staff is looking at the possibility of some type of farm designation, that they look into the possibility of a zoning designation for publicly-owned parks, as previously been raised by Mayor Sitnick and discussed by City Council.

Mr. Walter Plaue was concerned about implementing some type of zoning that, at some future date, may preclude the owner of that property from either selling it or subdividing it.

City Attorney Oast said that nothing City Council is doing tonight would limit the ability of anyone in these areas to subdivide their property.

Upon inquiry of Councilman Worley, Mr. Shuford said that these small farms would be zoned whatever is appropriate for the surrounding area, but under the interpretation would be exempt from complying with those zoning regulations as long as they continue to operate as a farm.

Upon inquiry of Councilwoman Field, City Attorney Oast said that working farms do enjoy special tax recognition.

In response to Councilman Peterson, Mr. Shuford said that currently within our existing ETJ, not just the three areas under consideration tonight, the City enforces only its zoning and its subdivision regulations. The City does not enforce stormwater management regulations, erosion control regulations, junked vehicle ordinances or building permit and inspection requirements. Those are ones that we are eligible to pursue. We considered suggesting to Council that we move in that direction and assume those in our existing ETJ, and of course we would suggest it here in the proposed three areas, but as a result of the State budget crunch and our need to respect our neighbors, Buncombe County, with regard to the potential funding implications that might pertain to them if we took away their building permit revenue. We felt it better to not recommend to Council that we take that action this year.

When Mr. Peter Dawes asked why include the Blue Ridge Parkway right-of-way into the ETJ area, Mr. Benson said it is a movement into the urbanized area on US 74.

Mr. John Herron said that residents are afraid to come to the meeting and speak out. He felt that government is taxing people to death. In addition, he felt the City already can't handle what they already have. He strongly opposed the City taking away the property owner's right to do what they want with their land.

Mayor Sitnick said the City doesn't consider ETJ or annexation in a vacuum. The state law that allows cities to consider an ETJ and to consider an annexation is a state law for a reason. The reason why cities, not just Asheville, are allowed to consider ETJ extensions is as those areas around the city become more urbanized with more streets and more homeowners, most of those people either work in the city or come into the city for their retail, social needs, social service needs, entertainment, and their medical needs. They come into the city and they use the city's infrastructure - streets and sidewalks, etc. The people who pay for that infrastructure are the Asheville City taxpayers alone. They also pay for the use of infrastructure used by tourists and other regional residents who come into the City for those same reasons. The reason the state has this law that allows cities to extend their ETJ and annex, which are two different things, is to make sure that some of the burden is taken off the city taxpayer who pays City taxes and County taxes. The City doesn't have any desire to put an undue burden on County neighbors, but they also need to make sure that there is not an undue burden on the Asheville taxpayer as these urban areas and subdivisions grow around the City.

Mr. Shuford read from the Municipal Government in North Carolina by the Institute of Government as follows "It is in the city's interest to ensure that areas will ultimately be brought into the city are developed in a manner consistent with the city's development standards and land use planning objectives and served by appropriate public facilities. Otherwise, unplanned growth and substandard development may thwart municipal annexation. In addition, even when the city has no annexation ambitions, unplanned growth and substandard development may have detrimental effects on nearby city areas."

Mayor Sitnick closed the public hearing at 6:20 p.m.

City Attorney Oast passed out a slightly revised ordinance which reference is made to the area being one of critical concern to the City as evidenced by the 1989 addendum to the City's comprehensive plan.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2807. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 143

ORDINANCE NO. 2808 - ORDINANCE EXTENDING THE CITY'S EXTRATERRITORIAL JURISDICTION TO INCLUDE THE AREA KNOWN AS THE LONG SHOALS ROAD AREA

Mayor Sitnick opened the public hearing at 6:22 p.m.

Mr. Benson said that this area includes a substantial amount of land owned by Biltmore Farms Inc., as well as property west of the French Broad River on both the north and south sides of Long Shoals Road, as shown on the Long Shoals Road Area ETJ Extension map. This area includes 1,831 acres and 176 properties.

Mr. John Herron again said the City should not be able to tell people what to do with their property.

Mr. Walter Plaue felt that one reason people get emotion about being taken into an ETJ area is that it's the first step to annexation. Even though there is no taxation under the ETJ, it's just a matter of time. He felt that even though County residents use the City's infrastructure, they spent their money in the City. The City's existing infrastructure is not maintained currently and if the City doesn't have the money to fix it now, how can they expect to fix it when more area is annexed. He said that agencies are doing their best to provide low income housing in the area, but raising taxes makes it more difficult for low income people to afford housing.

Mayor Sitnick stressed that the City does not tax in the ETJ areas and it does not mean that the City is going to annex them. She said there are many ETJ areas around the City that have never been annexed.

Mr. Shuford said that the City is unable to annex until the area reaches an urban level of density and there are very specific and tight state statutes that deal with what those provisions are. Large areas of undeveloped land are not subject to annexation regardless of whether they are in the ETJ or not. The ETJ does not create a taxing authority for the City nor does it automatically presume that the area will be annexed.

Mr. Peter Dawes said that state law says the no municipality can extend their ETJ in a zoned area and Buncombe County zoned this property last week. City Attorney Oast responded that Mr. Dawes is correct – that a city cannot expand an ETJ area into an area that has been zoned. To the extent that questions exist regarding the validity of Buncombe County's zoning, his recommendation is that City Council proceed.

Mayor Sitnick closed the public hearing at 6:38 p.m.

City Attorney Oast passed out a slightly revised ordinance which reference is made to the area being one of critical concern to the City as evidenced by the 1989 addendum to the City's comprehensive plan.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2808. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 145

ORDINANCE NO. 2809 - ORDINANCE EXTENDING THE CITY'S EXTRATERRITORIAL JURISDICTION TO INCLUDE THE AREA KNOWN AS THE US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA

Mayor Sitnick opened the public hearing at 6:39 p.m.

Mr. Benson said that this area includes a large area south of I-40 to the west of the city, sweeping southeastward along US 19-23, Sand Hill Road, Sardis Road and Brevard Road to the west of I-26, as shown on the West Area ETJ Extension map. This area includes 3,206 acres and 1,163 properties. He said the area on Sardis Road is a prime area for industrial development. He said this extension would fulfill Council's policy of protecting potential industrial development. In addition, it also includes some large tracts around the Enka and BASF property that are suitable for industrial development.

Mr. James Wright spoke against extending the City's ETJ into this area. He felt this was taxation with representation. He was opposed to the City telling the residents what they can do with their own property. He said that if he wanted to be in the City, he would have moved into the City. He felt the public hearing was not at a time when most people could attend it since most people work until 5:00 p.m. or 6:00 p.m. He felt the City can't take of what they already have.

Upon inquiry by Mr. Peter Dawes again about Buncombe County's recent zoning, City Attorney Oast said that in his opinion, if City Council proceed with the extension of the ETJ, then it will be a valid ordinance.

Upon inquiry of Mr. Jim Herron, Mr. Benson said that basically what the City is doing now in the existing ETJ is regulating land subdivision so that when a property owner subdivides land, the City makes sure that the streets are adequate that go into each lot and if utilities are available to the property that they are extended by the developer. So that in the future, property owners don't have problems with failing septic tanks and roads that are falling apart. As far as zoning is concerned, Planning staff looks at existing patterns.

Mayor Sitnick closed the individual and general public hearing at 6:51 p.m.

City Attorney Oast passed out a slightly revised ordinance which reference is made to the area being one of critical concern to the City as evidenced by the 1989 addendum to the City's comprehensive plan.

Councilman Worley moved to adopt Ordinance No. 2809. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 147

IV. UNFINISHED BUSINESS:

A. CONSIDERATION OF CITY COUNCIL APPOINTMENT TO REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Mayor Sitnick said that since she requested this matter be placed on the agenda, she wanted to address it. It has been brought to her attention that, at this time because of the complexity of our appointment process and policies that she would be willing to leave the membership of the Regional Water Authority as it is at the present time. She said that she will be attending the Regional Water Authority meeting on Tuesday, May 15, 2001, at 8:45 a.m. in the First Floor North Conference Room in the City Hall Building. She said that she will be making some general comments about non-betterment costs and other things. She encouraged other members of Council to attend the meeting as well. She said that City staff will be reporting on the Regional Water Authority to City Council at their May 15, 2001, worksession.

She said that if, after attending the May 15 Regional Water Authority meeting, she feels there is a need for further explanation and dialogue, she will consider calling together a meeting of participants who are concerned about this issue and who are participating in this issue. Some may include Buncombe County, Henderson County, City Council and members of the Regional Water Authority.

V. NEW BUSINESS:

A. RESOLUTION NO. 01-60 - RESOLUTION AUTHORIZING SUBMISSION TO THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT OF THE CONSOLIDATED ANNUAL ACTION PLAN 2001-02

Due to a conflict of interest, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilman Peterson and carried unanimously.

Community Development Director Charlotte Caplan said that the public hearing on this matter was held on April 24, 2001.

Ms. Caplan said that the City expects to have available $1,839,656 in CDBG funds and $1,422,966 in HOME funds to spend on housing and community development activities in the fiscal year beginning July 1, 2001. The City's Housing and Community Development Committee (HCD) and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 22 CDBG-assisted and 14-HOME assisted projects.

In addition, the HCD Committee recommends that the City apply for a CDBG Section 108 Guaranteed Loan in the amount of $850,000 to assist Eagle/Market Streets Development

Corporation in a major redevelopment effort in South Pack Square. A draft loan application will be submitted separately.

If approved, the funding will assist in adding or preserving 188 affordable housing units in the City and 162 units in the rest of the Consortium area (Buncombe, Henderson, Madison, and Transylvania Counties), will provide 3,300 Asheville residents with other needed services, and will assist in a major revitalization of the South Pack Square neighborhood.

Notice of the public hearing and a summary of the draft plan was published on April 6. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD on or before May 15, 2001.

Pursuant to a request by Mountain Housing Opportunities, and supported by City staff and the HCD Committee), a Plan amendment has been requested (and incorporated into the resolution) to reduce the funding for the Mountain Housing Opportunities' Northpoint Commons by $188,000 and increase the HOME funding for Mountain Housing Opportunities' Compton Place by $188,000.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 01-60, as amended above. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 343

B. RESOLUTION NO. 01-61 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE GRANT AND LICENSE AGREEMENT WITH FOOD LION LLC FOR SPONSORSHIP OF THE SKATEPARK LOCATED AT FLINT AND CHERRY STREETS

Parks and Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing an agreement with Food Lion for partial funding of the SkatePark located at Flint and Cherry Streets.

The Parks and Recreation Department, for the past several months, has been working with Food Lion to enter into an agreement for funding of the SkatePark located at Flint and Cherry Streets. This agreement represents a 10-year commitment by Food Lion to make the SkatePark a reality. The negotiations for this contract include naming rights, Food Lion sponsorship, and the ability for Food Lion to solicit other sponsors to assist with the funding. The agreement would commence on May 1, 2001, with final payment being made on May 1, 2007.

The Parks and Recreation Department requests City Council approval for the Mayor to execute the grant and license agreement with Food Lion, LLC, for sponsorship of the SkatePark.

On behalf of City Council, Mayor Sitnick praised the work of Mr. Brinson in making this SkatePark a reality. She thanked Doritos and Mountain Dew for their sponsorship as well.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-61. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 344

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of April 20-26, 2001: Marie Sheldon (Water), Darrel Hankins (Water), Harry Griffin Jr. (Police), Pat King (Water) and David Curry (Water).

The following claims were received during the period of April 27 – May 3, 2001: June Parler (Water) and Randy Lanford (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City has received a complaint on April 30, 2001, from Buncombe County regarding tax foreclosure proceedings for unpaid real estate taxes. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Sharon Martin

Ms. Sharon Martin stressed to Council the need for the City and County to communicate. She felt that because of the lack of communication, it becomes a conflict issue instead of a cooperation consideration. She said taxpayers are the ones who lose out when the City and County don't communicate.

Comments by Mark Long

Mr. Mark Long felt that 3-5 days to obtain a street entertainment permit is too long. His art of fire dancing gives the tourists who visit Asheville something to see and it adds to the vitality and positive vibe of Asheville. He encouraged the City to look into solutions for the problems it's Sister City San Cristobal, Mexico, is experiencing. In addition, he felt it was time for the City to look possibly at re-dedicating the City-owned monument downtown to Leonard Peltier.

Comments by Adam Baylus

Upon inquiry of Mr. Adam Baylus, Mayor Sitnick said that she has not received a letter from the Mayor of Canton regarding an appeal to City Council to cooperate and discuss the building of their civic center and raceway. She said that City Council will discuss this request when it is received.

Comments by Mayor Sitnick regarding E. Benson Slosman

Mayor Sitnick asked for City Council to consider honoring the memory and legacy of Mr. E. Benson Slosman with an appropriate commemoration. She said that he was a major contributor to the revitalization and restoration of Asheville.

Councilman Peterson suggested something with the Biltmore Train Station and Councilwoman Bellamy mentioned the greenway along the Swannanoa River Road.

Councilman Hay said that the Community Foundation has established a fund in Mr. Slosman's name and it may be that they have some goals, projects or specific ideas connected with that Fund that the City can partner with. Mayor Sitnick asked City staff set up a meeting with a representative from the Community Foundation, appropriate City staff, and interested Council members to discuss this issue.

Comments by Councilwoman Bellamy

Councilwoman Bellamy congratulated Principal Ray at Hall Fletcher for being the runner-up for the N. C. Principal of the Year. In addition, she congratulated Mr. Jackson who currently who works at Randolph Elementary as a 4th Grade teacher because he will take on the responsibility of operating the KIPP Academy.

Closed Session

At 7:23 p.m., Vice-Mayor Cloninger moved to go into closed session (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5); and (2) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session - G.S. 143-318.11(a)(4). This motion was seconded by Councilman Worley and carried unanimously.

At 8:57 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously (Vice-Mayor Cloninger and Mayor Sitnick were both excused from the last closed session item regarding economic development).

MEETING RECONVENED

The meeting was reconvened in the Council Chamber with Councilwoman Field presiding.

Councilman Worley moved to set a public hearing on May 22, 2001, to consider authorizing the City to enter into an agreement with Blue Ridge Motion Pictures LLC for economic development incentives pursuant to the City's Economic Development Policy, and as authorized pursuant to N. C. Gen. Stat. sec. 158-7.1. This motion was seconded by Councilman Hay and carried unanimously.

VIII. ADJOURNMENT:

Councilwoman Field adjourned the meeting at 9:01 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – May 15, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Sitnick asked for a moment of silence for former Council member Gary "Rock" McClure who died on Monday, May 14, 2001.

CONSENT:

New Street Name of "Proctor Drive"

Summary: The consideration of a resolution accepting the new proposed street name "Proctor Drive."

Marcell Proctor, owner of lots in Watkins Estates Subdivision, has petitioned the City of Asheville to accept the street name " Proctor Drive." The new street will begin at Caribou Road and end at cul-de-sac on Proctor Drive.

City staff recommends adoption of the resolution.

New Street Name of "St. Davids Court"

Summary: The consideration of a resolution accepting the new proposed street name "St. Davids Court."

Thomas Yurchenco, owner of lots in St. Davids Subdivision, has petitioned the City of Asheville to accept the street name " St. Davids Court." The new street will begin at Liberty Street and end at cul-de-sac on St. Davids Court.

City staff recommends adoption of the resolution.

Investment Policy

Summary: The consideration of a resolution adopting the City of Asheville Investment Policy.

The City of Asheville invests its public funds in a manner which will provide the highest investment return with reasonable security while meeting the daily cash flow demands of the City. The Finance Department of the City actively manages the City's investment program with the major objective of the preservation of capital, provision of liquidity and maximization of investment earnings. The investment program has been in compliance and continues to comply with North Carolina General Statutes, requirements of the Local Government Commission, and the investment practice recommendations of the Government Finance Officers Association. The Investment Policy formalizes and standardizes compliance with those requirements and recommendations.

Staff recommends the City Council adopt the resolution and City of Asheville Investment Policy.

Office Space for VISION

Summary: The consideration a request to allow the continued use of City office space for the VISION.

The City of Asheville has provided office space to the VISION of Asheville-Buncombe County (VISION) since Spring 1996. The office space is located in the City Development Office at 29 Haywood Street and has been provided at no cost. The city also provides funding to the VISION through "outside agency" funding.

In a letter dated March 30, 2001, from VISION Board Chair Albert L. Sneed Jr. Mr. Sneed requests the City continue to grant an in kind donation of office space and existing support services (including two parking passes to the Rankin Street Parking Garage) for Fiscal Year 2001-02. The VISION Board has expressed gratitude to the City and the "ideal location" for the office space. In looking at the upcoming year, City staff is not aware of any changes in the City Development Office layout or staffing levels that will require the space currently utilized by VISION. In fact, staff has recently worked with VISION to develop a floor layout plan that will accommodate both parties needs at minimum cost to VISION. Therefore, the current space arrangement is recommended to be granted for the upcoming Fiscal Year 2001-02.

Staff recommends that Council grant the request of the VISION by a motion to approve the request thereby providing the continued use of donated office space, the existing level of support services and two parking passes to the Rankin Street Parking Garage for Fiscal Year 2001-02.

Amendment to Regional Water Authority By-Laws

Summary: The consideration of an amendment to the Regional Water Authority's By-Laws to permit members to attend meetings by teleconference for purpose of a quorum.

The resolution would approve amending Article I, Section IV of the By-Laws of the Regional Water Authority of Asheville, Buncombe & Henderson to permit an Authority member to be considered present at an Authority meeting, or a Committee meeting, both for purposes of a quorum and for voting rights, by telephone conference. The Chairman of the Water Authority, or the Chairman of a Committee in the case of a Committee meeting, must authorize each specific attendance by conference call. Of course, the use of this technology would be limited to the availability of the phone system in the meeting room; presently both the North Conference Room and the Gilewicz Conference Room have the capability for a teleconference to one remote location.

As with any amendment to the By-Laws, this amendment must also be submitted to the Buncombe County Board of Commissioners. A By-Laws amendment must be approved by two of the three boards (Authority, City Council, County Commissioners) to become effective.

The Regional Water Authority approved this amendment to the Authority's By-Laws at their April 17, 2001, meeting.

The Regional Water Authority of Asheville, Buncombe and Henderson recommends City Council approval of the by-law amendment.

Re-Certification of Asheville Regional Housing Consortium

Summary: The consideration of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium to continue receiving entitlement allocations under the HOME grant program.

The City of Asheville entered into a Joint Cooperation Agreement with twelve governmental units within Region B on March 31, 1992, and formed the Asheville Regional Housing Consortium. On February 12, 2001, the City sent a letter to HUD stating its intent to participate again as a consortium in the HOME program, and also stating it will submit to HUD prior to June 30, 2001, all other required documents for participation, including a new Cooperation Agreement and authorizing resolutions from member governmental units.

The Cooperation Agreement states in Section 14: "The Lead Entity and the Cooperating Units agree to remain in the Consortium at least through September 30, 2004. Thereafter, each party shall continue to participate in the Consortium to the extent required by HUD regulations or other applicable law."

Since formation of the Consortium in 1992, the region has received entitlement allocations totaling $10,519,837. The City of Asheville has received $3,347,822 for its affordable housing programs and administrative costs as Lead Entity since the beginning of the program.

Community Development staff recommends adoption of the resolution.

Annual Contract for Auditing Services for Fiscal Year 2000-01

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2000-2001.

N.C. General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the three (3) Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct these audits with the option to be re-engaged annually for two more years. They completed the Fiscal Years 1997-98, 1998-99 and 1999-2000 audits and have now submitted an engagement letter for the Fiscal Year 2000-2001 audit. The fee has been estimated at $54,000. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

Councilwoman Bellamy requested additional budget information to include prior year's actual budget vs. actual expenditures for comparison purposes.

Advertise Offer to Purchase Disposal Parcel 157 on Jordan Street

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 157 in the East End/Valley Street Community for the tax value of $2,400.00.

Disposal Parcel 157 is a substandard lot located on the south side of Jordan Street comprising 3,920± square feet. The lot is rectangular in shape and mostly flat about street level then sloping down to the rear. The bid from William Boyle includes the proposal to combine the property with adjoining property currently owned by Mr. Boyle on Jordan Street. No construction is planned.

Approval of the resolution will establish the tax value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Land & Water Conservation Fund Grant

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for funds, through the Land and Water Conservation Fund via the National Park Service, to assist with the development of French Broad River Park, Phase IV.

French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The final master plan is complete, and the first phase of construction is underway. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned N. C. Dept. of Transportation funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise over $2 million to build the park. To date, $620,000 has been raised.

The Parks and Recreation Department is requesting $250,000 to $300,000 in grant funds from the Land and Water Conservation Fund which requires a 50% cash or in-kind match. The match is available in cash, labor, equipment, project management and technical support through Parks and Recreation and RiverLink.

The Parks and Recreation Department recommends the City apply for and enter into an agreement for grant funds with the North Carolina Department of Environment and Natural Resources to assist with the construction of the French Broad River Park, Phase IV.

Grant from Clean Water Trust Fund for Regional Stormwater Retention Facility in West-End Clingman Area

Summary: The consideration of a resolution to apply for and enter into an agreement with the Clean Water Management Trust Fund to assist with the purchase, construction and maintenance of two regional retention facilities in the West End/Clingman area.

The WECAN Community Charette suggested that two regional retention facilities be constructed to handle stormwater runoff from the area. One of the facilities is proposed to be located on property belonging to Mr. Tom Honea. The other facility is proposed to be located on property belonging to Mountain Housing Opportunities. Mr. Honea approached Mountain Housing Opportunities staff about purchasing a portion of his property for the above purpose.

The City is interested in assisting with this project because it is a more desirable solution to managing stormwater than individual stormwater facilities for every site. A regional wet stormwater facility allows impurities from the stormwater to settle out before the water is discharged into the stream. Additionally, the grant from the Clean Water Management Trust Fund must be requested by the City. Mountain Housing Opportunities is not an eligible agency for the grant.

The City is requesting approximately $250,000 in the grant. The grant does not require a match; however, some match is recommended. We propose to match the $250,000 request with the land (for the second stormwater facility) that belongs to Mountain Housing Opportunities. Mountain Housing Opportunities would be required to deed the land to the City of Asheville prior to receiving the grant.

The Engineering Department recommends the City apply for a grant to assist with the purchase, construction and maintenance of two regional retention facilities in the West End/Clingman area.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PRESENTATION ON THE WATER AUTHORITY AND RELATED ISSUES

City Manager Westbrook said that this update will cover key trends and land use implications, financial trends and challenges, information on American Freightways – A Flawed Business Model, examples of regional authorities – pros and cons, and a summary and staff recommendations.

He asked Council to pay special attention to three key items (1) What business model is most appropriate for the Regional Water Authority (Authority) to pursue; (2) water supply is a regional asset; and (3) water distribution is a local decision based upon land use, economic development and other political factors.

Planning & Development Director Scott Shuford explained the economic development trends and outlined Asheville's population density, concluding that City and County development patterns and population growth rates reflect suburbanization rather than urbanization. Sprawl development is expensive to serve. Sixty percent of water customers are in the City. We are selling less water than 10 years ago and we are selling it through a much more dispersed distribution pattern.

Mr. Shuford also outlined land use issues, concluding that water service distribution directly determines the land use patterns and directly affects the economic development prospects of a community, and decisions regarding water service distribution should be determined by the political jurisdiction having land use control.

Finance Director Bill Schaefer said that the current depreciated assets of the water system are $97.9 million and the current system produces a revenue stream of over $19 million per year. He reviewed with Council the "equity" in the water system and explained that the Sullivan Act precludes a differential rate structure for the City of Asheville. He explained in detail the financial challenges with the current regional water agreement which are (1) funding new water lines; and (2) organizational considerations. In conclusion, the current operation follows a flawed business model in that (1) the definitions in the Water Agreement are difficult to implement; and (2) the financial burden of running new water lines is inequitably borne by Asheville and Buncombe water customers.

Water Resources Director Tom Frederick explained why a request for water service from American Freightways is a "flawed" business model. The current interlocal agreement with Henderson County requires separate accounting books for every "regional water line." The requested "regional water line" to serve American Freightways is just over 500 feet long. If separate accounting had been set up for the water system in Buncombe County for every 500 feet of water line, there would now be over 12,000 separate sets of accounting books to manage the finances of the water system. He said that it is not the fault of the City Water Resources Department nor the fault of the Henderson County Utilities staff that the agreement is not working. The problem is the process (or business model) defined in the agreement for building water lines, which is ambiguous on the details and is incredibly bureaucratic. The process can only be changed by amending the agreement, which requires action of the Henderson County Board of Commissioners, the Buncombe County Board of Commissioners, City Council and the current Regional Water Authority. At the April 17, 2001, meeting of the Regional Water Authority, Authority members discussed that the Regional Water Agreement may need amending. He concluded that there is a serious need for a better business model that builds water lines in Henderson County, without wasteful accounting and legal expenses, and the overlap of multiple governmental organizations overseeing administrative detail.

Mr. Frederick then explained why the Orange County Water & Sewer Authority was not a good example of a regional water authority. He then went on to explain, in detail, why the Piedmont Triad was a good example of a regional water authority. In conclusion, he said that City staff has concluded that the Piedmont Triad Water and Sewer Authority offers a better model for this region to follow in developing a regional authority for addressing the regional water lines of Buncombe and Henderson Counties.

City Manager Westbrook summarized the report as follows: (1) each political jurisdiction (Asheville, Buncombe County and Henderson County) has separate and unique water services and growth management needs; (2) Henderson County believes a "true" G. s. 162A water authority will best meet their needs; (3) the current regional water agreement represents a "flawed" business model; (4) water supply is a regional asset; (5) water distribution is a local decision based upon land use, economic development, and other political factors; (6) financial inequities exist when Asheville and Buncombe County residents pay for Henderson County water lines; and (7) implementation of the Piedmont Triad model (G.S. 162-A) over Mills River assets would allow Henderson County sole discretion over growth management decisions. In conclusion, regional management structures should be limited only to manage assets which are truly regional in nature. Decisions regarding local issues, such as where to extend or replace water lines within a community, should be made by the governing board of that community.

City Manager Westbrook recommended that the "flawed" business model be fixed by (1) establishing the Mills River Treatment Facility, water supply intake and the 24" transmission line as a regional water authority organized under N. C. Gen. Stat. sec. 162-A; (2) allowing authority to have 3-4 local government customers buying wholesale water at wholesale rates; and (3) separating water distribution issues by local political jurisdiction.

Step One to begin implementation of fixing the "flawed" business model includes (1) City Council negotiating with Buncombe County and Henderson County regarding the best way to regionally manage current water system assets inside Henderson County; and (2) City Council inviting the City of Hendersonville to participate in the negotiations. Step Two is the City of Asheville and Buncombe County should jointly review the Supplemental Water Agreement to determine if changes are needed in the management of water system assets within Buncombe County.

Discussion surrounded the different components of the presentation and City Council asked numerous questions, made several comments and offered suggestions regarding the information presented.

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Discussion surrounded the different components of the presentation and City Council asked numerous questions, made several comments and offered suggestions regarding the information presented.

It was the consensus of Council that this is a good framework within which to begin discussions. City staff should investigate ways in which this would benefit the other parties to the agreement.

Mayor Sitnick reiterated to Council her comments at the Regional Water Authority meeting earlier in the day. She asked the Authority to support the bills exempting Asheville from the non-betterment waterline relocation costs. She explained her delay in responding to a letter Chairman Tate had written to her. She encouraged better communication between the Authority and City Council. With regard to the Water Agreement, the Authority seems to be unhappy with parts of it as well as City Council. She suggested we call the Henderson County Commissioners, the Buncombe County Commissioners, members of the Water Authority and City Council and start a substantive, comprehensive dialogue on where we go from here.

REGIONAL WATER AUTHORITY CITY REPRESENTATIVES

Mr. Lewis Daniels, Mr. Tommy Sellers and Mr. Ted Patton, Regional Water Authority City representatives, answered various water-related questions from City Council. They all agreed that the Piedmont Triad model is a good platform to begin discussions.

Mayor Sitnick felt there should be some type of media education seminar so the media can help educate the public on this issue.

Discussion then surrounded how the presentation by City staff should be viewed by the Buncombe County Commissioners, Henderson County Commissioners, and the entire Regional Water Authority in order to start the education process and start the dialogue in a major community-wide way.

It was the consensus of City Council to have the City staff make their presentation (as they did at this worksession) at the next Water Authority meeting, inviting the Buncombe County Commissioners and Henderson County Commissioners. The presentation can be held in the Council Chamber and a video tape made to be shown on the Government Channel.

LICENSE AGREEMENT WITH TRITON PCS FOR CONCEALED WIRELESS COMMUNICATION TOWER AT 300 MERRIMON AVENUE

At the request of City staff, this matter was removed from the agenda.

BENEFICIAL FILL SITE (AZALEA ROAD PROPERTY)

Public Works Director Mark Combs said that the City's White Fawn Reservoir was closed to beneficial fill dumping on February 2, 2001. To facilitate Water Maintenance and Streets Division's needs regarding a close, accessible and long term beneficial fill site, staff has been gathering specific information for the further potential development of the property, as directed by Council.

On April 3, 2001, City Council approved resolutions to purchase 155 acres of property on Azalea Road for long term development as a park, sports fields and potential beneficial fill site.

Potential short term beneficial fill options such as materials recycling and small, isolated sites would certainly aid in primary site longevity; however such options do not mitigate the need for a central, city owned and operated site which will serve the city's beneficial fill needs for the next 15 or more years. Also, the siting and development of small satellite operations pose significant liability and operations challenges to the City.

Concurrent with the recent purchase of the property, staff has initiated the following actions:

1. On January 31st Council directed staff to prepare a proposal regarding potential development of the property;
2. On February 2nd the White Fawn Reservoir was closed. Beneficial fill material is currently being placed in the Buncombe County Landfill in Alexander. In addition to tip fees, the 17 mile (one-way) trip has reduced operational efficiency by an estimated 30-50% due to travel time.
3. To date (12 weeks), the City has paid $90,907.84 to Buncombe County, which is an average of $7,576 per week, or $30,304 per month. Annual cost projections remain tenuous due to seasonal construction variances and emergencies; however, based on past experience, Water staff estimates tip fees at $500,000 per year and Department of Public Works staff estimates $175,000.
4. Staff developed a scope of services for an operation plan contract with the engineering firm of Woolpert, LLP, who will work with their sub-consultant, Froehling and Robertson, Inc. to prepare a plan which will incorporate the following:

    → Contour map;
    → Soil and Erosion Control Plan;
    → Plan for stabilization of existing slopes;
    → Plan for protection of existing river banks if necessary;
    → Design of upgrade to existing road if necessary;
    → Identify soil borrow source;
    → Work procedures for operation of site coordinated with Park plan;
    → Site grading plan (for grading permit application);
    → Prepare documents necessary for all permits as required; and
    → Flexibility (for slope and grade design) consistent with the final Parks & Recreation Master Plan (1st public meeting May 24th).

Estimated Operation plan cost: **$39,500** (4 to 6 weeks to complete plan)

5. On April 10th staff met with Dan LaMontagne, NC DENR, at the Azalea site regarding an allegation from a citizen that 'toxic wastes' were polluting the Swannanoa River. Subsequently, Mr. LaMontagne's has gathered site samples and should receive test results in mid to late June. Based on the consultant's original site examination, staff is confident that the site is not toxic to the surrounding waters and property.

6. On April 23rd staff met with and provided specific site information to Patrick Lance and Alex Perry (WNC Nature Center) regarding their concern of potential impacts of a beneficial fill site up stream from the Center.

Based on staff's further research and investigation as directed by Council, we recommend the following:

a. Appropriate $75,000 to the Public Works Department for tip fees from February through June 30th (Water Department staff estimates FY 00-01 tip fees of $110,000):
b. Appropriate $39,500 for a contract amendment with Woolpert LLP to develop a site operation plan; and
c. Direct staff to return to Council with a draft operation plan for Council review and approval with appropriate public input, as determined by City Council.

Contingent on Council's approval to proceed with a site plan, staff will report back to Council regarding specific construction and operations dates as plans are completed, as directed.

Councilman Worley asked for additional information regarding recycling of materials.

Discussion surrounded why the White Fawn Reservoir filled up so quickly.

Councilman Peterson explained why he had a concern that going to Azalea Road may not be the most cost-effective alternative. In addition, he wondered if the City could use the material to fill in worthless land in the City.

Vice-Mayor Cloninger and Councilman Hay requested additional information showing that other sites had been investigated and the reasons those sites are not an option anymore.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to separate the two budget amendments on the next formal City Council agenda.

SALE AND/OR TRADE OF CITY PROPERTY FOR THE JAIL DETENTION CENTER

City Manager Westbrook stated that this item needs to be pulled from the agenda pending further discussion with City Council.

REPORTS FROM THE OUTSIDE AGENCY COMMITTEE AND THE FEES & CHARGES COMMITTEE

Budget Director Ben Durant passed out the outside agency funding requests and recommendations from the City Council Outside Agency Committee. He noted that the Committee's recommendation for 2001-02 is $310,000 which is a decrease of $63,000 from 2000-01 budget.

Mr. Durant explained why the Committee had recommended $40,000 to be allocated to the A-B Community Relations Council (CRC) (their request was $63,000). After Councilman Hay advised Council that the CRC's funding is being reduced from Buncombe County and CDBG funds. Executive Director Bob Smith advised Councilman Hay that if their budget is cut by the City, they may well have no choice but to close down. It was the consensus of City Council to recommend $63,000 funding to the CRC and advise them of problems encountered with their application that need to be corrected and if they are not addressed, those problems will be considered the next time a funding request is made.

Mayor Sitnick suggested that every agency that is awarded outside agency funding be scheduled in for a worksession next year to find out what that agency is doing. Vice-Mayor Cloninger didn't think that was necessary and felt the Outside Agency Committee is capable of handling that.

Councilman Hay felt the entire outside agency funding process needs to be looked at in that, for instance, the Economic Development Commission should not be competing for funds with the One Youth at a Time agency.

Mayor Sitnick was very much opposed to funding the Visitor's Center $100,000 in that the Chamber of Commerce did little or nothing to help City Council with the room tax.

Mayor Sitnick questioned the no funding for the Coalition of Asheville Neighborhoods. Vice-Mayor Cloninger explained the Committee's position with regard to that request.

Mayor Sitnick urged City Council to support the Kids Voting in the amount of $1,000 as a symbol of City Council's support.

It was the consensus of City Council to vote separately on each of the outside agency funding requests when the ordinance is brought before City Council for adoption.

City Council then discussed the report of the recommendations from the City Council Fees & Charges Committee.

RESOLUTION NO. 01-63 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 2001 EVENTS

City Manage Westbrook said that this is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Downtown Association's 2001 events at specific locations and times.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the Downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities*. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Councilman Worley moved to suspend the rules and take formal action at this meeting since the first event begins Friday, May 18, 2001. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved to adopt Resolution No. 01-63. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilwoman Bellamy voting "no".

RESOLUTION BOOK NO. 26 – PAGE 346

CLOSED SESSION

At 7:50 p.m., Councilman Hay moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session - G.S. 143-318.11(a)(4); and (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5). This motion was seconded by Councilwoman Field and carried unanimously.

At 9:36 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:36 p.m.

Magdalen Burleson
CITY CLERK

Keni Sitnick
MAYOR

Tuesday – May 22, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 01-62 – RESOLUTION REAFFIRMING SISTER CITY RELATIONSHIP

Councilman Worley read the resolution reaffirming the Sister City relationship with Saumur, France.

Councilman Worley moved for the adoption of Resolution No. 01-62. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 345

ADDITION TO THE AGENDA

It was the consensus of City Council, at the request City Attorney Oast, to add a resolution authorizing cancellation of the Biltmore Farms Deed of Trust and release of the Letter of Credit to the Consent Agenda.

II. CONSENT AGENDA:

At the request of Councilwoman Bellamy, Councilman Worley moved to remove Consent Agenda Items H and L from the consent agenda to be considered separately due to a conflict of interest by Councilwoman Bellamy. This motion was seconded by Councilwoman Field and carried unanimously.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 8, 2000, AND THE WORKSESSION HELD ON MAY 15, 2000

B. MOTION SETTING A PUBLIC HEARING ON JUNE 12, 2001, TO ADOPT THE FISCAL YEAR 2001-02 ANNUAL OPERATING BUDGET

C. RESOLUTION NO. 01-64 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "PROCTOR DRIVE"

Summary: The consideration of a resolution accepting the new proposed street name "Proctor Drive."

Marcell Proctor, owner of lots in Watkins Estates Subdivision, has petitioned the City of Asheville to accept the street name " Proctor Drive." The new street will begin at Caribou Road and end at cul-de-sac on Proctor Drive.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 348

D. RESOLUTION NO. 01-65 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "ST. DAVIDS COURT"

Summary: The consideration of a resolution accepting the new proposed street name "St. Davids Court."

Thomas Yurchenco, owner of lots in St. Davids Subdivision, has petitioned the City of Asheville to accept the street name " St. Davids Court." The new street will begin at Liberty Street and end at cul-de-sac on St. Davids Court.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 349

E. RESOLUTION NO. 01-66 - RESOLUTION APPROVING THE CITY OF ASHEVILLE INVESTMENT POLICY

Summary: The consideration of a resolution adopting the City of Asheville Investment Policy.

The City of Asheville invests its public funds in a manner which will provide the highest investment return with reasonable security while meeting the daily cash flow demands of the City. The Finance Department of the City actively manages the City's investment program with the major objective of the preservation of capital, provision of liquidity and maximization of investment earnings. The investment program has been in compliance and continues to comply with North Carolina General Statutes, requirements of the Local Government Commission, and the investment practice recommendations of the Government Finance Officers Association. The Investment Policy formalizes and standardizes compliance with those requirements and recommendations.

Staff recommends the City Council adopt the resolution and City of Asheville Investment Policy.

RESOLUTION BOOK NO. 26 – PAGE 350

F. MOTION GRANTING THE REQUEST OF VISION FOR ASHEVILLE-BUNCOMBE COUNTY TO (1) CONTINUE USING DONATED CITY OFFICE SPACE AT 29 HAYWOOD STREET, (2) USE OF EXISTING LEVEL OF SUPPORT SERVICES, AND (3) TWO PARKING PASSES TO THE RANKIN STREET PARKING GARAGE FOR USE BY THE VISION STAFF

Summary: The consideration a request to allow the continued use of City office space for the VISION.

The City of Asheville has provided office space to the VISION of Asheville-Buncombe County (VISION) since Spring 1996. The office space is located in the City Development Office at 29 Haywood Street and has been provided at no cost. The city also provides funding to the VISION through "outside agency" funding.

In a letter dated March 30, 2001, from VISION Board Chair Albert L. Sneed Jr. Mr. Sneed requests the City continue to grant an in kind donation of office space and existing support services (including two parking passes to the Rankin Street Parking Garage) for Fiscal Year 2001-02. The VISION Board has expressed gratitude to the City and the "ideal location" for the office space. In looking at the upcoming year, City staff is not aware of any changes in the City Development Office layout or staffing levels that will require the space currently utilized by VISION. Therefore, the current space arrangement is recommended to be granted for the upcoming Fiscal Year 2001-02.

Staff recommends that Council grant the request of the VISION by a motion to approve the request thereby providing the continued use of donated office space, the existing level of support services and two parking passes to the Rankin Street Parking Garage for Fiscal Year 2001-02.

G. RESOLUTION NO. 01-67 - RESOLUTION APPROVING AN AMENDMENT TO THE REGIONAL WATER AUTHORITY'S BY-LAWS TO PERMIT MEMBERS TO ATTEND MEETINGS BY TELECONFERENCE FOR PURPOSE OF A QUORUM

Summary: The consideration of an amendment to the Regional Water Authority's By-Laws to permit members to attend meetings by teleconference for purpose of a quorum.

The resolution would approve amending Article I, Section IV of the By-Laws of the Regional Water Authority of Asheville, Buncombe & Henderson to permit an Authority member to be considered present at an Authority meeting, or a Committee meeting, both for purposes of a quorum and for voting rights, by telephone conference. The Chairman of the Water Authority, or the Chairman of a Committee in the case of a Committee meeting, must authorize each specific attendance by conference call. Of course, the use of this technology would be limited to the availability of the phone system in the meeting room; presently both the North Conference Room and the Gilewicz Conference Room have the capability for a teleconference to one remote location.

As with any amendment to the By-Laws, this amendment must also be submitted to the Buncombe County Board of Commissioners. A By-Laws amendment must be approved by two of the three boards (Authority, City Council, County Commissioners) to become effective.

The Regional Water Authority approved this amendment to the Authority's By-Laws at their April 17, 2001, meeting.

The Regional Water Authority of Asheville, Buncombe and Henderson recommends City Council approval of the by-law amendment.

RESOLUTION BOOK NO. 26 – PAGE 356

H. RESOLUTION RE-CERTIFYING THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

This matter was pulled from the Consent Agenda due to a conflict of interest.

I. RESOLUTION NO. 01-68 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2000-01

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2000-2001.

N.C. General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit for the three (3) Fiscal Years 1997-98, 1998-99 and 1999-2000. City Council selected Crisp Hughes Evans LLP to conduct these audits with the option to be re-engaged annually for two more years. They completed the Fiscal Years 1997-98, 1998-99 and 1999-2000 audits and have now submitted an engagement letter for the Fiscal Year 2000-2001 audit. The fee has been estimated at $54,000. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 357

J. RESOLUTION NO. 01-69 - RESOLUTION ESTABLISHING MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING DISPOSAL PARCEL 157 ON JORDAN IN THE EAST END/VALLEY STREET COMMUNITY

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 157 in the East End/Valley Street Community for the tax value of $2,400.00.

Disposal Parcel 157 is a substandard lot located on the south side of Jordan Street comprising 3,920± square feet. The lot is rectangular in shape and mostly flat about street level then sloping down to the rear. The bid from William Boyle includes the proposal to combine the property with adjoining property currently owned by Mr. Boyle on Jordan Street. No construction is planned.

Approval of the resolution will establish the tax value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 358

K. RESOLUTION NO. 01-70 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK, PHASE IV

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for

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funds, through the Land and Water Conservation Fund via the National Park Service, to assist with the development of French Broad River Park, Phase IV.

French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The final master plan is complete, and the first phase of construction is underway. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned N. C. Dept. of Transportation funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise over $2 million to build the park. To date, $620,000 has been raised.

The Parks and Recreation Department is requesting $250,000 to $300,000 in grant funds from the Land and Water Conservation Fund which requires a 50% cash or in-kind match. The match is available in cash, labor, equipment, project management and technical support through Parks and Recreation and RiverLink.

The Parks and Recreation Department recommends the City apply for and enter into an agreement for grant funds with the North Carolina Department of Environment and Natural Resources to assist with the construction of the French Broad River Park, Phase IV.

RESOLUTION BOOK NO. 26 – PAGE 359

L. RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE CLEAN WATER TRUST FUND FOR A GRANT TO ASSIST WITH THE PURCHASE, CONSTRUCTION AND MAINTENANCE OF TWO REGIONAL RETENTION FACILITIES IN THE WEST END/CLINGMAN AREA

This matter was pulled from the Consent Agenda due to a conflict of interest.

M. RESOLUTION NO. 01-71 - RESOLUTION AUTHORIZING CANCELLATION OF A DEED OF TRUST AND RELEASE OF LETTER OF CREDIT

City Attorney Oast said that this is the consideration of a resolution authorizing cancellation of a Deed of Trust

In 1997, the City entered into an agreement with Biltmore Farms, Inc. and the Western North Carolina Regional Economic Development Non-Profit Corporation for the development of a high-tech / flex building at Broadlands Industrial Park. The City's part of the agreement was to fund the construction through the issuance of taxable Certificates of Participation, secured by a Deed of Trust on the property and a letter of credit from Biltmore Farms.

The construction has been completed and the loan has been paid off, and Biltmore Farms has otherwise satisfied its obligations to the City under the agreement, and has requested cancellation of the Deed of Trust and release of the letter of credit. The City staff agrees that this should be done.

funds, through the Land and Water Conservation Fund via the National Park Service, to assist with the development of French Broad River Park, Phase IV.

French Broad River Park, Phase IV, represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The final master plan is complete, and the first phase of construction is underway. The park will include greenways, bicycle facilities, lawn bowling, volleyball and soccer complex, softball field, playground, restrooms, roller hockey, open space, picnic shelter, parking, and a welcome center. Phase IV will also connect to a planned N. C. Dept. of Transportation funded greenway from Hominy Creek on the west, and eventually to the Amboy Road greenway to the east.

The Parks and Recreation Department and RiverLink are in partnership to implement an ambitious fundraising plan to raise over $2 million to build the park. To date, $620,000 has been raised.

The Parks and Recreation Department is requesting $250,000 to $300,000 in grant funds from the Land and Water Conservation Fund which requires a 50% cash or in-kind match. The match is available in cash, labor, equipment, project management and technical support through Parks and Recreation and RiverLink.

The Parks and Recreation Department recommends the City apply for and enter into an agreement for grant funds with the North Carolina Department of Environment and Natural Resources to assist with the construction of the French Broad River Park, Phase IV.

RESOLUTION BOOK NO. 26 – PAGE 359

L. RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE CLEAN WATER TRUST FUND FOR A GRANT TO ASSIST WITH THE PURCHASE, CONSTRUCTION AND MAINTENANCE OF TWO REGIONAL RETENTION FACILITIES IN THE WEST END/CLINGMAN AREA

This matter was pulled from the Consent Agenda due to a conflict of interest.

M. RESOLUTION NO. 01-71 - RESOLUTION AUTHORIZING CANCELLATION OF A DEED OF TRUST AND RELEASE OF LETTER OF CREDIT

City Attorney Oast said that this is the consideration of a resolution authorizing cancellation of a Deed of Trust

In 1997, the City entered into an agreement with Biltmore Farms, Inc. and the Western North Carolina Regional Economic Development Non-Profit Corporation for the development of a high-tech / flex building at Broadlands Industrial Park. The City's part of the agreement was to fund the construction through the issuance of taxable Certificates of Participation, secured by a Deed of Trust on the property and a letter of credit from Biltmore Farms.

The construction has been completed and the loan has been paid off, and Biltmore Farms has otherwise satisfied its obligations to the City under the agreement, and has requested cancellation of the Deed of Trust and release of the letter of credit. The City staff agrees that this should be done.

City staff recommends adoption of a resolution authorizing cancellation of the Biltmore Farms Deed of Trust and release of the letter of credit.

Councilman Worley stated that this was very successful for the City and for Biltmore Farms. It was a good investment and a good payback.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEMS PULLED FROM CONSENT AGENDA

A. RESOLUTION NO. 01-72 - RESOLUTION RE-CERTIFYING THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium to continue receiving entitlement allocations under the HOME grant program.

The City of Asheville entered into a Joint Cooperation Agreement with twelve governmental units within Region B on March 31, 1992, and formed the Asheville Regional Housing Consortium. On February 12, 2001, the City sent a letter to HUD stating its intent to participate again as a consortium in the HOME program, and also stating it will submit to HUD prior to June 30, 2001, all other required documents for participation, including a new Cooperation Agreement and authorizing resolutions from member governmental units.

The Cooperation Agreement states in Section 14: "The Lead Entity and the Cooperating Units agree to remain in the Consortium at least through September 30, 2004. Thereafter, each party shall continue to participate in the Consortium to the extent required by HUD regulations or other applicable law."

Since formation of the Consortium in 1992, the region has received entitlement allocations totaling $10,519,837. The City of Asheville has received $3,347,822 for its affordable housing programs and administrative costs as Lead Entity since the beginning of the program.

Community Development staff recommends adoption of the resolution.

Councilman Hay moved for the adoption of Resolution No. 01-72. This motion was seconded by Councilman Worley and carried unanimously.

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B. RESOLUTION NO. 01-73 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE CLEAN WATER TRUST FUND FOR A GRANT TO ASSIST WITH THE PURCHASE,

CONSTRUCTION AND MAINTENANCE OF TWO REGIONAL RETENTION FACILITIES IN THE WEST END/CLINGMAN AREA

Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution to apply for and enter into an agreement with the Clean Water Management Trust Fund to assist with the purchase, construction and maintenance of two regional retention facilities in the West End/Clingman area.

The WECAN Community Charette suggested that two regional retention facilities be constructed to handle stormwater runoff from the area. One of the facilities is proposed to be located on property belonging to Mr. Tom Honea. The other facility is proposed to be located on property belonging to Mountain Housing Opportunities. Mr. Honea approached Mountain Housing Opportunities staff about purchasing a portion of his property for the above purpose.

The City is interested in assisting with this project because it is a more desirable solution to managing stormwater than individual stormwater facilities for every site. A regional wet stormwater facility allows impurities from the stormwater to settle out before the water is discharged into the stream. Additionally, the grant from the Clean Water Management Trust Fund must be requested by the City. Mountain Housing Opportunities is not an eligible agency for the grant.

The City is requesting approximately $250,000 in the grant. The grant does not require a match; however, some match is recommended. We propose to match the $250,000 request with the land (for the second stormwater facility) that belongs to Mountain Housing Opportunities. Mountain Housing Opportunities would be required to deed the land to the City of Asheville prior to receiving the grant.

The Engineering Department recommends the City apply for a grant to assist with the purchase, construction and maintenance of two regional retention facilities in the West End/Clingman area.

Councilman Hay moved for the adoption of Resolution No. 01-73. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 362

III. PUBLIC HEARINGS:

A. PUBLIC HEARING REGARDING AN AGREEMENT WITH BLUE RIDGE MOTION PICTURES LLC FOR ECONOMIC DEVELOPMENT INCENTIVES PURSUANT TO THE CITY'S ECONOMIC DEVELOPMENT POLICY

RESOLUTION NO. 01-74 – RESOLUTION OFFERING ECONOMIC DEVELOPMENT INCENTIVE GRANT TO BLUE RIDGE MOTION PICTURES LLC

Councilman Hay moved to excuse Mayor Sitnick and Vice-Mayor Cloninger from participating in this matter due to conflicts of interest, and that Councilwoman Field be appointed to preside in the Mayor and Vice-Mayor's absence. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Vice-Mayor Cloninger explained that his conflict of interest was that his law firm represents Blue Ridge Motion Pictures LLC.

Councilwoman Field opened the public hearing at 5:18 p.m.

Economic Development Director Mac Williams said that the consideration of a resolution approving an economic development incentive grant to a company proposing to develop a movie production studio. This public hearing was advertised on May 11, 2001.

Blue Ridge Motion Pictures, LLC is a start-up company proposing to purchase property inside the City limits of Asheville and, on that property, to renovate an existing building and build new facilities for the purpose of operating a movie production studios facility.

The site, located at 12 Old Charlotte Highway, is a 40-acre tract with an existing industrial facility of 178,000 square feet owned and currently occupied by Asheville Velour, a manufacturer of textile products. Asheville Velour will sell the site to Blue Ridge Motion Pictures, LLC, but will remain in operation in the facility as a tenant. According to representatives of both parties, this project will not result in the loss of the current manufacturing jobs at the site.

Blue Ridge Motion Pictures, LLC, is proposing new capital investment of $16 million to be in place by December 31, 2003. This investment is in addition to that required to purchase the property (scheduled for late May/early June 2001). The new investments would cover renovations to the existing building, installation of equipment, and new construction of soundstages and other related structures necessary to provide a full service studio for their own productions and for rental of space and/or equipment to other production companies. The firm also intends to create at least 20 full time jobs at an average annual salary range of between $25,000 and $45,000.

Based on the stated level of investment of $16 million, the firm would qualify for a Level 3 Grant as provided for by the City of Asheville Economic Development Incentives Policy. Per the policy, *"the grant is calculated and based upon the actual value, schedule and payment of property taxes. After the industry has paid in full its annual property tax and met all other criteria as outlined in the grant document, the City will pay the industry the annual installment of the grant required."*

Level 3 Grants (when investment levels are of $10 million or greater) allow grants of up to 85% of new taxes for up to 5 years. The total grant amount would equal $380,800 payable in 5 annual installments of $76,160 each beginning in January, 2004. The calculation determining the grant is as follows:

CALCULATION OF LEVEL 3 GRANT

NEW INVESTMENT		$16,000,000	(div. by $100)
NEW TAX BASE VALUE	$	160,000	(x current rate - $.56/$100)
NEW ANNUAL TAX REVENUE	$	89,600	(x grant amount - .85)
ANNUAL GRANT AMOUNT	$	76,160	(x grant term – 5 years)
TOTAL GRANT AMOUNT	$	380,800	

Payment of the grant funds would not begin until 2004 and after City has received documentation of actual values and payment in full of property taxes. Company will have been in operation locally nearly 8 years before total grant payment is made.

Other policy criteria apply as follows:

A. Jurisdiction – The project is within the city limits of the City of Asheville.
B. Scope:
   1. Project proposes to exceed capital investment minimum of $1,500,000.
   2. Company does not have minimum of 3 years operating history. However, a majority of the principals have a demonstrated history in the industry; and, given the nature of this project and its potential impact to enhance the growth of this industry sector locally, waiver of this criteria should be considered.
   3. There is a commitment to a minimum of 5 permanent new jobs.
   4. The location and type of business is consistent with City plans and policies.
   5. There is evidence of equity participation but at less than the 10% minimum of total project cost. However, the level of equity participation in the purchase of the property reportedly significantly exceeds 10%. Also, company representatives have reported capability to secure funding for total project as proposed. Council flexibility regarding this criteria should be considered.
   6. Proposed minimum salary exceeds Average Weekly County Wage for industry type.
   7. Proposed use of funds is in accordance with policy.
   8. Additional incentive funding may be available from other local governments and/or the State.

The grant document, in the form of a performance agreement, has been drafted according to the terms outlined above and has been accepted by representatives of Blue Ridge Motion Pictures, LLC. Acceptance and execution of the agreement and provision of the grant, or not, by Council is the subject of a formal public hearing pursuant to N. C. Gen. Stat. sec. 158-7.1.

The terms of the agreement being considered and the notice of the public hearing have been published in accordance with the referenced statute.

Mr. Williams said that part of a sentence in the payment of grant section of the agreement was inadvertently omitted in which City Council has before them. That omission has been corrected in the original agreement and Blue Ridge Motion Pictures, LLC, is aware of it.

City staff recommends Council accept and execute the proposed Performance Agreement and offer the economic development incentive grant to Blue Ridge Motion Pictures, LLC under the terms and conditions in that Agreement.

Mr. W. Louis Bissette, attorney for Blue Ridge Motion Pictures, LLC, spoke of support of this agreement stating that it is a great development for the City and for Blue Ridge Motion Pictures.

Mr. Tom Barkstedt, Partner for Blue Ridge Motion Pictures, spoke about the multi-talent in the area and that they have the largest studio rental in the United States. He said that he was pleased to be working with the City on this venture.

When Councilwoman Field said that our Public Access Channel Commission is looking for a small space, Mr. Barkstedt said that they could work something out in their building.

Mr. Fred English suggested the City of Asheville just give the company a tax break instead of loaning them money. Councilwoman Field explained that the State of North Carolina does not allow cities to give tax breaks.

Ms. Diana Bilbrey, member of the Film Board, spoke in support of this agreement and talked about the other benefits that will be derived from this motion picture studio coming to Asheville.

Mr. Paul Garrra has been involved with the film industry for 25 years and it's his opinion that the economic climate relative to a movie studio is excellent.

Mr. Chris Thurmond spoke in support of this venture.

Mr. Kurt Mann, owner of Ironwood Productions, spoke in support of this partnership.

Ms. Susan O'Neil felt this company has the possibility of bringing a great deal of development to Asheville, however, wanted to make sure that the development is compatible and sustainable with our present environment.

Ms. Gail Wurthner, member of the Film Board, spoke how this is a clean industry with a good product.

Mr. Kevin Rollins suggested City residents be given a tax break.

Mr. Johnny Sawyer, Secretary-Treasurer of the International Brotherhood of Teamsters – Local 61 in Asheville, spoke in support of this venture in that when movies are in town, they spend their money locally and local people are hired.

Ms. Leanne Campbell, Partner of Blue Ridge Motion Pictures LLC, spoke in support of this venture and noted that they are cleaning up the site.

Mr. William Meredith felt that if the company is investing $16 million here, then why do they need taxpayers money for a grant.

Councilwoman Field explained that this is new tax dollars – the taxes that this company will pay to the City of Asheville - that the City is granting back a portion to them.

Mr. Peter Loewer, member on the Film Board, spoke in support of this venture and noted that this is one of the most welcome industries Asheville has ever had.

Mr. Chad Slagle, actor, stated that this is an incredible opportunity for the City of Asheville to bring in revenue to the surrounding areas.

Mr. Rob Best wants to make sure that vehicles access this property off of Swannanoa River Road.

Councilwoman Field closed the public hearing at 5:52 p.m.

Councilwoman Field said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 01-74 authorizing the Mayor to execute an agreement with Blue Ridge Motion Pictures Inc. This motion was seconded by Councilwoman Bellamy.

City Attorney Oast asked that the motion authorize the City Manager to sign the agreement instead of the Mayor due to her conflict of interest. Councilman Hay and Councilwoman Bellamy both accepted that amendment to the motion.

Councilman Hay said that our economic development policies are at work and that is worth acknowledging and celebrating at the same time.

Councilwoman Worley emphasized that this is a grant to attract economic development. The amount of the grant is less than the new taxes that will be generated by that economic development - taxes we would not receive if this economic development did not come to Asheville. He felt this was a real bargain for Asheville to give the grant and in return receive all the benefits.

The amended motion made by Councilman Hay and seconded by Councilwoman Bellamy carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 363

ANNEXATION PUBLIC HEARINGS

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE LOWES AREA

Mayor Sitnick opened the public hearing at 6:00 p.m.

Mr. Paul Benson, Urban Planner II, said that this public hearing was advertised on April 17 and 27, 2001. He said that he has filed a certification of notification with the City Clerk, as follows: "(1) Buncombe County tax listings were obtained from the Buncombe County tax office on March 13, 2001; (2) on April 2, 2001, 39 letters, including a notice of property owner's rights, a map and description were mailed to property owners identified from said property tax listings of Buncombe County; (3) on or before April 23, 2001, one letter to the property owners was returned to his office; (4) on April 16, 2001, the returned letter was re-mailed by certified mail to either a new address provided by the Post Office on the returned envelope or to the same address; and (5) on April 24, 2001, letters were sent to the solid waste providers identified as being active in the affected area, with said letters including the Resolutions of Intent adopted by the City Council on March 13, 2001."

City Clerk Burleson filed a certification of notification as follows: "(1) on April 2, 2001, a statement of impact was delivered to the Clerk of the Buncombe County Board of Commissions; and (2) a published notification in the Asheville Citizen-Times on April 17, 2001, and April 27, 2001, included a notice of property owner's rights, a map, and a description of the areas being considered for annexation. On March 26, 2001, a letter was received from the Enka-Candler Fire & Rescue Department Inc.; on March 29, 2001, a letter was received from the Skyland Fire Department; on April 18, 2001, a letter was received from the Reynolds Volunteer Fire Department Inc.; and on April 26, 2001, a letter was received from the Haw Creek Fire & Rescue, all requesting to receive a good faith offer from the City of Asheville for fire protection services." The maps of the proposed annexations, the Annexation Services Plan and the property owners list have been displayed in the Office of the City Clerk for public inspection beginning March 30, 2001.

Mr. Benson explained that purpose of this hearing is for the City to explain the plan for extending City services to the proposed annexation area, and to give all persons resident or owning property within the area, and all residents of the City the opportunity to be heard. The effective date of annexation will be June 30, 2002.

The Lowes area includes 74 acres, subdivided into 39 properties, there area 88 dwelling units with an estimated population of 181 persons. This area fills a notch in the existing corporate limits and makes a more consistent city boundary along the south side of Old Haywood Road.

Mr. Benson then summarized the plan as follows: The Lowes area qualifies for annexation in that at least 60% of the lots are developed, and 60% of the acreage of properties that are either vacant or in residential use are subdivided into lots of 3 acres or less. It also qualifies in that it has an estimated population density of at least 2.3 persons per acre. Police protection is to be extended on effective date of annexation with no increase in personnel or equipment. Fire protection is to be contracted from the Enka-Candler Rural Fire Department (.06/9/6) and supplemented by the City to bring service up to City standards. Solid waste collection is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Street maintenance services are not planned for the Lowes Area at this time. However, property owners located on private roads may petition for City maintenance provided that adequate public right-of-way is provided. Water distribution in the Lowes Area 2,000 linear feet of 6" and 4" water line are planned, along with 3 new fire hydrants. Construction is scheduled to be complete by June 30th, 2004. Sewer collection in the Lowes Area 1,250 linear feet of 8" sewer line is planned to be constructed by June 30, 2004. City Financial Impact - Annual Expenses = $8,525; Annual Revenues = $94,389; and Capital Expenditures = $404,352.

Upon inquiry of Councilman Peterson, Mr. Benson said that the policy is basically to extend water lines to every occupied property and sewer lines to within 300 feet of every occupied property.

Mr. Fred English, resident in East Asheville, felt that City Council should take care of what they already have before bringing in more residents that don't even want to be annexed.

Mayor Sitnick closed the public hearing at 6:07 p.m.

Mayor Sitnick said that the ordinance to extend the corporate limits into this area will be considered by City Council on June 12, 2001.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE UPPER SONDLEY AREA

Mayor Sitnick opened the public hearing at 6:08 p.m.

Mr. Paul Benson, Urban Planner II, said that this public hearing was advertised on April 17 and 27, 2001. He said that he has filed a certification of notification with the City Clerk, as follows: "(1) Buncombe County tax listings were obtained from the Buncombe County tax office on March 13, 2001; (2) on April 2, 2001, 18 letters, including a notice of property owner's rights, a map and description were mailed to property owners identified from said property tax listings of Buncombe County; (3) on or before April 23, 2001, no letters to the property owners were returned to his office; and (4) on April 24, 2001, letters were sent to the solid waste providers identified as being active in the affected area, with said letters including the Resolutions of Intent adopted by the City Council on March 13, 2001."

City Clerk Burleson filed a certification of notification as follows: "(1) on April 2, 2001, a statement of impact was delivered to the Clerk of the Buncombe County Board of Commissions; and (2) a published notification in the Asheville Citizen-Times on April 17, 2001, and April 27, 2001, included a notice of property owner's rights, a map, and a description of the areas being considered for annexation. On March 26, 2001, a letter was received from the Enka-Candler Fire & Rescue Department Inc.; on March 29, 2001, a letter was received from the Skyland Fire Department; on April 18, 2001, a letter was received from the Reynolds Volunteer Fire Department Inc.; and on April 26, 2001, a letter was received from the Haw Creek Fire & Rescue, all requesting to receive a good faith offer from the City of Asheville for fire protection services."

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The maps of the proposed annexations, the Annexation Services Plan and the property owners list have been displayed in the Office of the City Clerk for public inspection beginning March 30, 2001.

Mr. Benson explained that purpose of this hearing is for the City to explain the plan for extending City services to the proposed annexation area, and to give all persons resident or owning property within the area, and all residents of the City the opportunity to be heard. The effective date of annexation will be June 30, 2002.

The Upper Sondley area includes 20.2 acres, subdivided into 16 properties, there area 16 dwelling units with an estimated population of 18 persons. This area fills a gap between the existing corporate limits and the boundary of the Blue Ridge Parkway property.

Mr. Benson then summarized the plan as follows: The Upper Sondley area qualifies for annexation in that at least 60% of the lots are developed, and 60% of the acreage of properties that are either vacant or in residential use are subdivided into lots of 3 acres or less. Police protection is to be extended on effective date of annexation with no increase in personnel or equipment. Fire protection is to be contracted from the Haw Creek Rural Fire Department (.10/9/6) and supplemented by the City to bring service up to City standards. Solid waste collection is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Street maintenance services are planned for entire length Upper Sondley Drive, which is .41 mile. These services include cleaning, repair and snow removal and will be extend on the effective date of annexation. Water distribution in the Upper Sondley Area currently meets City standards. Sewer collection in the Upper Sondley Area currently meets City standards. City Financial Impact - Annual Expenses = $4,790; Annual Revenues = $28,199; and Capital Expenditures = $3,630.

Mayor Sitnick closed the public hearing at 6:12 p.m.

Mayor Sitnick said that the ordinance to extend the corporate limits into this area will be considered by City Council on June 12, 2001.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE BEST INNS AREA

Mayor Sitnick opened the public hearing at 6:13 p.m.

Mr. Paul Benson, Urban Planner II, said that this public hearing was advertised on April 17 and 27, 2001. He said that he has filed a certification of notification with the City Clerk, as follows: "(1) Buncombe County tax listings were obtained from the Buncombe County tax office on March 13, 2001; (2) on April 2, 2001, one letter, including a notice of property owner's rights, a map and description were mailed to the property owner identified from said property tax listings of Buncombe County; (3) on or before April 23, 2001, the letter to the property owner was not to his office; and (4) on April 24, 2001, letters were sent to the solid waste providers identified as being active in the affected area, with said letters including the Resolutions of Intent adopted by the City Council on March 13, 2001."

City Clerk Burleson filed a certification of notification as follows: "(1) on April 2, 2001, a statement of impact was delivered to the Clerk of the Buncombe County Board of Commissions; and (2) a published notification in the Asheville Citizen-Times on April 17, 2001, and April 27, 2001, included a notice of property owner's rights, a map, and a description of the areas being considered for annexation. On March 26, 2001, a letter was received from the Enka-Candler Fire & Rescue Department Inc.; on March 29, 2001, a letter was received from the Skyland Fire Department; on April 18, 2001, a letter was received from the Reynolds Volunteer Fire

Department Inc.; and on April 26, 2001, a letter was received from the Haw Creek Fire & Rescue, all requesting to receive a good faith offer from the City of Asheville for fire protection services." The maps of the proposed annexations, the Annexation Services Plan and the property owners list have been displayed in the Office of the City Clerk for public inspection beginning March 30, 2001.

Mr. Benson explained that purpose of this hearing is for the City to explain the plan for extending City services to the proposed annexation area, and to give all persons resident or owning property within the area, and all residents of the City the opportunity to be heard. The effective date of annexation will be June 30, 2002.

The Best Inns area includes 4.3 acres, subdivided into one commercial property. Annexation of this area extends the corporate limits to the fourth and final quadrant of the Tunnel Road/I-40 access road, at Exit 55.

Mr. Benson then summarized the plan as follows: The Best Inns area qualifies for annexation in that it is 100% developed. Police protection is to be extended on effective date of annexation with no increase in personnel or equipment. Fire protection is to be contracted from Reynolds Rural Fire Department (.10/9/6) and supplemented by the City to bring service up to City standards. Solid waste collection is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Street maintenance services are not planned for the Best Inns Area. Water distribution in the Best Inns area currently meets City standards. Sewer collection in the Best Inns area currently meets City standards. City Financial Impact - Annual Expenses = $3,586; Annual Revenues = $19,839; and Capital Expenditures = $490.

Mr. Kevin Rollins questioned what the Best Inns will be getting from being annexed. Mr. Benson said that they would received professional police protection with a higher ratio of officers to population and also professional fire protection as opposed to a rural volunteer fire department. That could be a tangible savings from the fire insurance standpoint.

Planning & Director Scott Shuford also pointed out that properties on the fringe of our City that are developed at urban density should be brought into our City according to State law. In effect, the advantages of this property, and many of the other properties being considered for annexation today, are not tangible in terms of what they might be as a result of being annexed, but they do get the benefit of being proximate to the City of Asheville and have had that benefit for many years prior to the City initiating this program.

Mayor Sitnick closed the public hearing at 6:20 p.m.

Mayor Sitnick said that the ordinance to extend the corporate limits into this area will be considered by City Council on June 12, 2001.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE OLD DOMINION FREIGHT AREA

Mayor Sitnick opened the public hearing at 6:20 p.m.

Mr. Paul Benson, Urban Planner II, said that this public hearing was advertised on April 17 and 27, 2001. He said that he has filed a certification of notification with the City Clerk, as follows: "(1) Buncombe County tax listings were obtained from the Buncombe County tax office on March 13, 2001; (2) on April 2, 2001, one letter, including a notice of property owner's rights, a map and description were mailed to the property owner identified from said property tax listings of Buncombe County; (3) on or before April 23, 2001, the letter to the property owner was not to his office; and (4) on April 24, 2001, letters were sent to the solid waste providers identified as being active in the affected area, with said letters including the Resolutions of Intent adopted by the City Council on March 13, 2001."

City Clerk Burleson filed a certification of notification as follows: "(1) on April 2, 2001, a statement of impact was delivered to the Clerk of the Buncombe County Board of Commissions; and (2) a published notification in the Asheville Citizen-Times on April 17, 2001, and April 27, 2001, included a notice of property owner's rights, a map, and a description of the areas being considered for annexation. On March 26, 2001, a letter was received from the Enka-Candler Fire & Rescue Department Inc.; on March 29, 2001, a letter was received from the Skyland Fire Department; on April 18, 2001, a letter was received from the Reynolds Volunteer Fire Department Inc.; and on April 26, 2001, a letter was received from the Haw Creek Fire & Rescue, all requesting to receive a good faith offer from the City of Asheville for fire protection services." The maps of the proposed annexations, the Annexation Services Plan and the property owners list have been displayed in the Office of the City Clerk for public inspection beginning March 30, 2001.

Mr. Benson explained that purpose of this hearing is for the City to explain the plan for extending City services to the proposed annexation area, and to give all persons resident or owning property within the area, and all residents of the City the opportunity to be heard. The effective date of annexation will be June 30, 2002.

The Old Dominion area includes 15.5 acres, subdivided into one commercial property. Annexation of this area extends the corporate limits to only property accessed by the Sweeten Creek Industrial Park Drive that is currently not in the City.

Mr. Benson then summarized the plan as follows: The Old Dominion area qualifies for annexation in that it is 100% developed. Police protection is to be extended on effective date of annexation with no increase in personnel or equipment. Fire protection is to be contracted from Reynolds Rural Fire Department (.10/9/6) and supplemented by the City to bring service up to City standards. Solid waste collection is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Street maintenance services are not planned for the Old Dominion Area. Water distribution in the Old Dominion area currently meets City standards. Sewer collection in the Old Dominion area currently meets City standards. City Financial Impact - Annual Expenses = $1,826; Annual Revenues = $11,189; and Capital Expenditures = $1,053.

Mr. Steve Bruce, representative of Old Dominion Freight Line, said that although no one likes to see their taxes go up, but Asheville has been good to them and they want to be good corporate citizens.

Mayor Sitnick closed the public hearing at 6:26 p.m.

Mayor Sitnick said that the ordinance to extend the corporate limits into this area will be considered by City Council on June 12, 2001.

F. PUBLIC HEARING TO CONSIDER THE ANNEXATION IN THE ARDEN AREA

Mayor Sitnick opened the public hearing at 6:26 p.m.

Mr. Paul Benson, Urban Planner II, said that this public hearing was advertised on April 17 and 27, 2001. He said that he has filed a certification of notification with the City Clerk, as follows: "(1) Buncombe County tax listings were obtained from the Buncombe County tax office on March 13, 2001; (2) on April 2, 2001, 114 letters, including a notice of property owner's rights, a map and description were mailed to property owners identified from said property tax listings of Buncombe County; (3) on or before April 23, 2001, one letter to the property owners was returned to his office; (4) on April 12, 2001, the returned letter was re-mailed by certified mail to either a new address provided by the Post Office on the returned envelope or to the same address; and (5) on April 24, 2001, letters were sent to the solid waste providers identified as being active in the affected area, with said letters including the Resolutions of Intent adopted by the City Council on March 13, 2001."

City Clerk Burleson filed a certification of notification as follows: "(1) on April 2, 2001, a statement of impact was delivered to the Clerk of the Buncombe County Board of Commissions; and (2) a published notification in the Asheville Citizen-Times on April 17, 2001, and April 27, 2001, included a notice of property owner's rights, a map, and a description of the areas being considered for annexation. On March 26, 2001, a letter was received from the Enka-Candler Fire & Rescue Department Inc.; on March 29, 2001, a letter was received from the Skyland Fire Department; on April 18, 2001, a letter was received from the Reynolds Volunteer Fire Department Inc.; and on April 26, 2001, a letter was received from the Haw Creek Fire & Rescue, all requesting to receive a good faith offer from the City of Asheville for fire protection services." The maps of the proposed annexations, the Annexation Services Plan and the property owners list have been displayed in the Office of the City Clerk for public inspection beginning March 30, 2001.

Mr. Benson explained that purpose of this hearing is for the City to explain the plan for extending City services to the proposed annexation area, and to give all persons resident or owning property within the area, and all residents of the City the opportunity to be heard. The effective date of annexation will be June 30, 2002.

The Arden area includes 128 acres, subdivided into 114 properties; there are 73 dwelling units with an estimated population of 145 persons. This area would extend the corporate limits into the rapidly growing South Asheville area, and link 4 existing satellite areas to the primary corporate limits.

Mr. Benson then summarized the plan as follows: The Arden area qualifies for annexation in that at least 60% of the lots are developed, and 60% of the acreage of properties that are either vacant or in residential use are subdivided into lots of 3 acres or less. Police protection is to be extended on effective date of annexation with no increase in personnel or equipment. Fire protection is to be contracted from the Skyland Rural Fire Department (.075/5) and supplemented by the City to bring service up to City standards. Solid waste collection is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Street maintenance services are planned for Linden Street, Peach Tree Street, Sycamore Drive, Blake Drive, Royal Pines Drive, Cedar Lane and Sycamore Terrace, (1.6 miles). In addition, property owners located on private roads may petition for City maintenance provided that adequate public right-of-way is provided. Water distribution in the Arden Area currently meets City standards. Sewer collection in the Arden Area currently meets City standards. City Financial impact - Annual Expenses = $15,017; Annual Revenues = $147,577; and Capital Expenditures = $29,811.

Mayor Sitnick wanted to be sure that the City is working on creating a small farm designation within the extraterritorial jurisdiction and annexation areas so that the City doesn't put those people out of business. Mr. Benson said that he was not aware of any agricultural operations in any of these annexation areas. In addition, Buncombe County has not coded any of these properties as agricultural use.

City Attorney Oast pointed out to Council that in addition to the urbanization requirements, there is also a contiguity requirement with respect to areas that we annex. This area, even though it is adjacent to a pending annexation does qualify on the basis of the existing City limits.

Mr. Pat Cary, area property owner, spoke in opposition to the annexation and felt that the urban density requirement has not been met.

Mr. Kevin Rollins, speaking on behalf of the Libertarian Party of Buncombe County, hoped City Council does not tax residents out of their land. He felt that annexation is a violation of democracy and it should be put on a ballot so people can vote on whether people want to be annexed or not.

Mr. Fred English spoke in opposition of annexation.

Mayor Sitnick closed the public hearing at 6:38 p.m.

Mayor Sitnick said that the ordinance to extend the corporate limits into this area will be considered by City Council on June 12, 2001.

G. ORDINANCE NO. 2810 - ORDINANCE DIRECTING THAT THE DWELLING LOCATED ON WYATT STREET BE DEMOLISHED

Mayor Sitnick opened the public hearing at 6:39 p.m.

Mr. Jeff Baker, Housing Code Coordinator, said that this is consideration of an ordinance directing that the dwelling located on Wyatt Street be demolished and all debris removed from the property.

The dwelling located on Wyatt Street (PIN No. 9657.09-05-9999) is a shell of a building with a roof, but no walls, and no windows and doors. The real property owners, Mr. and Mrs. James R. White Sr., have not responded to ongoing requests by the Housing Division to repair or demolish the building.

The Housing Code Coordinator sent a letter, Consent of Demolition, and a Complaint and Notice of Hearing to the property owners on the January 25, 2001. The property owners have failed to demolish the dwelling or to respond to any document. A formal housing hearing was held and a "Findings of Fact and Order" was entered and served on the property owners. To date no action has been taken by the owners and the dwelling continues to be uninhabitable and a hazard to the community residents.

Section 4-217(c)(3) of the City's Housing Code, as authorized by N. C. General Statutes sec. 160A-443(5), authorizes City Council to direct by ordinance that the dwelling be demolished.

The following is an overview of some general information regarding this property:

- Fair market value of dwelling is $2,900 (as listed on the Buncombe County Tax Records)
- Estimated cost to repair and bring into Code compliance is $20,000-$40,000
- The affordable housing agencies were notified.

The Building Safety Director recommends adoption of the resolution setting a public hearing ordering that the property located on Wyatt Street be demolished.

Upon inquiry of Councilman Peterson, Mr. Baker said that the structure will probably be demolished in 30 days, however, the owner will still have the opportunity to bring the dwelling up to Code until the actual demolition.

When Mayor Sitnick asked how much it would cost in demolition and disposal fees, Mr. Baker said it would be approximately $4,000 and that amount will be applied as a lien to the land.

Mayor Sitnick closed the public hearing at 6:44 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2810. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 149

H. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT ON SHILOH ROAD

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 6:47 p.m.

Urban Planner Stacy Merten submitted into the record City Exhibits 1 & 2 (Affidavits of Publication), City Exhibit 3 (Certification of Mailing of Notice to Property Owners), City Exhibit 4 (Staff Report dated April 24, 2001), City Exhibit 5 (Letter dated May 2, 2001, from George Morosani); and City Exhibit 6 (Staff Report dated May 22, 2001). This public hearing was advertised on April 27 and May 4, 2001, and then re-advertised with the Parcel Identification Number on May 11 and 18, 2001.

She said that this is the consideration of issuance of a conditional use permit (CUP) for a parking lot to be located on property zoned RS-8 Residential Single Family High Density District on Shiloh Road.

With regard to some confusion about the address for this property, City staff did some follow-up research and found that Mr. Morosani had previously been notified that he should be using 55 Shiloh Road for his business located on the south side of Shiloh Road. Apparently he had not made this change and he made his application with the City.

Using a map (City Exhibit 7), she explained that the proposed project is actually located on the north side of Shiloh Road and that went through the Technical Review Committee (TRC) process. Mr. Morosani has since added another lot to be considered for the parking lot. There is an unopened right-of-way between the two lots.

Mr. George Morosani has submitted development plans to construct a 32-space parking lot on approximately .6 acres in an RS-8 Residential Single-Family High Density District, with the business itself being located across the street. The proposed development would be an ancillary use to the development on the south side of Shiloh and would be constructed in two phases (City Exhibit 8). The existing development contains a mix of uses including a heating and air conditioning retail and service business, a pharmacy and associated offices. The applicant wishes to expand the development, but cannot do so without the additional parking. Phase I (17 spaces) was previously reviewed by the TRC, but Phase II (15 spaces) was not.

The site is currently vacant and is surrounded by single-family dwellings (City Exhibit 9). The proposed parking area would be surrounded by a wooden fence and heavily landscaped. A sidewalk is proposed to be constructed along the street.

All of the TRC conditions for this project have been met. A Transportation Impact Analysis was not required for this project.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed development is a parking lot that will be constructed with methods and materials that will not pose a danger to the public. Landscaping and lighting will be done in manner sensitive to the surrounding uses and to mitigate any possible negative impacts such as glare, noise, dust or fumes.

2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

   The existing development is out of scale and character with the surrounding community, and as such does not benefit or enhance the community. An expansion of the use, although necessary for the use itself to operate effectively, will provide little public benefit.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed parking lot expansion will expand a commercial use into a residential area in the middle of the block with a high potential to injure the value of the adjoining properties.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed development is a parking lot within the fabric of the neighborhood with landscaping and fencing. Once mature, the landscaping will hide the view of the parking lot from the street. The wooden fencing will not be out of character with the surrounding neighborhood.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan and other official plans adopted by the City.

   The Asheville City 2010 Plan indicates residential use for this area, but the UDO allows for ancillary parking in residential zones under certain conditions.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development is located in an existing developed area. The project received approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department and Public Works Department. The TRC recommended certain conditions, which have been met. Sidewalks will be provided.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The City's traffic engineer has reviewed this project and determined that no undue traffic will be generated from this site.

The purpose of the ancillary parking CUP process is to allow a limited amount of intrusion into residential areas under appropriate conditions. Although the landscaping and fencing will serve to mitigate the impacts of this proposed development, staff feels that the intrusion of development in the middle of the block will destroy the fabric of the neighborhood and because of the proximity to Hendersonville Road, possibly serve as a catalyst for additional commercial development into the neighborhood.

Based on information available to the Planning & Development Department in advance of the public hearing, staff recommends denial of the ancillary parking conditional use permit. If Council takes action to approve the CUP, staff would like to add the following conditions: (1) PIN numbers for both parcels must be shown on the site plan; (2) The surrounding zoning should be corrected on the landscape plan; (3) The parking calculations must be corrected on the site plans; (4) The unopened section of Cherry Street should be closed and additional landscaping installed in this area; and (5) The Final Plans, showing Phase II, should be reviewed by the Technical Review Committee.

Councilman Hay said it was his understanding that the primary goal of ancillary parking was to allow more of a smooth transition between commercial and residential when they were right next to each other. Ms. Merten responded that the UDO does state that it can be immediately adjacent to or across the street.

Vice-Mayor Cloninger wondered if there was any potential for shared parking between the two commercial businesses on the south side of Shiloh Road.

Councilman Peterson asked that with 32 additional parking spots, is it anticipated that there will be more traffic on Shiloh Road. Ms. Merten said that they intend to expand the business so there would be a little more traffic, but not enough to trigger a traffic impact analysis.

City Attorney Oast said that if any Council member has any special knowledge, other than having visited the site and being familiar with the site, that Council feels might affect their decision, it needs to be disclosed.

Councilman Peterson disclosed that he has spoken with a couple of the neighbors who are in the audience, in particular Norma Baynes, and everyone else he has spoken with at the community association is in the audience as well.

Mr. George Morosani, applicant, passed out Applicant Exhibit 1 and briefed Council on his projects to date noting that he has invested in the City of Asheville for years. He said that he bought this subject property about 2 years ago. About one year ago he looked at the property across the street and asked the City if he could rezone the property to a commercial designation. At that time he had secured all the permission, except for one person's property, to convert it to commercial. That person said he would not grant permission, but he would not deny him. Former City Planner Carl Ownbey advised his attorney, Mr. David Matney, that he could not see

City staff recommending rezoning the property, but to wait until the UDO was amended for ancillary uses. Mr. Ownbey said he thought that would work. Mr. Morosani waited until last October and started applying for this CUP. Phase I (17 spaces) is to serve the existing building. Phase II (15 spaces) is for Phase 2 of the building which a 17 000 square foot building across the street. He said that Phase II is included in this CUP because he has been advised by the Planning Department that you can only ask for this request once. Mr. Morosani said that everything has been approved except there is a subjective feeling by Planning staff that the intrusion of this development into the middle of the block would destroy the fabric of the neighborhood. He showed how this property is not in the middle of the block. Using Applicant Exhibit 1, he showed how much of the area is commercial and how close the property is to Hendersonville Road. He stressed that he wants to build this parking lot for public safety purposes and to keep trucks and vehicles off Shiloh Road. He urged City Council to approve his request.

Mr. David Matney, attorney for the applicant, said that Phase I was for the existing building to get around the problem of trucks blocking the street and turning around. Phase II is for the expansion, but needs to be considered at this same time because that's what the ordinance reads. He said that Mr. Morosani reconsidered his initial request to rezone, after having received signatures from people up and down the street, at the suggestion of Planning staff. He explained how the parking lot does match the scale of the neighborhood. He stressed the parking lot will benefit the neighbors by keeping the trucks off the road. He felt that the neighborhood will be improved and this is not an intrusion of more commercial development. He did not see how having a nice landscaped parking lot could injure the neighborhood. He said that this development meets all the standards and urged Council to approve the CUP.

Mr. Fred English felt that City Council should deny this request.

Ms. Norma Baynes, representing the Shiloh Community Association, presented Neighborhood Exhibit 1 which reads "The Shiloh Community Association and the residents of the Shiloh are requesting that the property at 56 Shiloh Road or the property that will be used as a parking lot be denied for these reasons. The property is located between two residences. The residents of Shiloh would not like for the property to be rezoned commercial, as stated in our letter written to you and the City Council on December 14, 2000. We would like for the lot to remain residential. A parking lot will increase traffic causing safety problems for people walking on the road and residents getting in and out of their driveways. With increased commercial property in the Shiloh community, residential property is being eliminated. We would not like for commercial business to interfere with our historical building on Shiloh Road, A.M.E. Zion Church. The Shiloh Community Association would like to thank you for your support."

Ms. Debra Rumpf, resident at 68 Shiloh Road, presented Neighborhood Exhibit 2, said there is already a lot of noise on Shiloh Road. She said any development on the property will cause her property to flood during heavy rain. She noted that Mr. Morosani has had this property for several years and it has not been maintained.

Ms. Joan Shade, resident at 80 Shiloh Road, presented Neighborhood Exhibit 3, spoke against the development of a parking lot in their residential neighborhood. The lot across the street which Mr. Morosani owns is not maintained at all. She said the reason it is cleared off now is because a new sewer line has been installed and they cleared out a lot of the rubbish.

Mr. Walter Plaue felt that if businessmen follow the standards and laws required by the City, then they should be allowed to proceed with their development.

Mr. Matney stated that Mr. Morosani is not seeking to rezone the property, but just trying to abide by the rules the City set. He noted it is business on one side of the road and having this parking lot will help the truck traffic. The truck traffic is there because of the commercial businesses and this lot will not affect the number of vehicles that go up and down the road. It will affect how long a truck stays in the road and that is why they feel it's important to develop a parking lot. If the lot is constructed, the trucks will be stopping off the road and if it's denied, the trucks will be stopping on the road and blocking traffic.

Ms. Baynes agreed that one side of Shiloh Road is commercial, however, Mr. Morosani wants to build the parking lot on the other side, which is residential.

Mayor Sitnick closed the public hearing at 7:50 p.m.

Councilman Peterson felt that testimony and evidence presented has not been sufficient for him to establish that each of the seven standards have been met. He felt the property value of adjacent owners would be injured with the parking lot located on the residential side of the street.

Upon inquiry of Councilwoman Field, Mr. Shuford said that a lot of information has been presented at this hearing, however, he did not see a reason to change their recommendation.

Councilman Hay said that Mr. Morosani is a responsible developer and has done some terrific projects in the City. Based upon his personal experience, Mr Morosani does abide by the rules. So, if he thinks he's playing by the rules in this situation, the City may be mis-communicating the rules from time to time. It was his understanding when Council adopted the UDO with the ancillary uses provision, that it would be an opportunity for some flexibility in cases where no one would develop a lot for residential use because it was right next to commercial and it would be a good place for a transition that would allow some useful use, with contained rules. That is not what is going on here. There is commercial use across the street that would be enhanced by using this lot and he feels that is not why City Council developed the ancillary use provision. If that area is going to be used for parking, it should go through the rezoning process and looked at it from those points of view. He would have to vote against the CUP in that he did not feel that standard no. 2 was met.

Vice-Mayor Cloninger also respected Mr. Morosani and the great job that he has done with redevelopment throughout the City. He agreed with Councilman Hay in that this was not the type of project that Council had in mind when the ancillary use provisions were adopted by Council. He hoped City Council will go back and revisit the ordinance with regard to this.

Councilman Worley felt the problems is not with the ordinance, but a problem in communicating what the effect and possibilities are of attempting to use this ordinance. He felt it was clearly a discretionary ordinance on the part of City Council. He didn't find there was sufficient evidence presented to show that the development of this lot as a parking lot will not substantially injure the value of adjoining properties or that it really fits in with the harmony and scale of the neighborhood.

Councilman Peterson asked Mr. Shuford was aware of anything he knew of that could cause the two lots to be unsuitable for residential uses. Mr. Shuford said they are a little difficult to use for residential purposes because they are across the road from commercial, but certainly there are viable residents in the area that have been here and testified that they are okay with that situation. He did indicate that residential use is certainly a strong possibility for that property at some point, especially with the City's efforts to provide infill residential development where we can.

Mr. Shuford apologized to Mr. Morosani if he misunderstood anything that he or his staff said with regard to this process. The Planning Department's job is to assist the applicant to bring the best possible product before City Council, even if staff ultimately recommends denial. They are a customer of the City and we need to help them put their best foot forward as they go through the process. If that has been construed to be a directive in anyway of staff recommendation in favor of it, then he apologized. He felt this particular process was certainly less in either rezoning or conditional use rezoning in intensity. In recognizing the situation with regard to the location of the property, staff felt it was best to bring it forward with that type of development technique, opposed to the other two, in order to give the applicant the best possible chance of having something to meet the standards of approval.

Mayor Sitnick had a problem with the provision of ancillary uses because she did not like the intrusion of commercial use into neighborhoods. She said that she would vote against the CUP based on standards 2, 3, 4 and 5.

Councilwoman Bellamy moved to deny the conditional use permit for an ancillary use (parking lot) in a residential district on Shiloh Road, This motion was seconded by Councilman Peterson and carried unanimously.

Councilwoman Bellamy said it was clear to her, based on the evidence presented at the public hearing, that the requested CUP would not meet all the seven standards required. She did feel it was a commercial encroachment into the neighborhood, as it is clearly residential. Her biggest issue is that City Council does take each issue separately and base their decision on the information presented. Each ancillary CUP process is different. This Council is dedicated in being honest and fair to residents of all neighborhoods and communities. We do not look at race, social economics or area of the City.

City Attorney Oast said that he would bring back an ordinance denying the conditional use permit for City Council consideration at their next formal meeting on June 12, 2001.

At 8:05 p.m., Mayor Sitnick announced a short break.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2811 - BUDGET AMENDMENT APPROPRIATING $75,000 TO THE PUBLIC WORKS DEPARTMENT FOR TIP FEES FROM FEBRUARY 2001 THROUGH JUNE 30, 2001

B. ORDINANCE NO. 2812 - BUDGET AMENDMENT TO APPROPRIATE $39,500 FOR A CONTRACT AMENDMENT WITH WOOLPERT LLP TO DEVELOP A SITE OPERATION PLAN FOR BENEFICIAL FILL OPERATIONS ON AZALEA ROAD

Public Works Director Mark Combs said that the City's White Fawn Reservoir was closed to beneficial fill dumping on February 2, 2001. To facilitate Water Maintenance and Streets Division's needs regarding a close, accessible and long term beneficial fill site, staff has been gathering specific information for the further potential development of the property, as directed by Council.

On April 3, 2001, City Council approved resolutions to purchase 155 acres of property on Azalea Road for long term development as a park, sports fields and potential beneficial fill site.

Potential short term beneficial fill options such as materials recycling and small, isolated sites would certainly aid in primary site longevity; however such options do not mitigate the need for a central, city owned and operated site which will serve the city's beneficial fill needs for the next 15 or more years. Also, the siting and development of small satellite operations pose significant liability and operations challenges to the City.

Concurrent with the recent purchase of the property, staff has initiated the following actions:

1. On January 31st Council directed staff to prepare a proposal regarding potential development of the property;
2. On February 2nd the White Fawn Reservoir was closed. Beneficial fill material is currently being placed in the Buncombe County Landfill in Alexander. In addition to tip fees, the 17 mile (one-way) trip has reduced operational efficiency by an estimated 30-50% due to travel time.
3. As of May 15, 2001, (12 weeks) the City has paid $90,907.84 to Buncombe County, which is an average of $7,576 per week, or $30,304 per month. Annual cost projections remain tenuous due to seasonal construction variances and emergencies; however, based on past experience, Water staff estimates tip fees at $500,000 per year and Dept. of Public Works staff estimates $175,000.
4. Staff developed a scope of services for an operation plan contract with the engineering firm of Woolpert, LLP, who will work with their sub-consultant, Froehling and Robertson, Inc. to prepare a plan which will incorporate the following:

   → Contour map;
   → Soil and Erosion Control Plan;
   → Plan for stabilization of existing slopes;
   → Plan for protection of existing river banks if necessary;
   → Design of upgrade to existing road if necessary;
   → Identify soil borrow source;
   → Work procedures for operation of site coordinated with Park plan;
   → Site grading plan (for grading permit application);
   → Prepare documents necessary for all permits as required; and
   → Flexibility (for slope and grade design) consistent with the final Parks & Recreation Master Plan (1st public meeting May 24th).

   Estimated Operation plan cost: $39,500 (4 to 6 weeks to complete plan)

5. On April 10th staff met with Dan LaMontagne, NC DENR, at the Azalea site regarding an allegation from a citizen that 'toxic wastes' were polluting the Swannanoa River. Subsequently, Mr. LaMontagne's has gathered site samples and should receive test results in mid to late June. Based on the consultant's original site examination, staff is confident that the site is not toxic to the surrounding waters and property.

6. On April 23rd staff met with and provided specific site information to Patrick Lance and Alex Perry (WNC Nature Center) regarding their concern of potential impacts of a beneficial fill site up stream from the Center.

Based on staff's further research and investigation as directed by Council, we recommend the following:

a. Appropriate $75,000 to the Public Works Department for tip fees from February through June 30th (Water Department staff estimates FY 00-01 tip fees of $110,000);
b. Appropriate $39,500 for a contract amendment with Woolpert LLP to develop a site operation plan; and
c. Direct staff to return to Council with a draft operation plan for Council review and approval with appropriate public input, as determined by City Council.

Contingent on Council's approval to proceed with a site plan, staff will report back to Council regarding specific construction and operations dates as plans are completed, as directed.

Councilwoman Bellamy asked why the City doesn't wait until the results of the DENR study comes back in June before the site operation plan is started. Mr. Combs responded that there are no permitting requirements except by the City of Asheville (soil and erosion control plan), and the feasibility study has already been completed with the recommendation to proceed. If there are any results that are marginal or concerns by the DENR study, then there would be many things the City would consider in terms what would be done to make that site operational for a beneficial fill site. The results of the study would not have an impact on the operations plan whatsoever. Again, the City had a feasibility study performed and the firm said that based on their investigation that that site is a viable beneficial fill site. Any allegation that there is toxic waste or any kinds of those issues with that site, is just an allegation and we don't expect to find anything negative from the DENR study.

City Manager said this is a parallel process. We still need to have a use plan for the beneficial site.

Councilwoman Bellamy said if the report is positive, that's fine. But, if it's negative, we would be paying an additional $39,500, plus staff time, before Council really decides if the site will be developed for a beneficial fill. She felt we should wait until the DENR study is received in June before spending any more money, because spending this money for a site plan looks like City Council has already made up their minds.

Mayor Sitnick said the operational site plan is just the first step. She stressed the City will have a lot of public input and opportunities for discussion.

Vice-Mayor Cloninger said it was his understanding it could be several months before City Council makes a final decision on the uses on the property.

City Attorney Oast also said that as part of our investigation of the site, Mr. Pat Price performed an environment assessment. Along those lines, Mr. Combs explained that Woolpert incorporated Mr. Price's environmental impact study into their findings and recommendations in their feasibility study.

Mr. Combs noted that the amount today that the City has paid to Buncombe County for tipping fees (both Water Resources Department and Public Works Department) is approximately $106,000.

Councilman Peterson said that City Council received a letter from John Blaisdell from the NC Division of Pollution Prevention and Environmental Assistance which gives some details about alternatives regarding disposal of construction and demolition debris. Also he received a letter from Deborah McKenna where she had contacted APAC in Enka Candler and that they were willing to take asphalt for free, given the current price of oil. Ms. McKenna's letter also asks if the City has considered using a separation machinery in order to reduce the amount that has to be taken to the landfill. He asked Mr. Combs if he has explored these options. Mr. Combs responded that he has been directed by City Council at their May 15, 2001, worksession to come back with more specific information in terms of time motion studies and different evaluations regarding the various options mentioned.

Councilman Hay expects the Mr. Combs will be giving City Council a report on options to the Azalea Road site as we move forward. Mr. Combs responded that Council asked him to report back historically the sites that they looked at in terms of what is a long-term home base. He said they will also provide information on what City staff would think is a viable site.

Vice-Mayor Cloninger said that it seems to him that part of that review would also include looking at issues like this that might result in a reduction of what we would put in a landfill, wherever that landfill is located. Mr. Combs said that staff's original logic was to site a home base, a long-term area, that they could call a beneficial fill site home – that they could develop in terms of grinding their wood waste, managing their leaf compost and use it potentially to begin to separate and recycle our materials.

Councilman Peterson said that in some ways spending $39,500 is potentially wasteful to pay for an operational site plan if the research is revealed that the asphalt can be recycled, material separated, etc. He felt Council should look at the alternatives before spending money to move ahead with the Azalea Road site.

Councilman Worley felt if we don't proceed along a parallel track and then find we really have no alternative but to develop our own home site, then we will have wasted that much more time. In addition, we are spending money every day hauling to the Buncombe County landfill.

Mayor Sitnick was real concerned with the cost of the tipping fees. No matter what the City does, they are going to have to find a solution to our demolition materials. She will not be comfortable in making any decision on what that site will be used for until after ample public comment.

A brief discussion was held about how much inert material there is and who could recycle the asphalt.

Mr. Combs said that staff's logic has been to site this area in order to establish a home base. Then staff will perform time motion studies, look at productivity, look at distances, and then be able to make the home base optimal for as many years as we can. The will also look at other compliments concurrent with this.

City Manager Westbrook said that staff is in the middle of doing studies now and they will bring those back to City Council at a later time. However, he feels that based on Mr. Combs' experience on being a landfill operator in the past that we are going to need a site in addition to any other things that we come up with as part of the study. He thinks it would be in the City's best interest to start the study also and run on a parallel track.

Mayor Sitnick responded to Mr. Fred English's question regarding why City staff didn't anticipate the filling up of White Fawn Reservoir earlier.

Mr. Adam Baylus suggested the City crown the landfill instead of taking the material to the Buncombe County landfill.

Mr. Walter Plaue questioned how the City has been paying the tipping fees if we are just now requesting a budget amendment and the fees started in February, 2001.

Ms. Denise Goodson suggested the City work with the County to recycle materials that go into the landfill.

Mr. Mike Moody, representing the Beverly Hills Homeowners Association, presented City Council with a prepared statement. He said the White Fawn Reservoir landfill has been closed since February 2001 and it must have been evident that all materials would then have to be sent elsewhere. This should have triggered an earlier request for funds along with an interim plan, which did not include the Azalea Road site. With the closure of the White Fawn landfill, it seems prudent to have considered recycling options with firms outside the City limits. When work areas are closer to these firms than the county landfill, recycling should be economically feasible. He quoted out of the Unified Development Ordinance sec. 15-50 (a) that "it shall be the policy of the City of Asheville to require recycling to the fullest extent possible of recyclable materials...." He said that with this unexpected request of funds it seems prudent to review the City's comprehensive plan in an "advertised public meeting."

Councilwoman Field said that the City of Asheville and Buncombe County have reduced their waste by 40% as directed by N. C. Gen. Stat. sec. 130A-309.09.

After 20 minutes of debate for a book-keeping entry, Councilwoman Field called the question. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved to adopt Ordinance No. 2811. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 19 - PAGE 151

Councilman Peterson asked various questions, some being, but are not limited to: are negotiations still occurring with the Blue Ridge Parkway regarding the bridge and if it is a public road or private property; if a new bridge needs to be built, is the site still financially a feasible project; what will happen if the Parkway closes the bridge; can the bridge be upgraded; is there a contingency plan if the bridge can't be re-opened; what is the cost and timeframe to stabilize the mound; and how much would it cost to move the power lines to fully utilize the power lines on top of the mound.

Councilman Peterson stated that it did not make financial sense to do a detailed plan if we're not going to use the Azalea Road site for a beneficial fill site. He felt the decision should be made to go to that site or not, before we spend $39,500 for the operations site plan. Vice-Mayor Cloninger responded that City Council has not given their approval for this site, however, he felt the more information about the site, the better, in terms of trying to make an educated decision.

Mr. Combs stressed that this is an unregulated activity and City Council has chosen to make this process so open to the public that they are willing to do these kinds of studies for an unregulated activity.

Ms. Rebecca Campbell presented City Council with information regarding recycling opportunities that would minimize the need for new or existing dumps for construction debris within the City of Asheville or Buncombe County.

Mr. Ned Guttman, representing Redwood Forest, urged City Council to wait for the DENR study analysis which may say that the water is clean and the mound is stable. He felt this is a fact-gathering effort that needs to be done before any decision is made with regard to the site. He said that the perception by the neighborhood is that Mr. Combs is saying there has been a decision made by City staff but City Council has not decided what the use of that site would be, including the mound. Mr. Guttman said that including labor, etc., the $30,000 for fixing the bridge will increase. He said that if the power lines are not moved, essentially half of the mound will not be usable and that would cut the life-time from 14 years to 7-9 years. He urged Council not to approve the $39,500 for the operational site plan, but better spend that money on obtaining the facts of what is in the mound.

Mr. Combs explained that the study by DENR are water and soil samples, not a full assessment of the site as to it's viability for beneficial fill.

When Mr. Peter Dawes said that he could use 500 tons of millings, Mr. Combs explained that there are plenty of places his staff can find to dump, but they don't do that for liability reasons.

Ms. Susan O'Neil felt that residents have been assured all along that nothing will happen on this site without ample time for public comment, but further studies are being made to consider this as a landfill site. Neighbors have done research that cost the City nothing and that research should be considered.

Ms. Karen Cragnolin, Director of RiverLink, said that the State of N. C. has looked at the Swannanoa River and said this is an endangered river and has been put on a list of one of the most sediment impaired rivers in the state. As a result of that, they have appropriated money through the Environmental Protection Agency to begin a remediation program to begin to stop pollution at the source which is runoff from development. She felt City Council needed to think about the river and the impacts on the river when discussing this site. She said that RiverLink has been involved in the planning of this site from the beginning but she has a feeling that it seems that it's steam-rolling at this point. If the City had two or three sites that they were looking at proposing to do a $39,500 study on, she would feel better. She said it appears that it's been narrowed down to one site at this point.

Mayor Sitnick said City Council is not making any hasty decisions on this issues. As anxious as we are to make a decision on this, she would like to wait until the DENR study has been received in mid to late June and if it comes back clean, she will feel more comfortable. Between now and then, Council can look into some of the comments and materials that were submitted.

Councilman Worley said that Council needs to get to the point where a decision can be made. There are still a lot of questions and Council needs to have all the facts in front of them, including the operational site plan. We are spending money every day to take our materials to the landfill. He would like to find a way to recycle the material and find a way to avoid the tipping fees at the landfill. Everyday we delay in moving forward on parallel tracks to get all the information we need, costs all taxpayers money.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved to adopt Ordinance No. 2812. This motion was seconded by Vice-Mayor Cloninger.

Councilman Peterson felt Council should wait for the DENR study. He reiterated again the issues on why City Council should wait to spend the $39,500 for the study.

Councilwoman Bellamy asked that this issue be delayed until they receive the information staff will be bringing to Council regarding the other sites investigated.

The motion made by Councilman Worley and seconded by Vice-Mayor Cloninger carried on a 4-3 vote, with Vice-Mayor Cloninger, Councilwoman Field, Councilman Hay and Councilman Worley voting "yes" and Mayor Sitnick, Councilwoman Bellamy and Councilman Peterson voting "no".

It was the consensus of City Council that if the DENR study comes in with negative results, that we ask Woolpert to stop their study and not pay the full fee.

ORDINANCE BOOK NO. 19 – PAGE 153

V. NEW BUSINESS:

A. NATIONAL BASKETBALL DEVELOPMENTAL LEAGUE CONTRACT

Councilman Hay said that he, Councilman Worley and some City staff have been talking with people from the National Basketball Development League (NBDL) intensively over the last couple of weeks about the possibility of bringing a team to Asheville to pay basketball, as opposed to the major project which they proposed earlier in the year. Over two closed sessions, they advised City Council what the key ingredients were and at the last closed session, they sketched out for Council what they thought was the direction that the negotiations were headed and asked that if City Council felt positive about that, to put it on the agenda for today. One thing City Council wanted done at that point was for staff to take the proposal and work on it at their level to see what they could do to work from the talking stage to a point of having a contract that they could present and recommend to City Council. In part of that review, Council was expecting from them that they would do a thorough thinking-through of the financial end as well as some of the other things. That has been on-going. Last night the City Manager advised him that they could not have a contract ready that he could recommend for consideration by City Council at today's meeting. The people at NBDL said they could wait. The decision was made last night that Council would not vote on that proposal today. The City Manager and staff will continue to work with the NBDL to see if a contract can be prepared that they can recommend to City Council, perhaps as early as next week. He would still like to give people a chance to comment tonight on the contract because the contract is still being negotiated and the more Council hears, the more they learn and the better able they are to negotiate a contract that reflects what Asheville wants that contract to be.

Mayor Sitnick stressed that City Council has not seen the contract and nor does Council know any of the details of the contract at this time.

Councilman Worley said that one of the things that has happened in the last week is the identification by staff of a number of issues that City Council didn't deal with in the preliminary discussions with the NBDL. One of the premises that we've gone into these negotiations with, and it's helped develop some of the issues, is the fact that we don't want to lose the Smoke and we do want to be fair to the Smoke. We've told NBDL this from the very beginning in our negotiations. We value the Smoke and we want to keep the Smoke at the Civic Center.

After Councilman Peterson said that he received a copy of a draft agreement dated 5/18/01, Councilman Worley advised him that the draft agreement has changed drastically and that draft agreement reflects nothing but to get the terms under discussion.

It was the consensus of City Council that once there is an agreement that the City Manager can recommend to City Council, a copy of that agreement will be available to the public so people can review it and comment on it.

The following people spoke in support of keeping Asheville Smoke at the Civic Center for several reasons, some being, but are not limited to: there are already some constraints and limitations for Smoke already; if the NBDL comes to Asheville, it will make it difficult financially and operationally for Asheville Smoke to exist next year with a tenant taking up 28 dates, prime weekend dates, practice time, limited ice availability, competing with the entertainment dollar within the general public and competing with the advertising dollars:

Mr. Dan Wilhelm, Manager of Asheville Smoke
Ms. Michelle Green, Angles on Ice
Mr. Michael Green
Mr. Beumer

Ms. Lynn Leslie
Mr. Jonathan Allen, professional ice skating coach representing Angles on Ice
Ms. LaVerne Laney, member of the Asheville Civic Center
Mr. Wayne Hoglen
Mr. Marc Yops
Mr. Carl Mumpower, Chair of the Asheville Civic Center
Ms. Kate Leslie
Ms. Clare Beumer, Angles on Ice
Ms. Samatha Kertz, Angels on Ice
Ms. Margaret Beumer
Mr. Pat Bingham, Coach of Asheville Smoke
Mr. Bob Swan, member of the Civic Center Commission
Mr. Bob Bennett
President of the Smoke Booster Club
Ms. Donna Seymour
Mr. Andrew Beall
Ms. Cheryl Holder
Ms. Serenity Allen, Coach for Asheville Figure Skating Club

It was reported again that once there is an agreement that the City Manager can recommend to City Council, a copy of that agreement will be available to the public so people can review it and comment on it, prior to formal action by City Council.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 4-17, 2001: Carmen Y. Cabrera (Fire), Glenn Nye (Streets), Ginger Holt (Water) and Sandra P. Robinson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The following Notice of Charge of Discrimination was received by the City on May 21, 2001: Doris Richardson filed charge. The nature of the proceeding is race discrimination charge against the City of Asheville. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 12:04 a.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – May 29, 2001 – 2:30 p.m.
Asheville Civic Center

Special Meeting

Asheville City Council Members Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson. Councilman Charles R. Worley was out of the country.

Buncombe County Commissioners Present: Chairman Nathan Ramsey, Presiding; Vice-Chair David Gantt; Commissioner Patsy Keever; Commissioner Bill Stanley; Commissioner David Young; County Attorney Joe Connolly; County Manager Wanda Greene; and County Clerk Kathy Hughes.

At 2:30 p.m., the City Council and the County Commissioners took a brief tour of the Asheville Civic Center.

Mayor Sitnick and Chairman Ramsey each called their respective meetings to order at 3:17 p.m. and said the meeting would focus on the issue of the Asheville Civic Center.

Civic Center David Pisha explained the six important factors to the Civic Center's success: Civic Center staff, event diversity, comparisons to other facilities, family show activity, capital improvements and public participation.

He explained that the Civic Center staff consists of four full-time administrative staff, five full-time maintenance personnel and hundreds of part-time event staff.

With regard to event diversity, there have been over 200 event days annually for the past four years. During that time, the Civic Center has hosted Bob Dylan, Elton John, the New York City Opera, the Miami City Ballet, and a wide variety of sporting events. Over 85% of the major events at the Civic Center have used the facility before.

He did a comparison to other facilities. Savannah, Georgia - $1.3 million deficit if rental car tax was not allocated to budget – that tax brings over $1 million per year. Macon Georgia - $1 million deficit last year. Buildings 1/3 smaller than Asheville Civic Center experience similar deficits. He said the Asheville Civic Center cash deficit last year was $675,000.

Mr. Pisha then reviewed statistics regarding the family show activity.

Capital improvements are vital to reducing the deficit at the Civic Center. For example, the bleacher project. Before investment, it took 10 men 10 man hours to set-up or remove bleachers from the arena. It now takes 4 men 3 hours to complete. This is an average savings of nearly $1,000 each time the job is done for an annual savings of $15,000 - $20,000.

Mr. Pisha then reviewed statistics regarding the public participation in performing arts, concerts and sports. He said the public participation totals for 4 years is $1.4 million visitors.

Mr. Pisha then reviewed some interesting facts: Western North Carolinians voted the Thomas Wolfe Auditorium the Best Concert Venue in Western North Carolina, SFX sold out two events in the Civic Center this year (one of these concerts sold out all 2,400 tickets in just 15 minutes and all but 200 of these tickets were sold over the internet), and the Chamber of Commerce statistics indicate that Western North Carolina grew by nearly 100,000 people in the last decade. If this trend continues over the next 10 years, there will be over 600,000 people living in this market.

Ms. Lynn Leslie
Mr. Jonathan Allen, professional ice skating coach representing Angles on Ice
Ms. LaVerne Laney, member of the Asheville Civic Center
Mr. Wayne Hoglen
Mr. Marc Yops
Mr. Carl Mumpower, Chair of the Asheville Civic Center
Ms. Kate Leslie
Ms. Clare Beumer, Angles on Ice
Ms. Samatha Kertz, Angels on Ice
Ms. Margaret Beumer
Mr. Pat Bingham, Coach of Asheville Smoke
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Mr. Bob Bennett
President of the Smoke Booster Club
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VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 12:04 a.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Challenges include (1) how do we continue to be successful as the Civic Center ages and more capital improvements are needed; and (2) how do we capture a bigger portion of our market?

Solutions include a new/renovated facility which would create two types of new revenue streams. The first is created from the enhancement of existing services. The second is from areas not possible today, given the functional capabilities of the building. Experts report that we need 40% more points of sale in our food and beverage operation to service our existing number of seats – this alone would boost revenues $150,000 - $200,000. Also, naming rights, luxury suites, etc., are examples of revenue not possible in the current building. That one program could bring in an additional $400,000.

The direct economic impact is seen by (1) Southern Conference Tournament: 20,000 – 25,000 visited Asheville = $13 million; and (2) N. C. League of Municipalities: 2,000 in attendance = $1.2 million.

The formula for success is (1) over 200 event days per year; (2) events ranging from wedding receptions to concerts, from dance recitals to hockey, from the symphony to high school graduations; (3) in the last two months, 61,000 have used the facility; and (4) in April 2001, revenues were in excess of $200,000.

Councilman Hay, Chair of the Future of the Civic Center Task Force, brought City Council and the Commissioners up-to-date on the history of what has taken place to date with regard to the Civic Center architectural study. Councilman Hay used excerpts from the Heery International Civic Center Feasibility Study to outline the different ideas, which he stressed were presented as not possible solutions, only dialogue creators: (1) Renovate Auditorium, and Arena and Eliminate Exhibition Space; (2) Renovate Arena, New Performing Arts Center; (3) Renovate Auditorium, Demolish Arena; (4) Renovate Arena, Auditorium and Exhibit Hall; (5) Convert Arena and Auditorium into new Convention Center; and (6) Renovate Arena.

Vice-Chair Gantt, member on the Future of the Civic Center Task Force, said that Asheville was unique in that it has the Arena, Convention Center, Performing Arts Center and Exhibition Hall all in one place. He did think we're on the right track and was glad that all options are being explored.

Mayor Sitnick noted that 80% of the people who use the Civic Center are from outside the City and there has been a necessity for years to subsidize the operations. It's her understanding that facilities that have been built outside of a downtown area are failing and explained how nice it is to have someone attend an event at the Civic Center and perhaps dinner before the event and then dessert after the event in a downtown restaurant. She praised the Task Force in working to determine what is the best course of action to take in order to provide our constituents what they deserve and what they want.

Upon inquiry of Commissioner Keever, Mr. Pisha explained what would be required to try to bring the Southern Conference back to Asheville.

Upon inquiry of Chairman Ramsey, Councilman Hay said that the report from Heery International is due back near the end of June and then it will take some time to take those recommendations and turn them into a plan.

Councilwoman Field felt that if you split the facilities, then you will double the operating costs – two sets of staff to run the facilities. She felt it makes sense to do everything in one place and that we should try and recycle and reuse the existing facility.

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There was a brief discussion of funding options to renovate the Civic Center. It was the consensus of City Council and the County Commissioners that the only option no one will consider is paying for it out of property taxes.

At 4:20 p.m., Commissioner Stanley moved to adjourn the meeting. This motion was seconded by Vice-Chair Gantt and carried unanimously.

At 4:20 p.m. Vice-Mayor Cloninger moved to adjourn the meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – June 5, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger (left meeting at 4:52 p.m.); Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Charles R. Worley

Mayor Sitnick congratulated Councilwoman Bellamy and members of the Asheville Fire Department on winning First Place (for the second year in a row) in the Mayor's Cup Raft Race.

CONSENT:

Councilwoman Bellamy requested the four items dealing with possession of alcoholic beverages and/or unfortified wine at festivals be voted on separately at the next formal meeting.

Mayor Sitnick requested the establishment of the Clean Air Community Trust be voted on separately at the next formal meeting.

Possession of Alcoholic Beverages and/or Unfortified Wine at the Bele Chere Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Bele Chere Festival on July 27-28, 2001.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the downtown area. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Possession of Alcoholic Beverages and/or Unfortified Wine at the Goombay Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Goombay Festival on August 24-26, 2001.

The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The 2001 Goombay Festival has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past. This event is co-sponsored by the Asheville Parks and Recreation Department.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Possession of Alcoholic Beverages and/or Unfortified Wine at the Brewgrass Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5th Annual Brewgrass Festival on September 15, 2001.

For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist The 5th Annual Brewgrass Festival has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Possession of Alcoholic Beverages and/or Unfortified Wine at the Greek Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Greek Festival on September 28-30, 2001.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City County Plaza, September 28-30, 2001. The 2001 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Advertise for Upset Bids on 125 Iris Drive

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot at 25 Iris Drive.

A bid from Brian K. Perry, in the amount of $12,200, has been received for the purchase of a vacant lot at 125 Iris Drive. The bid is not less than the tax value of $12,200.

The property is a single family residential RS 8 zoned lot on Iris Drive comprising approximately 0.28 acre of land. The property has a rectangular shape and is fairly level elevated about 3' - 4' above street level. It has approximately 100 front feet on Iris Drive. There is no current or contemplated use for the property by the City. Mr. Perry plans to build a single family residence on the site for his own home.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

Contract for Regional Hazardous Materials Response

Summary: The consideration of a resolution authorizing the City Manager to renew an agreement with the N. C. Dept. of Public Safety and Crime Control for provision of regional hazardous materials emergency response.

North Carolina is divided into six geographical regions for the purpose of hazardous material emergency response. The North Carolina Department of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Cleveland County west to the Tennessee Border. Twenty-two counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

During the seven years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

City staff recommends City council authorize the City Manager to renew the Regional Hazardous Materials Contract with the North Carolina Department of Public Safety and Crime Control for Region 6.

Contract for Confined Space Emergency Response

Summary: The consideration of a resolution authorizing the City Manager to renew a contract with Rockwell Automation Dodge to provide technical rescue - confined space rescue services to the Rockwell Facility.

Rockwell Automation Dodge, located at 70 Reems Creek Road, Weaverville, North Carolina, is a manufacturing facility whose operation necessitates entry of their staff into confined spaces. State and Federal OSHA requirements necessitate that the facility provide for the emergency rescue of persons who may become trapped within confined spaces at their facility.

The City of Asheville is authorized to provide these type services pursuant to North Carolina General Statute sec. 160A-293. The City Of Asheville is capable of providing certain standby and rescue response services in connection with the use and maintenance of these confined spaces.

In consideration of the services rendered and available, Rockwell Automation Dodge agrees to pay the City of Asheville $5,000.00 annually. Rockwell Automation Dodge provides funding that fully supports the operational costs of the services.

During the time that we have provided technical rescue services to Rockwell (since Fiscal Year 1999-2000), the City has not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

City staff recommends City Council authorize the City Manager to renew the Technical Rescue – Confined Space Rescue agreement with Rockwell Automation Dodge.

Amendment to Water 35 Fund

Summary: This is the consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect the transfer of grant funding for Critical Needs Phase II to the 29 Fund (Water Bond Capital Improvements Fund), to decrease future funding for N. C. Dept. of Transportation (NCDOT) projects that are being funded in the 29 Fund, and to reflect a transfer to capital from the Fiscal Year 2001-02 Water Fund Budget.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance in the 35 Fund. By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond Proceeds in the 29 Fund.

Transfer Grant Funding For Critical Needs Phase II - On August 15, 2000, the Authority approved an amendment to Capital Project Ordinance 82-25 (35 Fund – Water Major Capital Improvements Fund) to reflect funding from the $2 Million High Unit Cost Grant received from the State for Critical Needs Phase II. On December 19, 2000, the Authority also approved a $1 million increase in the 29 Fund (Water Bond Capital Projects Fund) for Critical Needs Phase II to be funded with a portion of $13.3 million 2001 Revenue Bond Issue. The Asheville City Council also approved both of these amendments.

Staff is recommending transferring the grant funds of $2 million from the 35 Fund to the 29 Fund, so that the total funding for the Critical Needs Phase II projects in the amount of $3 million can be managed in one fund. This change to the 35 Fund will become effective upon the date of adoption of this budget amendment.

Reduction of Future Funding for NCDOT Projects - Six of the eight future NCDOT projects which were to be funded with Future Contributions from Other Funds, are being funded in the 29 Fund with a portion of the $13.3 million 2001 Revenue Bond Issue. These projects total $2,805,299 and include the Biltmore Viaduct, I-40 at US 25A, NC 151 Phase I, US 74 Phase I and II, and NC 191 Brevard Road. Staff is recommending reducing the 35 Fund by $2,805,299, since these projects will now be funded in the 29 Fund. The NC 151 Phase II and US 25-A will be funded with Future Contributions From Other Funds in the amount of $1,879,370. This future funding is expected to come from a Revenue Bond Issue in late 2002. This change to the 35 Fund will become effective upon the date of adoption of this budget amendment.

2001/2002 Transfer to Capital - The Authority traditionally budgets funds each year for capital improvements that will be financed through operating revenues on a pay-as-you-go basis. In Fiscal Year 2001-02, it has been estimated that there will be $785,038 available for capital improvements. At a meeting on April 10, 2001, the Budget Committee approved the following high priority projects be funded with the Fiscal Year 2001-02 contribution to capital:

Master Plan Projects (Water Line Oversizing)	$100,000
Critical Needs Projects (Water Distribution FY 01/02)	$685,038
Total	$785,038

The recommended appropriations to the Master Plan Improvements projects are for oversizing and reimbursement agreements with developers so that water lines are built to sizing recommended by the Master Plan. There is additional funding of $191,117 already budgeted in this budget line item. This transfer will result in total funding for oversizing of $291,117. The Critical Needs Improvements includes water line improvement projects totaling $685,038 defined as follows:

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5th Annual Brewgrass Festival on September 15, 2001.

For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. The 5th Annual Brewgrass Festival has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Possession of Alcoholic Beverages and/or Unfortified Wine at the Greek Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Greek Festival on September 28-30, 2001.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City County Plaza, September 28-30, 2001. The 2001 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Advertise for Upset Bids on 125 Iris Drive

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot at 25 Iris Drive.

A bid from Brian K. Perry, in the amount of $12,200, has been received for the purchase of a vacant lot at 125 Iris Drive. The bid is not less than the tax value of $12,200.

The property is a single family residential RS 8 zoned lot on Iris Drive comprising approximately 0.28 acre of land. The property has a rectangular shape and is fairly level elevated about 3' - 4' above street level. It has approximately 100 front feet on Iris Drive. There is no current or contemplated use for the property by the City. Mr. Perry plans to build a single family residence on the site for his own home.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

Contract for Regional Hazardous Materials Response

Summary: The consideration of a resolution authorizing the City Manager to renew an agreement with the N. C. Dept. of Public Safety and Crime Control for provision of regional hazardous materials emergency response.

North Carolina is divided into six geographical regions for the purpose of hazardous material emergency response. The North Carolina Department of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Cleveland County west to the Tennessee Border. Twenty-two counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

During the seven years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

City staff recommends City council authorize the City Manager to renew the Regional Hazardous Materials Contract with the North Carolina Department of Public Safety and Crime Control for Region 6.

Contract for Confined Space Emergency Response

Summary: The consideration of a resolution authorizing the City Manager to renew a contract with Rockwell Automation Dodge to provide technical rescue - confined space rescue services to the Rockwell Facility.

Rockwell Automation Dodge, located at 70 Reems Creek Road, Weaverville, North Carolina, is a manufacturing facility whose operation necessitates entry of their staff into confined spaces. State and Federal OSHA requirements necessitate that the facility provide for the emergency rescue of persons who may become trapped within confined spaces at their facility.

The City of Asheville is authorized to provide these type services pursuant to North Carolina General Statute sec. 160A-293. The City Of Asheville is capable of providing certain standby and rescue response services in connection with the use and maintenance of these confined spaces.

In consideration of the services rendered and available, Rockwell Automation Dodge agrees to pay the City of Asheville $5,000.00 annually. Rockwell Automation Dodge provides funding that fully supports the operational costs of the services.

During the time that we have provided technical rescue services to Rockwell (since Fiscal Year 1999-2000), the City has not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

City staff recommends City Council authorize the City Manager to renew the Technical Rescue – Confined Space Rescue agreement with Rockwell Automation Dodge.

Amendment to Water 35 Fund

Summary: This is the consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect the transfer of grant funding for Critical Needs Phase II to the 29 Fund (Water Bond Capital Improvements Fund), to decrease future funding for N. C. Dept. of Transportation (NCDOT) projects that are being funded in the 29 Fund, and to reflect a transfer to capital from the Fiscal Year 2001-02 Water Fund Budget.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance in the 35 Fund. By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond Proceeds in the 29 Fund.

Transfer Grant Funding For Critical Needs Phase II - On August 15, 2000, the Authority approved an amendment to Capital Project Ordinance 82-25 (35 Fund – Water Major Capital Improvements Fund) to reflect funding from the $2 Million High Unit Cost Grant received from the State for Critical Needs Phase II. On December 19, 2000, the Authority also approved a $1 million increase in the 29 Fund (Water Bond Capital Projects Fund) for Critical Needs Phase II to be funded with a portion of $13.3 million 2001 Revenue Bond Issue. The Asheville City Council also approved both of these amendments.

Staff is recommending transferring the grant funds of $2 million from the 35 Fund to the 29 Fund, so that the total funding for the Critical Needs Phase II projects in the amount of $3 million can be managed in one fund. This change to the 35 Fund will become effective upon the date of adoption of this budget amendment.

Reduction of Future Funding for NCDOT Projects - Six of the eight future NCDOT projects which were to be funded with Future Contributions from Other Funds, are being funded in the 29 Fund with a portion of the $13.3 million 2001 Revenue Bond Issue. These projects total $2,805,299 and include the Biltmore Viaduct, I-40 at US 25A, NC 151 Phase I, US 74 Phase I and II, and NC 191 Brevard Road. Staff is recommending reducing the 35 Fund by $2,805,299, since these projects will now be funded in the 29 Fund. The NC 151 Phase II and US 25-A will be funded with Future Contributions From Other Funds in the amount of $1,879,370. This future funding is expected to come from a Revenue Bond Issue in late 2002. This change to the 35 Fund will become effective upon the date of adoption of this budget amendment.

2001/2002 Transfer to Capital - The Authority traditionally budgets funds each year for capital improvements that will be financed through operating revenues on a pay-as-you-go basis. In Fiscal Year 2001-02, it has been estimated that there will be $785,038 available for capital improvements. At a meeting on April 10, 2001, the Budget Committee approved the following high priority projects be funded with the Fiscal Year 2001-02 contribution to capital:

Master Plan Projects (Water Line Oversizing)	$100,000
Critical Needs Projects (Water Distribution FY 01/02)	$685,038
Total	$785,038

The recommended appropriations to the Master Plan Improvements projects are for oversizing and reimbursement agreements with developers so that water lines are built to sizing recommended by the Master Plan. There is additional funding of $191,117 already budgeted in this budget line item. This transfer will result in total funding for oversizing of $291,117. The Critical Needs Improvements includes water line improvement projects totaling $685,038 defined as follows:

Grove Park Area Improvements	$500,000
North Fork/Right Fork Rd and Walkertown Rd	39,000
Eloise Street	39,000
King Street	71,038
Cub St/Trade St/Rector St (50% cost share)	36,000
	$685,038

The Grove Park Area Improvements will create a new intermediate pressure zone (HGL=2700) between the North Fork Water Treatment Plan to West Asheville Reservoir pressure zone and the Patton Mountain pressure zone. Currently there is a long and narrow area along the west slope of the Patton Mountain/Beaucatcher Mountain range from the Grovewood Park subdivision to near the Beaucatcher Cut and from the Grove Park Inn to Sunset Drive and Old Toll Road which is subject to low pressures anytime a major transmission line between Haw Creek and Beaucatcher Mountain is reduced for maintenance. The new pressure zone will add needed reliability to this described area.

The North Fork Road and Eloise Street projects are sections of the water system that need to be upgraded to 6" and 8" lines to avoid low pressure problems and during peak times. The King Street project will replace an old galvanized water main, which causes frequent maintenance and repair.

The Cub Street/Trade Street/Rector Street project will replace old water lines with new lines sized for adequate fire protection. This project is being moved up on the priority list to coincide with other infrastructure and housing improvements by Mountain Housing Opportunities (MHO) and will be funded 50% by Community Development Block Grant funds allocated to MHO.

Staff is recommending the approval of an amendment to the 35 Fund to reflect the transfer of $785,038 from the Fiscal Year 2001-02 Water Fund Budget for the project recommendations identified above. This transfer will become effective July 1, 2001.

The Regional Water Authority approved the amending of Capital Project Ordinance 82-25 (35 Fund) at their May 22, 2001, meeting.

Staff recommends approval of the a budget amendment to the 35 Fund to reflect the changes identified above.

Amendment to Water 29 Fund

Summary: The consideration of a budget amendment (29 Fund - Water Bond Capital Improvements Fund) to reflect the transfer of $2 million in N. C. Dept. of Environment & Natural Resources Grant Funds from the 35 Fund (Water Major Capital Improvements Fund).

By Resolution 92-17 dated May 19, 1992, the Regional Water Authority (Authority) authorized and budgeted for various capital projects to be funded by City Water Bond Proceeds in the 29 Fund. By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds and Appropriated Fund Balance in the 35 Fund.

On August 15, 2000, the Authority approved an amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect funding from the $2 Million High Unit Cost Grant received from the State for Critical Needs Phase II. On December 19, 2000, the Authority approved a $1 million increase in the 29 Fund (Water Bond Capital Projects Fund) for Critical Needs Phase II to be funded with a portion of $13.3 million 2001 Revenue Bond Issue. Both of these budget amendments were also approved by City Council. Staff is recommending transferring the grant funds of $2 million from the 35 Fund to the 29 Fund, so that the total funding for the Critical Needs Phase II projects in the amount of $3 million can be managed in one fund. Staff recommends increasing revenues for State Grant DEH-087 in the amount of $2 million and increasing the appropriations for Critical Needs Improvements from $1 million to $3 million.

The Regional Water Authority approved the amending Capital Project Ordinance 92-17 (29 Fund) at their May 22, 2001, meeting.

Staff recommends approval of a budget amendment to the 29 Fund to reflect the changes identified above.

Revisions to Standard Specifications & Details Manual

Summary: The consideration of a resolution amending the Asheville Standard Specifications and Details Manual to include fire flow and fire hydrant requirements for buildings.

On May 15, 2001, Mayor Sitnick sent a letter to the State Fire Marshal's office, on behalf of City Council, requesting that they remove fire protection water supply requirements from the Asheville amendments to the North Carolina Building Code – Volume V – Fire Prevention. The letter also stated that the City planned to place fire protection water supply requirements in the Asheville Standards and Specifications Manual. The State Building Code Council will be holding its semi-annual meeting from June 11 through June 13, 2001. It is anticipated that they will act on this request at this meeting.

Staff will be requesting additional changes to the Asheville Standards and Specifications Manual in July of this year.

City staff recommends that City Council adopt the addition to the Asheville Standard Specifications and Details Manual to include fire flow and fire hydrant requirements for buildings.

Donation to Mounted Patrol

Summary: The consideration of a resolution authorizing the City Manager to accept on behalf of the City a donation from The Susanne Marcus Collins Foundation, Inc., and to adopt a budget ordinance amendment in the amount of $7,500 to add the donation to the police operating budget.

The Susanne Marcus Collins Foundation, Inc., has donated $7,500 to support the Asheville Police Department's Mounted Patrol . The funds are intended to purchase one Bay American Quarter Horse, which will enable the Police Department provide better police services to the citizens of downtown Asheville.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to accept the donation; and (2) budget amendment, in the amount of $7,500, to appropriate funds in the police operating budget.

Establishment of Clean Air Community Trust

Summary: The consideration of a resolution authorizing establishment of a clean air community trust.

Last year, the City and Buncombe County agreed to establish a clean air community trust for the purpose of seeking and administering grants and undertaking other programs in furtherance of local air quality.

Since then, we have been working with the County's attorneys and members of the air quality agency to develop a trust agreement and by-laws for this purpose. Our progress has been affected by the pendency of a lawsuit regarding the distribution of funds collected by the air quality agency. However, the trust documents specify that the funding for the trust is to be from money from private sources or that is not restricted by law.

To this end, the Buncombe County Medical Society and Alliance Endowment has made a significant contribution to the County for purposes of the initial funding for the trust, and other members of the community have expressed their desire to help get it started.

Currently under review are the by-laws for the trust. A recommended draft of that document should be available by your June 5 worksession.

The Buncombe County Commissioners are planning to act on June 5 to authorize establishment of the trust, and may appoint the County's three initial trustees. Following adoption of the resolution authorizing the trust and approving the by-laws, Council should act to appoint its initial two trustees.

If Council wishes to establish the Clean Air Community Trust, adoption of the resolution is recommended.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AIRPORT MASTER PLAN UPDATE

Airport Director Mike Armour updated City Council on the Airport's Master Plan. He reviewed the short-term, intermediate and long-term development projects, along with costs associated with the projects.

BENCHMARK – COMMUNITY PROGRESS REPORT

Mr. Bob Burgin presented City Council with their third set of benchmarks "Your Community Progress Report." He said our community and its leaders have come to rely on this set of objective measurements that track our achievement and bring light to our shortcomings.

He explained the VISION's achievements this year include: (1) aggressive leadership to assure we will have an education system that is number one for MSAs our size – our efforts to increase graduation rates resulted in a diverse, community-owned Education Coalition between school systems, 30 community organizations, and colleges that has developed strategies for all students to succeed and graduate on time; (2) county-wide community dialogues among diverse groups of citizens on the future of our transportation system – a consensus-building strategy that will inform the Dept. of Transportation's financial priorities for our area; and (3) building partnerships and spotlighting opportunities to assure a viable future – outcomes like creating an extension policy for our sewer system, reinstating bus service along US 70 to Black Mountain, building strategies to retain and recruit local 18 to 34 year olds, and renewing Woodfin's agreement with Asheville Water Authority .

Soon the VISION will implement another long-term leadership initiative to spotlight our economic goals. Our goals in health, quality of life, housing, infrastructure, and government hinge on our economic benchmarks. We plan to use our success in focusing the whole community on our educational vision as a template to engage every partner and the voice of citizens.

VISION needs City Council's commitment in three ways. First, they asked for Council's continued financial commitment for Fiscal Year 2000-01 to maintain their broad base of community support. Second, they asked for Council" input as they provide diverse, citizen-driven leadership to make our VISION a reality. Last, they asked Council to review the Community Progress Report and institute the VISION goals into local planning.

Councilwoman Field said that she has undertaken the task of putting City Council's Code of Ethics in written form.

On behalf of City Council, Mayor Sitnick thanked Asheville-Buncombe VISION Inc. for their work.

PRESENTATION OF THE REGIONAL WATER AUTHORITY BUDGET

Mr. Jack Tate, Chairman of the Regional Water Authority of Asheville, Buncombe and Henderson, presented City Council with the request for approval of the Fiscal year 2001-02 Water Fund Budget in the amount of $21,917,801.

He said that this budget is based on an overall 3.1% rate increase across the board for residential and non-residential customers as recommended and approved by the Regional Water Authority on May 22, 2001. This rate increase will provide for adequate debt service coverage and essential operations and maintenance programs. It will also provide for contributions to the capital improvements fund to meet the Authority's long-term capital improvements needs. This budget also assumes growth in billing revenues that vary according to projected demand patterns for each customer class. The average growth rate for all customer classes is estimated to be approximately 1.275% in Fiscal Year 2001-02.

Revenues
Utility Charges - To maintain financial integrity, given the loss of two large industrial customers and the decrease in consumption of other industrial customers, the Authority implemented an 8% rate increase in Fiscal year 1999-2000 and a 4% rate increase in Fiscal Year 2000-01. In Fiscal Year 2001-02, the Regional Water Authority is recommending a 3.1% rate increase. This rate increase along with projected growth in billing revenues will provide adequate funding to meet the Authority's long-term capital improvements plan. A significant portion of the water system includes aged infrastructure with aged pipe and pipe joint technology. This has resulted in a higher than average unaccounted water rate. In this and future budgets, the Regional Water Authority is committed to providing adequate funding for capital improvements to replace aged infrastructure and reduce the unaccounted water rate.

The budget estimate for Fiscal Year 2001-02 is based on a revenue estimate of $21,917,801. Assumptions used in the revenue projections include an average growth rate in demand of approximately 1.275% and a 3.1% increase in water rates.

Estimated Utility Charges Fiscal Year 2000-01	$19,218,355
Growth	$245,210
	$19,463,565
3.1% Rate Increase	$603,371
Estimated Utility Charges Fiscal Year 2001-02	$20,066,936

Plus Other Revenue (e.g. tap fees)	$1,850,865
Total Projected Revenue for Fiscal Year 2000-01	$21,917,801

Other Revenue - Investment earnings revenues reflect earnings on cash fund balances and are estimated to be $415,020 and Other Operating Revenue is estimated to be $1,435,845.

Expenses

Operating Expenses

Staff is recommending a 6.9% increase in operating expenses for FY 2001/2002 over the projected operating expenses for FY 2000/2001. Approximately 3.3% of this increase is due to the cost of using the Buncombe County Landfill for disposal of excavated soil, concrete, and asphalt from construction/repair sites. Without this obligation, the increase in operating expenses would only be 3.6%.

Reengineering

Four new programs will be created or expanded to improve water service to our customers and to ensure that the water system is maintained in good operating condition. These program include the following: (1) adding leak detection surveys to the duties performed by the mapping crew in order to reduce unaccounted for water lost through leaks; (2) expanding the water system mapping improvements program; (3) expanding the meter change-out and testing program and establishing a goal of not allowing any meter older than 12 years to remain in the system without passing a calibration test; (4) and creating a cross-connection control inventory and maintenance program. The leak detection, mapping, and cross-connection control programs will be staffed with current employees. Their job duties will be expanded and some shifting of responsibilities will be required throughout the Water Maintenance Division. The estimated savings of using existing staff to perform these duties versus hiring new employees is approximately $80,000 in salaries and benefits. The meter change-out and testing program will require hiring a two-person crew at an estimated cost of $56,000 in salaries and benefits. It will also require the purchase of new meters estimated to cost an additional $150,000.

Salaries and Benefits

Salary and Fringe Benefit expenses are estimated to increase by 4% as approved in the City of Asheville's Pay Plan. The number of positions authorized in the Fiscal Year 2000-01 Budget was 105. Staff is requesting a total of 107 positions in Fiscal Year 2001-02. This is the first request for an increase in the number of authorized positions in over six years, which demonstrates our commitment to continuously strive for greater efficiency.

Capital Projects Fund (Transfer to Capital)

On May 22, 2001, the Regional Water Authority adopted a goal to maintain an 80-year replacement schedule for water system assets, which will require total annual funding for capital projects of approximately $4.4 million. A 3.1% rate increase for the next five years will provide adequate revenue financed capital to help meet this goal. The Authority's current five-year capital plan for Fiscal Year 2002-06, based on a 3.1% rate increase annually, includes the following expenditures on replacing aged infrastructure based on the following assumptions:

State Grants	$2.0 Million	(Phase II Grant for Critical Needs)
Bond Funds	2.1 Million	
NCDOT Projects	5.4 Million	
Revenue Financed	7.6 Million	(Includes $1 million in matching funds for Phase II Grant)
Construction Crew	2.8 Million	
State Grants	2.0 Million	(Phase III Grant for Critical Needs)
Total	21.9 Million	

Average of $4.38 Million per year

370

This is slightly below the Authority's goal of $4.4 million annually, but it will be adequate until staff's replacement schedule can be further refined and reviewed by the Authority's financial consultant. On July 1, 2001, a transfer to capital of $785,038 will be made to fund $100,000 for Master Plan Projects (water line oversizing) and $685,038 for the highest priority projects on the list of Critical Needs Projects. A second transfer to capital of approximately $400,000 will take place in late Fiscal Year 2001-02 to fund additional Critical Needs Projects. If the Authority is required to provide funding for unanticipated emergency needs or experiences a revenue shortfall, this contribution to capital will be reduced.

Debt Service
Debt service is for 1992 General Obligation Bonds, 1996 Revenue Bonds and Loan, and a new $13.3 million revenue bond issue in February 2001. This bond issue will fund capital needs including Bee Tree Spillway, NCDOT projects, master plan projects, Mills River Water Treatment Plant uprating, and future use of Bee Tree water supply.

Capital Equipment
Staff is recommending replacing 2 air compressors, a backhoe, two dump trucks, and ten vehicles at a total cost of $477,000. The purchase of vehicles has been limited for over four years and many have far exceeded their useful life (the majority are over 9 years old). A comprehensive evaluation of capital equipment replacement is reflected in the current 5-year replacement plan, which is more uniform and sustainable for future planning.

Long Term Planning
The Regional Water Authority bases their recommendation for Fiscal Year 2001-02 on their financial consultant's long-term (5-year) financial plan and staff's recommendation for an 80-year replacement schedule of water system assets. This plan calls for minimum annual rate increases of approximately 3.1% over the next five years in order to maintain financial sufficiency, meet future debt service, and fund capital improvements.

He said that the Regional Water Authority is recommending that the City Council approve the proposed Fiscal Year 2001-02 Water Fund Budget, which includes a 3.1% rate increase and totals $21,917,801. Mr. Tate felt this is a responsible rate increase.

Mr. Tate answered various questions from City Council, some including, but are not limited to: what is the history of the water rate increases, is there a study being performed on rates for industrial customers vs. residential uses, and will the mapping program started on a few years ago be used in conjunction with the new program.

Mayor Sitnick wanted to see the water rate structure issue dealt with quickly, fairly and equitably to everyone involved.

It was the consensus of City Council to have City staff work with Mr. Tate and other representatives of the Regional Water Authority, along with representatives of Buncombe County to see if the difference between a 2.5% rate increase recommended by the City Manager and the 3.1% rate increase recommended by the Regional Water Authority can be reconciled.

At 4:52 p.m., Vice-Mayor Cloninger left the meeting.

Mayor Sitnick announced a five minute break.

UDO AMENDMENT REVIEWS

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on June 26, 2001. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Establishing Standards for Non-Residential Access onto Residential Streets

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to limit access by non-residential uses onto residential streets.

The Planning and Zoning Commission has recommended adoption of an amendment to the UDO limiting access by non-residential access onto residential streets. Access onto residential streets by non-residential uses located on corner and through lots can impact the residential character of the residential streets. Currently, the City Council often reserves a strip of residentially zoned property along the residential street frontage to limit access onto the residential street by non-residential uses. This results in a cumbersome zoning pattern and restricts the use of the residentially zoned property for buffering and other appropriate uses. The proposed standards would not apply to non-residential uses permitted in residential zones, such as churches, schools, and libraries, or to non-residential uses located in non-residential or mixed use zoning districts that have their only access onto residential streets. Non-residential uses located on corner lots, through lots, and other lots with frontage on more than one street would be required to have their access from the street that is abutted by similar uses. Access onto residential streets by non-residential uses located on corner lots would be permitted if certain conditions are met and the City's Traffic Engineer approves the proposed access. As proposed, the standards would preserve the residential character of streets that function primarily to provide access to residences. The proposed ordinance amendment identifies clear standards for access, making it easier for staff, developers, and citizens to understand and adhere to them.

The Planning and Zoning Commission voted unanimously to recommend approval of the wording amendment limiting access by non-residential uses onto residential streets. The Planning and Development staff recommends approval of the wording amendment.

Upon inquiry of Councilwoman Field, Mr. Green said that the Traffic Engineer with work with site professionals on a case by case basis when access onto a commercial highway may not be reasonable.

Revisions to Soil and Erosion Control Ordinance

Assistant City Engineer John Echeverri said that this is the consideration of amendment to the Unified Development Ordinance (UDO) regarding Soil/Erosion and Sedimentation Control.

The N. C. Dept. of Environmental & Natural Resources issued revisions to The Sedimentation Pollution Control Act dating October 1999 and July 2000 to the City of Asheville. The UDO sections for Erosion Control will be affected by those changes.

Changes are made in accordance with the Sedimentation Pollution Control Act (Title 15A Chapter 4) revisions from October 1999 and July 2000. Summary of the major changes are as follows:

- When deemed necessary by the approving authority Pre-Construction conference may be required. (Sec. 7-12-2)
- The time for establishment of a permanent ground cover will shorten to 15 working days or 90 calendar days, whichever is shorter. (Sec. 7-12-2)
- Maximum Civil Penalty for violating the Act increases from $500.00 to $5000.00 per day. (Sec. 7-18-2)

- The Act clarifies that a person may be assessed a one-time civil penalty of up to $5000.00 for the day the violation is first detected. (Sec. 7-12-2)
- A copy of the Erosion Control Plan for any land disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the director of the division of water quality. (Sec. 7-12-2)
- Project sites that meet the Hillside area development Sec. 7-12-4 of this chapter, shall submit documentation prepared by a registered professional showing drainage configuration as well as bank stabilization when land-disturbing activity between 5,000 and 10,000 square feet is undertaken. (Sec. 7-12-2)
- Changed several minor typographical errors and clarifications. (Sec. 7-5-13; & 7-12-2)
- Name of the Erosion Control Committee will be changed to the Development Review Committee so that the duties could be broadened. (Sec. 7-12-2)

The Engineering Department request that City Council adopt the ordinance of changes for the UDO Sections 7-5-13, 7-12-2, and 7-18-2 regarding soil/erosion and sedimentation control.

Upon inquiry of Councilwoman Field, Mr. Echeverri said that he would investigate the provision regarding the time for establishment of a permanent ground cover and have it clarified for City Council before the public hearing.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on June 26, 2001.

LICENSE AGREEMENT WITH TRITON PCS FOR CONCEALED WIRELESS COMMUNICATION TOWER AT 300 MERRIMON AVENUE

Field Services Coordinator Ed Vess said that this is the consideration of a Resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 300 Merrimon Avenue.

The building at 300 Merrimon Avenue is the historic Fire Station #4 and is currently known as the Harley Shuford Arson Task Force Building. The property is listed in the National Register of Historic Places and is one of the oldest fire training towers in the United States. The training tower is in need of structural reinforcement and rehabilitation.

In conjunction with the proposed License Agreement Triton will carry out the rehabilitation of the training tower in accordance with plans approved by City staff and the State Historic Preservation Office. The cost of the rehabilitation, estimated at *$60,000*, will be paid by Triton. Triton will install a 15' flag pole on top of the training tower which will house their concealed wireless communication facility along with a 9' x 13' equipment shed on the ground at the rear of the building. The term of the License Agreement will be 5 years with one period 4.5 year renewal period. Triton will pay a License Fee of $14,400 the first year with a 4% annual increase each year thereafter.

Planning Department staff recommends adoption of the Resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ADVERTISE FOR UPSET BIDS FOR PORTION OF 36 GROVE STREET

Finance Director Bill Schaefer said that this is the consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids for a portion of 36 Grove Street.

36 Grove Street is located on the east side of Grove Street in downtown Asheville and zoned Central Business District. The 1.05 acres lot is improved with a building currently being used as the Senior Opportunity Center and a parking lot. The bid from BOC Enterprises, in the amount of $111,000, is for the parking lot portion of the property which comprises 0.57 acre and includes the stipulation for the City to retain a non-exclusive parking easement on the property in order to continue to provide parking to the Senior Opportunity Center. The site proposed to be purchased with the parking easement encumbrance was appraised by Mark Morris at a fair market value of $111,000.

The proposal from BOC Enterprises is made in order to facilitate the expansion and renovation of the building at 48 Grove Street. The total project cost for 48 Grove Street is expected to exceed $3,000,000. The sale of the property will result in an increase to the tax base and improvement of the Grove Street area.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Finance Department and Parks and Recreation Department staff recommend adoption of the resolution.

Discussion surrounded wanting to make sure there was adequate parking for the Senior Opportunity Center.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SALE AND/OR TRADE OF CITY PROPERTY FOR THE JAIL DETENTION CENTER

City Manager Jim Westbrook said that pursuant to City Council's direction, he has completed negotiations with the County for the sale and/or trade of City property for use as a jail detention center.

Based on direction for City Council, he has been negotiating with Buncombe County for the use of City-owned property directly behind the current jail site for a proposed jail detention center. Since there were other properties in the area that the City desired to acquire from the County, he proposed a combination sale and trade of properties which would allow the County to purchase the property the City owns and the City to acquire two properties that we need from the County.

The details of the negotiations are summarized below.

1. The City will sell to the County property located behind your current jail for two pieces of property which the County owns as follows:

The appraised price of the City-owned parking lot (Marjorie, Davidson, Valley Streets) PIN No. 9649.19-50-4467	$750,000
Less property owned by Buncombe County (Marjorie and Eagle Streets) PIN No. 9649.19-50-2118	-364,000

Less property owned by Buncombe County (Valley, Marjorie & Davidson Sts.) -243,500
PIN Nos. 9649.19-50-4350, 5310, 5325, 5326
Cash Due City $142,500

2. Since both the County and the City are using the property described in Item 1 above as parking lots, the agreement will include cross-easements to allow for the City and County to continue to park as we do currently. When either the City or the County starts a construction project on the lots, then the parking for City and County employees will revert to align with the ownership of the property.

3. The current lease between the City and the County for the property located between Marjorie and Eagle Streets (PIN No. 9649.19-50-2118), which the City will purchase with this new agreement, will terminate with no further obligation by either party.

4. The property which the City will sell to the County (PIN No. 9649.19-50-4467) located behind the current jail will be used exclusively for jail and/or jail related facilities during a 12 year period beginning with the date the property is sold to the County.

5. The property which the City will sell to the County (PIN No. 9649.19-50-4467) located behind the current jail will be used for jail and/or jail related facilities, governmental offices, or governmental uses after the initial 12 year period.

6. For a period of 12 years from the date of conveyance, the height of any building constructed on the lot behind the current jail (PIN No. 9649.19-50-4467) may be no higher than the top of the balustrade on the second floor of the City Building. This restriction is in addition to the City's zoning regulations. After the expiration of the 12 year period, the City's zoning regulations would continue to apply.

7. The City and the County will continue to work together for a Master Plan of the governmental complex area located in the downtown so that in the future such expansions by the City and/or County can be better planned with regard to traffic, supporting and ancillary facilities.

In a telephone conversation, Assistant County Manager Jon Creighton indicated the above seven points would be acceptable to the County and that he would ask the Commissioners to take action at their June 5, 2001, meeting. Of particular note is the agreement between the City and the County to Master Plan the governmental complex area located in downtown so that future governmental building expansions can be preplanned to the maximum extent possible. It also allows the City to acquire two pieces of County property that may be needed in the future for additional parking, and to help make up the loss of parking spaces when construction begins on the property sold to the County.

City staff recommends Council approve the sale of the City-owned parking lot (PIN No. 9649.19-50-4467) for $750,000 to Buncombe County; the purchase of Buncombe County property (PIN Nos. 9649.19-50-4467; 9649.19-50-4350; 9649.19-50-5310; 9649.19-50-5325, and 9649.19-50-5326) by the City; to further instruct the City Manager to allow for the cross-easements as described in Number 2 above through written agreement with the County; to provide for the termination of any agreements or understanding with regard to the property owned by the County between Marjorie and Eagle Streets (PIN No. 9649.19-50-2118) as described in Number 3 above; and such language as would be necessary to cause the City and the County to work toward a Master Plan for the governmental complex as described in Number 7 above. The City Attorney is instructed to prepare the deeds in such a manner that the property sold to the County (PIN No. 9649.19-50-4467) is to be used exclusively for jail and/or jail related facilities for the first 12)years as described in Number 4 above, and the use of the property by the County for jail and/or jail related facilities, governmental offices, or governmental uses after the initial 12 year period as described in Number 5 above, and the height of the initial building for the first 12 years of the agreement as described in Number 6 above.

Councilwoman Bellamy hoped that Buncombe County will involve Pastor Grant from the Mt. Zion Missionary Baptist Church in their discussions of design and that the City involves the Church when discussions begin about the parking deck.

City Attorney Oast said that the title work on these properties are not completed yet and the City will need to make sure that they can obtain good title on the parcels.

Mr. Jason Cline, representing Community of Compassion, spoke against the City selling and exchanging property with Buncombe County for the jail detention facility.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CANCELLATION OF JULY 3, 2001, WORKSESSION

It was the consensus of City Council to cancel the July 3, 2001, City Council worksession.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS

City Council instructed the City Clerk to arrange for various interviews on several boards and commissions.

CLOSED SESSION

At 6:07 p.m., Councilwoman Field moved to go into closed session and adjourn to Room 209 of the City Hall Building (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session - G.S. 143-318.11(a)(4); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Kathlyn Marie Stein, Michael Hootstein, Buncombe County Schools, Michael and Rose Dixon and City of Asheville – G. S. 143-318.11 (a) (3). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 8:42 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:42 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – June 12, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. BUNCOMBE COUNTY MEDICAL SOCIETY AND ALLIANCE ENDOWMENT DONATION

Dr. Emory Williams and Dr. Wayne Montgomery presented City Council with a check to the Clean Air Community Trust from the Buncombe County Medical Society and Alliance Endowment in the amount of $5,000 to demonstrate their commitment for the health of our community.

On behalf of City Council, Mayor Sitnick thanked Drs. Williams and Montgomery for the wonderful donation.

B. RESOLUTION NO. 01-75 – RESOLUTION CONCERNING STATE REIMBURSEMENTS, REVENUE OPTIONS AND LOCAL FISCAL CRISIS

Councilman Worley read the resolution urging the Governor and General Assembly to take immediate action to relieve local governments of the impossible situation in which they have been placed during the current fiscal year and Fiscal Year 2002 and to ensure, in the short term, the provision of basic services to the State's eight million residents. Said resolution requests that for long-term fiscal resources of program stability, the General Assembly is urged to authorize replacement revenue which meets the following prerequisites: replaces reimbursements on a hold-harmless basis to all local governments, does not require voter approval to realize the replacement revenues, does not require annual appropriations or other actions by the N. C. General Assembly, produces adequate revenues to offset any revenue losses caused by State action and sufficient revenue growth to keep pace with inflation and other changing factors or needs, has a distribution formula that is reasonable and fair, gives local governments sufficient discretion as to uses of the proceeds; and avoids further pressure on the local ad valorem property tax.

Councilman Worley moved for the adoption of Resolution No. 01-75. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 364

II. CONSENT:

Councilwoman Field asked that Consent Agenda Item "M" be removed from the Consent Agenda for discussion.

Councilwoman Bellamy asked that Consent Agenda Items "D" and "K" be removed from the Consent Agenda for individual votes due to a conflict of interest.

Councilwoman Bellamy asked that Consent Agenda Items "Q", "R", "S" and "T" be removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 22, 2001, THE JOINT CITY/COUNTY MEETING HELD ON MAY 29, 2001, AND THE WORKSESSION HELD ON JUNE 5, 2001

B. MOTION SETTING A PUBLIC HEARING ON JUNE 26, 2001, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR NON-RESIDENTIAL ACCESS ONTO RESIDENTIAL STREETS

C. MOTION SETTING A PUBLIC HEARING ON JUNE 26, 2001, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE SOIL AND EROSION CONTROL ORDINANCE

D. MOTION SETTING A PUBLIC HEARING ON JUNE 26, 2001, TO CONSIDER AMENDING A PREVIOUSLY GRANTED CONDITIONAL USE PERMIT FOR THE CLINGMAN AVENUE CONDOMINIUMS

This item was removed from the Consent Agenda due to a conflict of interest by Councilwoman Bellamy.

E. RESOLUTION NO. 01-76 - RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 157 ON JORDAN STREET IN THE EAST END/VALLEY STREET COMMUNITY TO WILLIAM BOYLE IN THE AMOUNT OF 2,400

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcel 157 on Jordan Street in the East End/Valley Street Community Improvement Area to William Boyle in the amount of $2,400.

On May 22, 2001, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 157. The advertisement ran in the Asheville Citizen-Times on May 25, 2001, as provided in N. C. Gen. Stat. sec. 160A-269.. No response was received. Therefore, the offer to purchase from William Boyle in the amount of $2,400. was not upset and the sale to William Boyle should be approved.

Approval of the resolution will authorize the sale of the property to William Boyle for the amount of $2,400.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 365

F. RESOLUTION NO. 01-77 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH TRITON PCS PROPERTY COMPANY FOR A CONCEALED WIRELESS COMMUNICATION FACILITY AT 300 MERRIMON AVENUE

Summary: The consideration of a Resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 300 Merrimon Avenue.

The building at 300 Merrimon Avenue is the historic Fire Station #4 and is currently known as the Harley Shuford Arson Task Force Building. The property is listed in the National Register of Historic Places and is one of the oldest fire training towers in the United States. The training tower is in need of structural reinforcement and rehabilitation.

In conjunction with the proposed License Agreement Triton will carry out the rehabilitation of the training tower in accordance with plans approved by City staff and the State Historic Preservation Office. The cost of the rehabilitation, estimated at *$60,000*, will be paid by Triton. Triton will install a 15' flag pole on top of the training tower which will house their concealed wireless communication facility along with a 9' x 13' equipment shed on the ground at the rear of the building. The term of the License Agreement will be 5 years with one period 4.5 year renewal period. Triton will pay a License Fee of $14,400 the first year with a 4% annual increase each year thereafter.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 366

G. RESOLUTION NO. 01-78 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR A VACANT LOT AT 125 IRIS DRIVE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot at 125 Iris Drive.

A bid from Brian K. Perry, in the amount of $12,200, has been received for the purchase of a vacant lot at 125 Iris Drive. The bid is not less than the tax value of $12,200.

The property is a single family residential RS 8 zoned lot on Iris Drive comprising approximately 0.28 acre of land. The property has a rectangular shape and is fairly level elevated about 3' - 4' above street level. It has approximately 100 front feet on Iris Drive. There is no current or contemplated use for the property by the City. Mr. Perry plans to build a single family residence on the site for his own home.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 367

H. RESOLUTION NO. 01-79 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR A PORTION OF 36 GROVE STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids for a portion of 36 Grove Street.

36 Grove Street is located on the east side of Grove Street in downtown Asheville and zoned Central Business District. The 1.05 acres lot is improved with a building currently being used as the Senior Opportunity Center and a parking lot. The bid from BOC Enterprises, in the amount of $111,000, is for the parking lot portion of the property which comprises 0.57 acre and includes the stipulation for the City to retain a non-exclusive parking easement on the property in order to continue to provide parking to the Senior Opportunity Center. The site proposed to be purchased with the parking easement encumbrance was appraised by Mark Morris at a fair market value of $111,000.

The proposal from BOC Enterprises is made in order to facilitate the expansion and renovation of the building at 48 Grove Street. The total project cost for 48 Grove Street is expected to exceed $3,000,000. The sale of the property will result in an increase to the tax base and improvement of the Grove Street area.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Finance Department and Parks and Recreation Department staff recommend adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 368

I. RESOLUTION NO. 01-80 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE N. C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR REGIONAL HAZARDOUS MATERIALS RESPONSE

Summary: The consideration of a resolution authorizing the City Manager to renew an agreement with the N. C. Dept. of Public Safety and Crime Control for provision of regional hazardous materials emergency response.

North Carolina is divided into six geographical regions for the purpose of hazardous material emergency response. The North Carolina Department of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Cleveland County west to the Tennessee Border. Twenty-two counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

During the seven years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

City staff recommends City council authorize the City Manager to renew the Regional Hazardous Materials Contract with the North Carolina Department of Public Safety and Crime Control for Region 6.

RESOLUTION BOOK NO. 26 – PAGE 369

J. RESOLUTION NO. 01-81 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ROCKWELL AUTOMATION DODGE FOR CONFINED SPACE RESCUE SERVICES

Summary: The consideration of a resolution authorizing the City Manager to renew a contract with Rockwell Automation Dodge to provide technical rescue - confined space rescue services to the Rockwell Facility.

Rockwell Automation Dodge, located at 70 Reems Creek Road, Weaverville, North Carolina, is a manufacturing facility whose operation necessitates entry of their staff into confined spaces. State and Federal OSHA requirements necessitate that the facility provide for the emergency rescue of persons who may become trapped within confined spaces at their facility.

The City of Asheville is authorized to provide these type services pursuant to North Carolina General Statute sec. 160A-293. The City Of Asheville is capable of providing certain standby and rescue response services in connection with the use and maintenance of these confined spaces.

In consideration of the services rendered and available, Rockwell Automation Dodge agrees to pay the City of Asheville $5,000.00 annually. Rockwell Automation Dodge provides funding that fully supports the operational costs of the services.

During the time that we have provided technical rescue services to Rockwell (since Fiscal Year 1999-2000), the City has not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

City staff recommends City Council authorize the City Manager to renew the Technical Rescue – Confined Space Rescue agreement with Rockwell Automation Dodge.

RESOLUTION BOOK NO. 26 – PAGE 370

K. BUDGET AMENDMENT TO THE 35 FUND – WATER MAJOR CAPITAL IMPROVEMENTS FUND

This item was removed from the Consent Agenda due to a conflict of interest by Councilwoman Bellamy.

L. ORDINANCE NO. 2813 - BUDGET AMENDMENT TO THE 29 FUND – WATER BOND CAPITAL IMPROVEMENTS FUND

Summary: The consideration of a budget amendment (29 Fund - Water Bond Capital Improvements Fund) to reflect the transfer of $2 million in N. C. Dept. of Environment & Natural Resources Grant Funds from the 35 Fund (Water Major Capital Improvements Fund).

By Resolution 92-17 dated May 19, 1992, the Regional Water Authority (Authority) authorized and budgeted for various capital projects to be funded by City Water Bond Proceeds in the 29 Fund. By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds and Appropriated Fund Balance in the 35 Fund.

On August 15, 2000, the Authority approved an amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect funding from the $2 Million High Unit Cost Grant received from the State for Critical Needs Phase II. On December 19, 2000, the Authority approved a $1 million increase in the 29 Fund (Water Bond Capital Projects Fund) for Critical Needs Phase II to be funded with a portion of $13.3 million 2001 Revenue Bond Issue Both of these budget amendments were also approved by City Council. Staff is recommending transferring the grant funds of $2 million from the 35 Fund to the 29 Fund, so that the total funding for the Critical Needs Phase II projects in the amount of $3 million can be managed in one fund. Staff recommends increasing revenues for State Grant DEH-087 in the amount of $2 million and increasing the appropriations for Critical Needs Improvements from $1 million to $3 million.

The Regional Water Authority approved the amending Capital Project Ordinance 92-17 (29 Fund) at their May 22, 2001, meeting.

Staff recommends approval of a budget amendment to the 29 Fund to reflect the changes identified above.

ORDINANCE BOOK NO. 19 – PAGE 155

M. RESOLUTION AMENDING THE ASHEVILLE STANDARD SPECIFICATIONS & DETAILS MANUAL TO INCLUDE FIRE FLOW AND FIRE HYDRANT REQUIREMENTS FOR BUILDINGS

This item was removed from the Consent Agenda for further discussion.

N. RESOLUTION NO. 01-82 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM THE SUSANNE MARCUS COLLINS FOUNDATION TO SUPPORT THE POLICE DEPARTMENT'S MOUNTED PATROL

Summary: The consideration of a resolution authorizing the City Manager to accept on behalf of the City a donation from The Susanne Marcus Collins Foundation, Inc , and to adopt a budget ordinance amendment in the amount of $7,500 to add the donation to the police operating budget.

The Susanne Marcus Collins Foundation, Inc., has donated $7,500 to support the Asheville Police Department's Mounted Patrol . The funds are intended to purchase one Bay American Quarter Horse, which will enable the Police Department provide better police services to the citizens of downtown Asheville.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to accept the donation; and (2) budget amendment, in the amount of $7,500, to appropriate funds in the police operating budget.

RESOLUTION BOOK NO. 26 – PAGE 371

O. ORDINANCE NO. 2814 - BUDGET AMENDMENT FROM THE SUSANNE MARCUS COLLINS FOUNDATION TO SUPPORT THE POLICE DEPARTMENT'S MOUNTED PATROL

Summary: See Consent Agenda Item "N" above.

ORDINANCE BOOK NO. 19 – PAGE 157

P. RESOLUTION NO. 01-83 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO CANCEL THE JULY 3, 2001, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 26 – PAGE 372

Q. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2001 BELE CHERE FESTIVAL ON JULY 27-28, 2001

This item was removed from the Consent Agenda for an individual vote.

R. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2001 GOOMBAY FESTIVAL ON AUGUST 24-26, 2001

This item was removed from the Consent Agenda for an individual vote.

S. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 5TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 15, 2001

This item was removed from the Consent Agenda for an individual vote.

T. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2001 GREEK FESTIVAL ON SEPTEMBER 28-30, 2001

This item was removed from the Consent Agenda for an individual vote.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

MOTION SETTING A PUBLIC HEARING ON JUNE 26, 2001, TO CONSIDER AMENDING A PREVIOUSLY GRANTED CONDITIONAL USE PERMIT FOR THE CLINGMAN AVENUE CONDOMINIUMS

Councilman Hay moved to excuse Councilwoman Bellamy from voting in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Worley moved to set a public hearing on June 26, 2001, to consider amending a previously granted conditional use permit for the Clingman Avenue Condominiums. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE NO. 2815 - BUDGET AMENDMENT TO THE 35 FUND – WATER MAJOR CAPITAL IMPROVEMENTS FUND

Councilman Hay moved to excuse Councilwoman Bellamy from voting in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: This is the consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect the transfer of grant funding for Critical Needs Phase II to the 29 Fund (Water Bond Capital Improvements Fund), to decrease future funding for N. C. Dept. of Transportation (NCDOT) projects that are being funded in the 29 Fund, and to reflect a transfer to capital from the Fiscal Year 2001-02 Water Fund Budget.

By Resolution 82-25 dated October 5, 1982, the Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds, and Appropriated Fund Balance in the 35 Fund. By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond Proceeds in the 29 Fund.

Transfer Grant Funding For Critical Needs Phase II - On August 15, 2000, the Authority approved an amendment to Capital Project Ordinance 82-25 (35 Fund – Water Major Capital Improvements Fund) to reflect funding from the $2 Million High Unit Cost Grant received from the State for Critical Needs Phase II. On December 19, 2000, the Authority also approved a $1 million increase in the 29 Fund (Water Bond Capital Projects Fund) for Critical Needs Phase II to be funded with a portion of $13.3 million 2001 Revenue Bond Issue. The Asheville City Council also approved both of these amendments.

Staff is recommending transferring the grant funds of $2 million from the 35 Fund to the 29 Fund, so that the total funding for the Critical Needs Phase II projects in the amount of $3 million can be managed in one fund. This change to the 35 Fund will become effective upon the date of adoption of this budget amendment.

Reduction of Future Funding for NCDOT Projects - Six of the eight future NCDOT projects which were to be funded with Future Contributions from Other Funds, are being funded in the 29 Fund with a portion of the $13.3 million 2001 Revenue Bond Issue. These projects total $2,805,299 and include the Biltmore Viaduct, I-40 at US 25A, NC 151 Phase I, US 74 Phase I and II, and NC 191 Brevard Road. Staff is recommending reducing the 35 Fund by $2,805,299, since these projects will now be funded in the 29 Fund. The NC 151 Phase II and US 25-A will be funded with Future Contributions From Other Funds in the amount of $1,879,370. This future funding is expected to come from a Revenue Bond Issue in late 2002. This change to the 35 Fund will become effective upon the date of adoption of this budget amendment.

The Regional Water Authority approved the amending of Capital Project Ordinance 82-25 (35 Fund) at their May 22, 2001, meeting.

Staff recommends approval of the a budget amendment to the 35 Fund to reflect the changes identified above.

Councilman Worley moved for the adoption of Ordinance No. 2815. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 159

RESOLUTION NO. 01-84 - RESOLUTION AMENDING THE ASHEVILLE STANDARD SPECIFICATIONS & DETAILS MANUAL TO INCLUDE FIRE FLOW AND FIRE HYDRANT REQUIREMENTS FOR BUILDINGS

Summary: The consideration of a resolution amending the Asheville Standard Specifications and Details Manual to include fire flow and fire hydrant requirements for buildings.

On May 15, 2001, Mayor Sitnick sent a letter to the State Fire Marshal's office, on behalf of City Council, requesting that they remove fire protection water supply requirements from the Asheville amendments to the North Carolina Building Code – Volume V – Fire Prevention. The letter also stated that the City planned to place fire protection water supply requirements in the Asheville Standards and Specifications Manual. The State Building Code Council will be holding its semi-annual meeting from June 11 through June 13, 2001. It is anticipated that they will act on this request at this meeting.

Staff will be requesting additional changes to the Asheville Standards and Specifications Manual in July of this year.

City staff recommends that City Council adopt the addition to the Asheville Standard Specifications and Details Manual to include fire flow and fire hydrant requirements for buildings.

Councilwoman Field said that the Table 10.1 regarding the minimum required fire flow and flow duration for buildings is different from that the committee and community group agreed upon. She felt it just may be a typographical error. She supported adoption of the resolution and asked that City staff review the Table for accuracy.

Councilwoman Field moved to adopt Resolution No. 01-84, subject to Table 10.1 being reviewed for accuracy. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 373

RESOLUTION NO. 01-85 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2001 BELE CHERE FESTIVAL ON JULY 27-28, 2001

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Bele Chere Festival on July 27-28, 2001.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the downtown area. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-85. This motion was seconded by Councilwoman Field and carried on a 5-2 vote, with Mayor Sitnick and Councilwoman Bellamy voting "no".

RESOLUTION BOOK NO. 26 – PAGE 374

RESOLUTION NO. 01-86 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2001 GOOMBAY FESTIVAL ON AUGUST 24-26, 2001

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Goombay Festival on August 24-26, 2001.

The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The 2001 Goombay Festival has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past. This event is co-sponsored by the Asheville Parks and Recreation Department.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-86. This motion was seconded by Councilwoman Field and carried on a 5-2 vote, with Mayor Sitnick and Councilwoman Bellamy voting "no".

RESOLUTION BOOK NO. 26 – PAGE 378

RESOLUTION NO. 01-87 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 5TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 15, 2001

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 5th Annual Brewgrass Festival on September 15, 2001.

For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. The 5th Annual Brewgrass Festival has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-87. This motion was seconded by Councilwoman Field and carried on a 5-2 vote, with Mayor Sitnick and Councilwoman Bellamy voting "no".

RESOLUTION BOOK NO. 26 – PAGE 381

RESOLUTION NO. 01-88 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2001 GREEK FESTIVAL ON SEPTEMBER 28-30, 2001

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2001 Greek Festival on September 28-30, 2001.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City County Plaza, September 28-30, 2001. The 2001 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of this request as stated in the resolution.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-88. This motion was seconded by Councilwoman Field and carried on a 5-2 vote, with Mayor Sitnick and Councilwoman Bellamy voting "no".

RESOLUTION BOOK NO. 26 – PAGE 383

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE FISCAL YEAR 2001-02 ANNUAL OPERATING BUDGET

Mayor Sitnick opened the public hearing at 5:25 p.m.

Budget Director Ben Durant said that the Fiscal 2001/2002 Annual Operating Budget and Capital Improvements Program was presented to City Council on May 10, 2001. On May 15, 2001, City Council held a worksession. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the public hearing was published on June 1 and June 8, 2001. Adoption of the budget ordinance is scheduled for June 26, 2000, at the City Council meeting.

The Fiscal Year 2001/2002 Annual Operating Budget is balanced with an ad valorem tax rate of $.56 per $100 of assessed value. All essential City services are maintained.

A copy of the budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the ad valorem tax rate, which can not be changed once adopted.

Mr. Durant said that City Council has received their requested additional information on the Fiscal Year 2000-2001 current street project list by geographic region, Civic Center employee demographics, Criminal Justice Information System costs, Water Resources Fund Balance, water rate increase history, water customer statistics and explanation of Parks and Recreation fee increases.

It was the consensus of City Council to make consensus decisions regarding the outside agency funding requests and the fees and charges at the next worksession on June 19, 2001.

Mr. Adam Baylus questioned how certain can we be that we will be the City will get their reimbursement from the State and can we work the budget so we are planning now not to have those funds. In addition, he questioned the $100,000 for a feasibility study regarding the Asheville Riverside Project, which this particular funding was not addressed at the April 24, 2001, meeting when this project was endorsed by City Council.

City Manager Westbrook responded that he did not believe the City would get reimbursed the funds for the current year and administratively the budget has been reduced to account for that. The Governor has proposed that, in the upcoming budget, cities and counties get the reimbursements. In addition, there is a lot discussion about alternate funding sources for cities through other means of raising revenue. The N. C. League of Municipalities recommends that cities plan for those revenues, or the equivalent of those, in the budget. If we do not get those funds, then we do have contingency plans, and we would ask City Council to amend the budget at that time.

Mr. Mickey MaHaffey, representing Peacemakers, believed that given the crisis in our community with water and air that there needs to be serious consideration given to the budget. He asked City Council to consider the following: far more attention to water system needs; the 5% that goes to the city as payment in lieu of taxes and the 2.5% that goes to the County should stay in the Water Fund; continue to work on the needed relief from the non-betterment costs; more work on the water agreement; need to make the Regional Water Authority a "true" Water Authority; because we are falling short in the area of addressing air pollution, we need to examine our fleet of vehicles and buy smaller vehicles; Transit Authority is receiving less money but we need to make the bus system a top priority and expand the transit system; examine the way we do policing in Asheville – need more foot patrol and bicycle patrol; need to consider holding the public safety departments (Police and Fire) down as much as possible so money can be spent in other areas; need to look at how much we are investing in payroll and consider holding raises down this and next year; and keep in mind that Asheville is becoming an increasing tourist economy and the people that keep the tourist economy going are very low wage owners in a stagnant market and most none have health care coverage.

Ms. Catherine Shane was disappointed that air quality is not a top priority in the Fiscal Year 2001-02 budget. She noted that the transit system is severely lacking. She encouraged Asheville to not create more of a population on the French Broad River without addressing the fact that it is a very polluted river. She seems like we are encouraging tourists to come here to drive and shop and not to come for our natural beauty.

Ms. Susan O'Neil felt that the most secure workers in our economy are government employees who get regular raises.

Ms. Beth Trigg was concerned about the priorities reflected in the budget because she didn't feel they are the priorities of the community. She felt Council should address the huge gap reflected in the budget between the top management positions and the people at the bottom. More money should be spent on public transportation and accommodating pedestrians and bicycles within the community. She urged City Council to enclose the bus shelter before winter. She was also concerned about the gap between funding for Economic Development and funding for Community Development programs.

Ms. Susan Andrew asked Council to increase the traffic calming budget from $100,000 to $200,000. She asked City Council to re-consider funding the request from the Coalition of Asheville Neighborhoods. She asked the City make it a standard that we only give public funds to groups that work for the whole community, not just for their members like the Chamber of Commerce.

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Mr. Jack Tate, Chairman of the Regional Water Authority of Asheville, Buncombe and Henderson, said that for the last ten years, the water rates have increased at an average of 3.175%.

Mr. Lewis Daniels, Chairman of the Budget Committee of the Regional Water Authority of Asheville, Buncombe and Henderson, hoped that the Water Authority has the opportunity to address any issues in terms of what the Water Authority is recommending (3.1% increase) vs. what the City staff is recommending (2.5% increase) for the budget.

City Manager Westbrook said that pursuant to City Council's instruction, they are still trying to arrange a meeting with Buncombe County representatives, Regional Water Authority representatives and City staff with regard to working on a compromise to the Water Authority's recommended increase vs. City staff's recommended increase in the Water Fund Budget.

At the Mayor's request, Mr. Durant reviewed the water rate increase history, a financial feasibility evaluation, the Fiscal Year 2001-02 recommended Water Budget comparison, budget reduction options, and estimated tipping fee costs. He said that the tipping fee budget can be adjusted, based on actual history, and accommodate all of the Water Resource Department's needs, including the capital replacement schedule, at a 2.5% rate increase.

Mr. Daniels responded to the information presented regarding the financial feasibility evaluation and the budget comparison on department wide expenses and attorney fees. He said if the difference can be achieved from the tipping fees in a legitimate manner, then he felt the Water Authority would be delighted to go with the City staff's recommendation of a 2.5% increase. He stressed, however, that it was important to maintain the capital replacement.

Upon inquiry of Mayor Sitnick, Mr. Daniels said that the attorneys for the Water Authority have not had a rate increase in several years, but their rate increase this year is substantial.

Mr. Tate said they are certainly willing to look at the tipping fees, but he wants to make it clear that the initial figure was a responsible figure. If they end up spending more than that, then he would be concerned where that money would come from. They have made a policy decision for the commitment to the 80 year replacement.

Mayor Sitnick suggested that a meeting be set up with the Water Authority, City Council and the City's Director of Public Works so the Authority can inform Council on where the water is being lost and our Director of Public Works can report on ways to reduce our waste by recycling, compaction, re-use, etc.

Ms. Laurel Eide explained why the Coalition of Asheville Neighborhood funding for a paid staff member should be granted by City Council.

Mayor Sitnick closed the public hearing at 7:00 p.m.

Mayor Sitnick said that City Council will be discussing the outside agency funding requests and fees and charges at their June 19, 2001, worksession and considering adoption of the Fiscal Year 2001-02 Annual Operating Budget on June 26, 2001.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2816 - ORDINANCE DENYING THE CONDITIONAL USE PERMIT FOR THE ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT ON SHILOH ROAD

City Attorney Oast on May 22, 2001, following a public hearing, Council voted to deny the application for the conditional use permit on Shiloh Road, and directed staff to prepare an order with appropriate findings.

The order is in draft form and may be modified by Council prior to voting on it.

Once the order issuing the Conditional Use Permit is in satisfactory form, Council should vote to adopt it.

City Attorney Oast corrected the following typographical errors: (1) in Finding No. 3 in the classification should read CB II Community Business classification; (2) in Finding No. 4, the sentence should read "A recreation center is located to the east on Shiloh Road;" and (3) in Finding No. 6, the sentence should read "If developed as proposed … landscaping would meet or exceed the requirements of the City Code."

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2816, with the changes outlined above by City Attorney Oast. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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At 7:05 p.m., Mayor Sitnick announced a short break.

B. ORDINANCE NO. 2817 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE LOWES AREA

Mayor Sitnick said that the public hearing on this matter was held on May 22, 2001.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Lowes area.

On March 13, 2001, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and the Arden area. The Annexation Services Plan for all of these areas was approved on March 27, 2001, and a public information meeting was held on May 3, 2001. Public hearings on each of annexations were held by City Council on May 22, 2001. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2002.

Staff recommends adoption of annexation ordinance for the Lowes area, with an effective date of June 30, 2002.

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2817. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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C. ORDINANCE NO. 2818 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE UPPER SONDLEY AREA

Mayor Sitnick said that the public hearing on this matter was held on May 22, 2001.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Upper Sondley area.

On March 13, 2001, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and the Arden area. The Annexation Services Plan for all of these areas was approved on March 27, 2001, and a public information meeting was held on May 3, 2001. Public hearings on each of annexations were held by City Council on May 22, 2001. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2002.

Staff recommends adoption of annexation ordinance for the Upper Sondley area, with an effective date of June 30, 2002.

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2818. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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D. ORDINANCE NO. 2819 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE BEST INNS LOCATED ON TUNNEL ROAD

Mayor Sitnick said that the public hearing on this matter was held on May 22, 2001.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Best Inns on Tunnel Road.

On March 13, 2001, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and the Arden area. The Annexation Services Plan for all of these areas was approved on March 27, 2001, and a public information meeting was held on May 3, 2001. Public hearings on each of annexations were held by City Council on May 22, 2001. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2002.

Staff recommends adoption of annexation ordinance for the Best Inns on Tunnel Road, with an effective date of June 30, 2002.

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Hay moved for the adoption of Ordinance No. 2819. This motion was seconded by Councilwoman Field and carried unanimously.

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E. ORDINANCE NO. 2820 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE OLD DOMINION FREIGHT AREA

Mayor Sitnick said that the public hearing on this matter was held on May 22, 2001.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Old Dominion Freight area.

On March 13, 2001, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and the Arden area. The Annexation Services Plan for all of these areas was approved on March 27, 2001, and a public information meeting was held on May 3, 2001. Public hearings on each of annexations were held by City Council on May 22, 2001. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2002.

Staff recommends adoption of annexation ordinance for the Old Dominion Freight area, with an effective date of June 30, 2002.

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2820. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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F. ORDINANCE NO. 2821 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ARDEN AREA

Mayor Sitnick said that the public hearing on this matter was held on May 22, 2001.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Arden area.

On March 13, 2001, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and the Arden area. The Annexation Services Plan for all of these areas was approved on March 27, 2001, and a public information meeting was held on May 3, 2001. Public hearings on each of annexations were held by City Council on May 22, 2001. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2002.

Staff recommends adoption of annexation ordinance for the Arden area, with an effective date of June 30, 2002.

Mayor Sitnick said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Worley moved for the adoption of Ordinance No. 2821. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 181

V. NEW BUSINESS:

A. CONTRACT WITH THE NATIONAL BASKETBALL DEVELOPMENT LEAGUE

Councilman Hay said that the City is scheduled to get the final report regarding the Civic Center Architectural Study from Heery International on Tuesday, June 26, 2001. City Council is scheduled for the presentation at 3:00 p.m. on Tuesday, June 26, 2001, in the Council Chamber in the City Hall Building.

City Manager Westbrook said that staff, with Councilmen Hay and Worley, has been working with the National Basketball Development League (NBDL) on the possibility of bringing a professional basketball team to the City. After this presentation, staff will recommend City Council hold a public hearing on this issue on Tuesday, June 19, 2001, beginning at 5:00 p.m. in the Council Chamber in the City Hall Building.

City Attorney Oast said the potential agreement has some elements of a lease and some elements involve economic development. If the lease is longer than one year but less than 10 years, there must be 10 days notice of Council's intent to authorize the lease. For most types of economic development, there is a 10 day notice of Council's intent to authorize the agreement and a public hearing must be held. Because of some timing situations, City staff is giving the presentation today and asking for the public hearing and final action at the June 19, 2001, worksession. These items have been advertised for action on June 19. After this presentation, City staff will ask Council on whether or not to proceed with the public hearing and consideration of the lease and economic development license agreement.

Finance Director Bill Schaefer explained in detail the financial and other ancillary financial benefits of the NBDL. He used the representative attendance of 2,500 to outline the revenues in the first year of $243,804.00 and the expenses in the first year of $209,403.50, showing a gain of $34,400.50. He then outlined the estimated gain in year two of $521.00 and in year three $4,249.00. After the initial third year period, in years 4-10 there is no longer any provision for an attendance bonus, the capital expenses have been amortized, and the entertainment fee is no longer applicable. Therefore, in year 4, the anticipated gain is $141,423.00 and that growing through the out years to $167,008.81 in the 10th year. He then reviewed in detail the staffing projections for the NBDL. Next Mr. Schaefer reviewed the ice to basketball change-over and the ice to home show change-over removal or set-up. He then reviewed just the NBDL gain/loss based on three year's attendance.

Upon inquiry of Councilman Peterson, Mr. Schaefer explained the figures with both hockey and basketball in the Civic Center. If hockey remains, using an attendance figure of 1,795, there will be additional change-over costs of approximately $80,000, an additional Assistant Director in the amount of $45,000, and additional maintenance labor in the amount of $20,000. In the first year the City loses approximately $58,000. In years 2 and 3, the City loses approximately $95,000, and the subsequent seven year is a loss of approximately $9-13,000 per year.

Civic Center Director David Pisha addressed the scheduling as it relates to both hockey and basketball. They have gone to considerable lengths to make sure that each team has been treated as fairly as possible. He also talked about public skating and youth hockey scheduling.

City Manager Westbrook summarized the benefits: long-term financial gain (after 1 year); if hockey leaves the Civic Center, a major tenant like NBDL would be less expensive to operate and less disruptive to trade shows; with the NBDL, there is potential to bring SFX back in the future, Southern Conference and UNC-Asheville; greater potential for renovation of facility; greater potential for naming rights, luxury boxes, personal seat licenses, etc., which will generate additional future income for the Civic Center; NBDL represents a stable income ($5,000 rent/game); financial and marketing strength of NBA; and ancillary economic and other benefits. He also outlined the following issues and concerns: short-term financial loss (1 year – cost of minor renovations); tremendous arena floor turnover in order to provide small, separate segments of time as needed to schedule both hockey and basketball in the same facility; minor impact on public skating and youth hockey; one additional staff to be added which would not be required by either sport separately; there are fewer dark days, therefore less time for other attractions at the Civic Center during the hockey and NBDL seasons such as concerts, wrestling, etc.; and unilateral right to renew after three years for an additional seven years.

At the request of Councilman Peterson, Mr. Pisha said he would develop an additional scheduling calendar of only NBDL (without hockey) showing the days that would be available for public skating and youth hockey. He would also provide figures regarding changeovers with regard to that.

Mr. Rob Levine, Senior Vice-President, New League Development with the National Basketball Association (NBA), said the NBDL is 100% owned by the NBA. He gave some brief statistics of the NBDL and the players. He explained why they chose Asheville. He then addressed the misconceptions with regard to the SFX and the NBDL negatively impacting hockey. He said the City has used very conservative assumptions but they believe the numbers are higher. He said they will be investing over $1 Million locally and a good percentage of that will be on local advertising and promotion. He said they share with the Asheville Smoke the commitment to growing a vital sports marketplace.

Councilman Hay moved to set a public hearing on the proposed agreement with the National Basketball Development League for 5:00 p.m. on Tuesday, June 19, 2001, in the

Council Chamber located on the 2nd Floor in the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

B. RESOLUTION NO. 01-89 - RESOLUTION AUTHORIZING ESTABLISHMENT OF A CLEAN AIR COMMUNITY TRUST

City Attorney Oast said that this is the consideration of a resolution authorizing establishment of a clean air community trust.

Last year, the City and Buncombe County agreed to establish a clean air community trust for the purpose of seeking and administering grants and undertaking other programs in furtherance of local air quality.

Since then, the City has been working with the County's attorneys and members of the air quality agency to develop a trust agreement and by-laws for this purpose. Our progress has been affected by the pendency of a lawsuit regarding the distribution of funds collected by the air quality agency. However, the trust documents specify that the funding for the trust is to be from money from private sources or that is not restricted by law.

To this end, the Buncombe County Medical Society and Alliance Endowment has made a significant contribution to the Trust for purposes of the initial funding for the trust, and other members of the community have expressed their desire to help get it started.

Currently under review are the by-laws for the trust.

The Buncombe County Commissioners are planning to act at their meeting today to authorize establishment of the trust, and may appoint the County's three initial trustees. Following adoption of the resolution authorizing the trust and approving the by-laws, Council should act to appoint its initial two trustees.

If Council wishes to establish the Clean Air Community Trust, adoption of the resolution is recommended.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 01-89. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 385

C. RESOLUTION NO. 01-90 - RESOLUTION AUTHORIZING SALE, EXCHANGE, AND JOINT USE OF GOVERNMENTAL PROPERTY NEAR CITY BUILDING

City Manager Jim Westbrook said that pursuant to City Council's direction, he has completed negotiations with the County for the sale and/or trade of City property for use as a jail detention center.

Based on direction for City Council, he has been negotiating with Buncombe County for the use of City-owned property directly behind the current jail site for a proposed jail detention center. Since there were other properties in the area that the City desired to acquire from the

County, he proposed a combination sale and trade of properties which would allow the County to purchase the property the City owns and the City to acquire two properties that we need from the County.

The details of the negotiations are summarized below.

1. The City will sell to the County property located behind your current jail for two pieces of property which the County owns as follows:

The appraised price of the City-owned parking lot (Marjorie, Davidson, Valley Streets) PIN 9649.19-50-4467	$750,000
Less property owned by Buncombe County (Marjorie and Eagle Streets) PIN 9649.19-50-2118	-364,000
Less property owned by Buncombe County (Valley, Marjorie & Davidson Sts.) PIN Nos. 9649.19-50-4350, 5310, 5325, 5326	-243,500
Cash Due City	$142,500

2. Since both the County and the City are using the property described in Item 1 above as parking lots, the agreement will include cross-easements to allow for the City and County to continue to park as we do currently. When either the City or the County starts a construction project on the lots, then the parking for City and County employees will revert to align with the ownership of the property.

3. The current lease between the City and the County for the property located between Marjorie and Eagle Streets (PIN 9649.19-50-2118), which the City will purchase with this new agreement, will terminate with no further obligation by either party.

4. The property which the City will sell to the County (PIN 9649.19-50-4467) located behind the current jail will be used exclusively for jail and/or jail related facilities during a 12 year period beginning with the date the property is sold to the County.

5. The property which the City will sell to the County (PIN 9649.19-50-4467) located behind the current jail will be used for jail and/or jail related facilities, governmental offices, or governmental uses after the initial 12 year period.

6. For a period of 12 years from the date of conveyance, the height of any building constructed on the lot behind the current jail (PIN 9649.19-50-4467) may be no higher than the top of the balustrade on the second floor of the City Building. This restriction is in addition to the City's zoning regulations. After the expiration of the 12 year period, the City's zoning regulations would continue to apply.

7. The City and the County will continue to work together for a Master Plan of the governmental complex area located in the downtown so that in the future such expansions by the City and/or County can be better planned with regard to traffic, supporting and ancillary facilities.

Of particular note is the agreement between the City and the County to Master Plan the governmental complex area located in downtown so that future governmental building expansions can be preplanned to the maximum extent possible. It also allows the City to acquire two pieces of County property that may be needed in the future for additional parking, and to help make up the loss of parking spaces when construction begins on the property sold to the County.

City staff recommends Council approve the sale of the City-owned parking lot (PIN 9649.19-50-4467) for $750,000 to Buncombe County; the purchase of Buncombe County property (PIN Nos. 9649.19-50-4467; 9649.19-50-4350; 9649.19-50-5310; 9649.19-50-5325, and 9649.19-50-5326) by the City; to further instruct the City Manager to allow for the cross-easements as described in Number 2 above through written agreement with the County; to provide for the termination of any agreements or understanding with regard to the property owned by the County between Marjorie and Eagle Streets (PIN 9649.19-50-2118) as described in Number 3 above; and such language as would be necessary to cause the City and the County to work toward a Master Plan for the governmental complex as described in Number 7 above. The City Attorney is instructed to prepare the deeds in such a manner that the property sold to the County (PIN 9649.19-50-4467) is to be used exclusively for jail and/or jail related facilities for the first twelve (12) years as described in Number 4 above, and the use of the property by the County for jail and/or jail related facilities, governmental offices, or governmental uses after the initial twelve (12) year period as described in Number 5 above, and the height of the initial building for the first twelve (12) years of the agreement as described in Number 6 above.

Councilwoman Bellamy hoped that Buncombe County will involve Pastor Grant from the Mt. Zion Missionary Baptist Church in their discussions of design and that the City involves the Church when discussions begin about the parking deck.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-90. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 386

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 18-24, 2001: Yvette Lee Adams (Police), Beverly Hinton (Parks & Recreation), Dennis Horton (Water), Oswaldo Ordonez (Street), BellSouth (Water), Hampton Inn (Water) and Sarah Burdine (Parks & Recreation).

The following claims were received during the period of May 25-June 7, 2001: James W. Dally (Parks & Recreation), Ferguson Enterprises (Finance), Feed-Seed Supply (Fire), Michelle Swanson (Water) and Kay Crozer (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English felt what when the NBDL comes to Asheville, they will start making demands. He felt they the City should not enter into an agreement with the NBDL.

B. COMMENTS BY MICKEY MAHAFFEY

Mr. Mickey MaHaffey asked some questions regarding transit services.

C. COMMENTS BY PETER DAWES

Mr. Peter Dawes thanked City Council for their courtesy to the media. He said that a lot of people say they are concerned about air quality, but people rarely attend the WNC Regional Air Quality Agency meetings.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – June 19, 2001 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Setting Public Hearing to Demolish 191 Sulphur Springs Road

Summary: The consideration of a resolution setting a public hearing on July 10, 2001, for the adoption of an ordinance directing that the dwelling located at 191 Sulphur Springs Road be demolished and all debris removed from the property.

Budget Amendment regarding Pritchard Park

Summary: The consideration of a budget amendment, in the amount of $4,000, for donations from the French Broad River Garden Club and the Asheville Downtown Association for Pritchard Park.

The City of Asheville staff met with several members of the French Broad River Garden Club about their interest in supporting the renovation of Pritchard Park. The Garden Club is able to make a donation in the amount of $3,000 for the beautification of the park space.

At a later date, the City of Asheville will place a plaque paid for by the French Broad River Garden Club in an area of the park to acknowledge their contribution.

City staff was also approached by the Asheville Downtown Association who expressed interest in the project and committed $1,000 towards the renovation.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Pritchard Park.

Contract Agreements with Volunteer Fire Departments

Summary: The consideration of a resolution authorizing the City Manager to enter into agreements with the Haw Creek Volunteer Fire Department, the Riceville Volunteer Fire Department, the West Buncombe Volunteer Fire Department and the Enka-Candler Volunteer Fire Departments for fire protection services for annexed areas.

With the annexations effective July 1, 2001, for the City of Asheville, there are four areas that the City is required to contract with volunteer fire departments for service under North Carolina General Statutes. The same standard fire protection contract applies to all four of the affected volunteer fire departments.

The four areas that are effective July 1, 2001, and their associated volunteer fire departments are as follows:

01A	Piney Mountain Road area	Haw Creek VFD
01B	Riceville Road area	Riceville VFD
01E	New Leicester Highway area	West Buncombe VFD
01F	Wedgefield Drive area	Enka-Candler VFD

Contracts have been provided to and accepted by the above listed volunteer fire departments. The contracts are consistent with requirements set forth in N.C. Gen. Stat. sec. 160A-49.1. The Statute require a five-year contractual period. The contract documents have been written to allow for year-to-year continuance after the mandatory period, if both parties are agreeable to continue the contract.

City staff recommends City Council authorize the City Manager to contract with the necessary agencies for fire protection services as required by N. C. Gen. Statutes for annexed areas.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PACK SQUARE RENAISSANCE UPDATE

Ms. Carol King, Chair of the Board of Trustees for the Pack Square Conservancy Inc., updated City Council on the Pack Square Renaissance Project.

Of behalf of City Council, Mayor Sitnick thanked Ms. King and the efforts of the entire Board on this very important project.

HISTORIC DESIGNATION OF SILVERMAN COMPANY SIGN

Historic Resources Director Maggie O'Connor said that this is the consideration of a resolution designating the Silverman Company steel rooftop sign at 48 Swannanoa River Road historically significant and/or a landmark sign.

The owner of the Silverman Company steel rooftop sign located at 48 Swannanoa Road requests landmark sign designation of the 6 feet x 64 feet (384 square feet) steel roof top Silverman Company sign. The sign erected in 1924 has been maintained over the years. Sec. 7-13-2(c) of the Unified Development Ordinance (UDO) "Signs Exempt from Regulation," provides in paragraph 12 that landmark or historically significant signs are exempt from regulation, and that signs may be designated historically significant and/or landmark signs by the city council provided the signs satisfy one or more of the following criteria:

A. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.

B. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.

C. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.

Pursuant to UDO sec. 7-3-4(a)(2), the Historic Resources Commission (HRC) may recommend to the City Council that certain objects be designated as historic or landmark. Though not specifically mentioned, this function includes signs. At its February 9, 2000, meeting, the Historic Resources Commission of Asheville and Buncombe County (HRC) reviewed a request for landmark sign designation for the Silverman Company sign. By a unanimous vote the motion to recommend that designation passed. The HRC found the Silverman Company steel rooftop sign meets Criteria A; Criteria B because it denotes a local business; and Criteria C because a steel company made the sign out of steel for their business and, it is the only one of its kind that the Silverman Company designed and built.

This is an unusual case in that the Silverman sign, despite its historic characteristics, appears to be a relatively standard roof-top sign. Staff recognizes that approval of this request may result in similar requests for similar type signs that do not have the same level of historicity as the Silverman sign. By recommending approval, the HRC has taken a broad view with regard to the intent of the ordinance. If Council prefers that the ordinance be more tightly construed so that signs like the Silverman sign and Dreamland Flea Market sign are not considered eligible for such designation, staff would appreciate a discussion on the intent of the ordinance in order to provide appropriate direction to HRC and to modify our code requirements and guidelines as needed.

The HRC recommends approval of the request to designate the Silverman Company steel rooftop sign at 48 Swannanoa River Road historically significant and/or a landmark sign. If Council wishes to designate the Silverman Company steel rooftop sign as a landmark or historic sign, adoption of a resolution is required. If Council wishes to deny the request, a motion to that effect may be made, but is not required, or Council may vote down the resolution. If council denies the request, staff asks that you assist us in clarifying the intent of the ordinance that allows for the designation of historically significant/landmark signs.

At the request of Council members, Ms. O'Connor said that she would provide additional information to Council regarding if the company would still be allowed a free-standing sign, what size signage would be allowed if a free-standing sign were allowed, and how old the building is that the sign is located on.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MOTION SETTING A PUBLIC HEARING TO CONSIDER AN APPLICATION TO HUD FOR A CDBG SECTION 108 GUARANTEED LOAN AND ECONOMIC DEVELOPMENT INITIATIVE GRANT FOR THE REHABILITATION OF BUILDINGS IN SOUTH PACK SQUARE

Ms. Charlotte Caplan, Community Development Director, said that a motion is necessary in order to set a public hearing on June 26, 2001, to consider an application to the U.S. Dept. of Housing and Urban Development (HUD) for a Community Development Block Grant (CDBG) Section 108 Guaranteed Loan of $800,000 and an Economic Development Initiative (EDI) Grant of $340,000 for the rehabilitation of buildings in South Pack Square.

Councilman Worley moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

At the request of Councilwoman Bellamy, Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Field moved to set a public hearing for June 26, 2001, to consider an application to HUD for a CDBG Section 108 Guaranteed Loan and Economic Development Initiative Grant for the rehabilitation of buildings in South Pack Square. This motion was seconded by Councilman Worley and carried unanimously.

DISCUSSION OF OUTSIDE AGENCIES AND FEES AND CHARGES

It was the consensus of City Council to discuss each outside agency funding request separately as follows:

Asheville-Buncombe Community Relations Council

Approved in 2000-01 - $63,000
Requested in 2001-02 - $63,000
Committee Recommended - $40,000. (After May 15, 2001, City Council Worksession, Committee Recommended - $63,000)

After discussion, it was the consensus of City Council to appropriate $63,000 to the Asheville-Buncombe Community Relations Council.

Asheville Area Arts Council

Approved in 2000-01 - $30,000
Requested in 2001-02 - $50,000
Committee Recommended - $30,000

After discussion, it was the consensus of City Council to appropriate $30,000 to the Asheville Area Arts Council.

Asheville-Buncombe VISION Inc.

Approved in 2000-01 - $15,000
Requested in 2001-02 - $15,000
Committee Recommended - $15,000

After discussion, it was the consensus of City Council to appropriate $15,000 to the Asheville Buncombe VISION Inc.

Visitor's Center
(Part of a 5-year Capital Campaign)

Approved in 2000-01 - $100,000
Requested in 2001-02 - $100,000
Committee Recommended - $100,000

After discussion, it was the consensus of City Council to appropriate $100,000 to the Visitor's Center. Mayor Sitnick and Councilman Peterson recommended no funding.

Buncombe County Economic Development Commission
(Annual payment for Board participation)

Approved in 2000-01 - $50,000
Requested in 2001-02 - $50,000
Committee Recommended - $50,000

After discussion, it was the consensus of City Council to appropriate $50,000 to the Economic Development Commission.

Asheville Sister Cities Inc.

Approved in 2000-01 - $2,000
Requested in 2001-02 - $2,000
Committee Recommended - $2,000

After discussion, it was the consensus of City Council to appropriate $2,000 to the Asheville Sister Cities Inc.

High County Art & Craft Guild

Requested in 2000-01 – Zero
Requested in 2002-02 - $10,000
Committee Recommended – Zero

After discussion, it was the consensus of City Council to not appropriate any funds to the High Country Art & Craft Guild. Mayor Sitnick and Councilwoman Field would like to find some funding.

In order to show support the High Country Art & Craft Guild, it was the consensus of City Council to review the possibility of either writing off or reducing what Guild owes to the Civic Center at a later date.

Life on Life's Terms Inc.

Approved in 2000-01 - $5,000
Requested in 2001-02 - $18,000
Committee Recommended - $5,000

After discussion about Life on Life's Terms Inc. being fiscally responsible and financially sound, it was the consensus of City Council to appropriate $5,000 to Life on Life's Terms Inc. with the stipulation that the City not release payment until Life on Life's Terms Inc. demonstrates their on-going financial stability.

Mountain Center for Substance Abuse Prevention

Approved in 2000-01 - $30,000
Requested in 2001-02 - $30,000
Committee Recommended - $20,000

After discussion, it was the consensus of City Council to appropriate $20,000 to the Mountain Center for Substance Abuse Prevention.

One Youth At A Time, Inc.

Approved in 2000-01 - $10,000
Requested in 2001-02 - $20,000
Committee Recommended - $10,000

After discussion, it was the consensus of City Council to appropriate $10,000 to One Youth At A Time Inc.

Project STEAM

Approved in 2000-01 - $5,000
Requested in 2001-02 - $5,000
Committee Recommended - $5,000

After discussion, it was the consensus of City Council to appropriate $5,000 to Project STEAM.

RiverLink Inc.

Approved in 2000-01 - $18,000
Requested in 2001-02 - $25,000
Committee Recommended - $18,000

After discussion, it was the consensus of City Council to appropriate $18,000 to RiverLink Inc.

The Health Adventure

Approved in 2000-01 - $5,000
Requested in 2001-02 - $20,000
Committee Recommended - $5,000

After discussion, it was the consensus of City Council to appropriate $5,000 to The Health Adventure.

Coalition of Asheville Neighborhoods

Requested in 2000-01 – Zero
Requested in 2001-02 - $30,000
Committee Recommended – Zero

After discussion, it was the consensus of City Council to not appropriate any funds to the Coalition of Asheville Neighborhoods (CAN). Councilman Peterson recommended funding CAN. Mayor Sitnick thought that in the future if they receive other funds, that the City should consider some funding for them.

Neighborhood Housing Services

Requested in 2000-01 – Zero
Requested in 2001-02 - $15,000
Committee Recommended – Zero

After discussion, it was the consensus of City Council to not appropriate any funds to Neighborhood Housing Services.

Kids Voting

Requested in 2000-01 – Zero
Requested in 2001-02 - $2,500
Committee Recommended – Zero (At the May 15, 2001, City Council worksession, the Committee Recommended $1,000)

After discussion, it was the consensus of City Council to appropriate $1,000 to Kids Voting.

YWCA

Requested in 2000-01 – $15,000
Requested in 2001-02 - $18,500
Committee Recommended – $10,000

After discussion, it was the consensus of City Council to appropriate $10,000 to the YWCA.

Fees and charges were discussed, but most particularly the following issues: (1) making sure that an application fee is not doubled if construction work is permitted prior to receiving the issuance of a permit, (2) adult softball fees, (3) summer playground fees, (4) Civic Center ice change-over fees, (5) skateboard park fees, and (6) fee in lieu of constructing sidewalks. City Council then gave direction to Budget Director Ben Durant on the fees and charges.

It was the consensus of City Council to charge certain ice change-over fees with exemptions for events that have been held at the Civic Center prior to the inception of hockey. New events (since the inception of hockey) will be charged certain ice change-over fees if their gross revenues are less than $35,000. Councilman Peterson did not agree.

NEXT COMMUNITY MEETING LOCATION

It was the consensus of City Council to held their next community meeting on Tuesday, July 31, 2001, beginning at 7:00 p.m. at the West Asheville Community Center located at 970 Haywood Road, Asheville, N.C.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 4:43 p.m., Councilman Hay moved to go into closed session in Room 209 of the City Hall Building for the following reasons: (1) to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is N. C. Gen. Stat. sec. 160A-168, the Personnel Privacy Act – G. S. 143-381.11 (a) (1); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Betty Donoho, County of Buncombe, Western North Carolina Air Pollution Control Agency and City of Asheville – G. S. 143-381.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 4:58 p.m., Vice-Mayor Cloninger moved to come out of closed session and continue with the City Council public hearing in the Council Chamber, located on the 2nd Floor in the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

PUBLIC HEARING TO CONSIDER AUTHORIZING ARENA LICENSE AGREEMENT AND LEASE WITH THE NATIONAL BASKETBALL DEVELOPMENT LEAGUE

RESOLUTION NO. 01-91 - RESOLUTION AUTHORIZING ARENA LICENSE AND LEASE WITH THE NATIONAL BASKETBALL DEVELOPMENT LEAGUE

Mayor Sitnick reminded City Council that Rule 9 of the Rules of Procedure for City Council provides that "The Mayor shall have the following powers: ... (d) to call a brief recess at any time." The Mayor asked that Council members who need to leave a Council meeting that is in progress so inform her by either passing her a note or by moving for a brief recess pursuant to Council Rule 19 (c). Pursuant to N. C. Gen. Stat. sec. 160A-75, a council member who has withdrawn from the council chamber without being excused by a majority vote is recorded as an affirmative vote on any matters that come before council during his or her unexcused absence from the chamber.

Mayor Sitnick opened the public hearing at 5:00 p.m.

City Clerk Burleson noted that the public hearing was legally advertised on Saturday, June 9, 2001.

The following individuals spoke in opposition of the City bringing the National Basketball Development League (NBDL) to the Asheville Civic Center for various reasons, some being, but are not limited to: impact of basketball and hockey may have a negative effect on the Civic Center; questioned the feasibility of accommodating both hockey and basketball because of the limitations of the building; schedule regarding hockey is still a concern with limited weekend date, practice availability and whether it's going to be operationally feasible and financially feasible to make ice available for the hockey team to practice; scaled back youth and adult hockey league schedules; figure skaters will have limited ice time available to them; City is willing to spend $170,000 on capital improvements to the Civic Center that will only benefit the NBDL and not all Civic Center users; the addition of basketball will have a negative impact on the Civic Center and will create a larger deficit for taxpayers; estimate of $2,500 per game is inflated; basketball in this country is on a downward swing, while ice hockey and other ice related sports is on an upward swing; potential 10-year contract has unilateral terms for cancellation; the cost/benefit analysis estimates utilizing single source data is extremely difficult to validate; it's unrealistic to anticipate that the Asheville Smoke will survive as a second primary tenant competing for a limited pool of discretionary sports entertainment dollars; concern with attendance projections; it is unreasonable to assume that, in the event the Civic Center is renovated, extensive systemic renovations required can be accomplished in an affordable fashion outside of the NBDL scheduled season; concern that a near term renovation/replacement of the Civic Center is not possible due to planning, financing, and community support issues; concern that the economic projections for the NBDL/Civic Center are not supported by the contract; concern of the Civic Center's ability to support this activity in the consistent and supportive manner the NBDL and Asheville Smoke deserve; the Smoke fan base will not support the NBDL in anyway; without a similar agreement at the same time for the Asheville Smoke, the Smoke could be at the mercy of the NBDL and the NBA; and there is no public support for basketball:

Mr. Dan Wilhelm, Asheville Smoke hockey team but representing himself
Mr. Tom Leslie
Ms. Gwen Lee
Dr. Carl Mumpower, Chairman of the Civic Center Commission (read a report dated June 19, 2001 and submitted a report dated June 11, 2001)
Mr. Phil Seymour
Mr. Rick Sweet
Ms. Christy Quinn, downtown business owner
Mr. O. Rice, employee of the hockey league
Mr. Dennis Justice, representing Save Our Smoke

When Councilman Hay asked if Dr. Mumpower's report is a formal recommendation from the entire Civic Center Commission, Dr. Mumpower stated that City Council did not ask the

Commission to make a formal vote on this contract. Their assumption has been that City Council was interested in anything the Commission could do to educate them and this is their good faith effort to do that. He said that all the Commission members received a copy of the final contract and was given an opportunity to offer comments to him. He is echoing their comments to Council now.

Discussion then surrounded whether City Council actually asked the Commission for their formal recommendation. City Council contends that the Commission was asked – Dr. Mumpower contends the Commission was not asked. Mayor Sitnick suggested the ordinance establishing the Civic Center Commission be amended so that for each issue that comes before the City Council regarding the Civic Center that City Council sends a formal written request to the Commission for their opinion and recommendation. Vice-Mayor Cloninger said that there may be ideas generated by staff that they would want to take to the Civic Center Commission first before they present it to City Council.

Mr. Dan Breneman, local business owner, spoke in support of bringing basketball to Asheville. He has seen what sports can do to a City and the influence of sports will do nothing but enhance the opportunities for hockey and other opportunities to bring people to Asheville. He hoped Council does everything they can to keep hockey and hopes Council finds a way to share the facility with other sports as well.

Mayor Sitnick closed the public hearing at 6:19 p.m.

Mayor Sitnick said that members of Council have been furnished with a copy of the resolution and it will not be read.

Councilman Hay moved for the adoption of Resolution No. 01-91, authorizing arena license agreement and lease with National Basketball Development League. This motion was seconded by Councilman Worley.

Councilman Worley emphasized that in all of Council's discussions they have emphasized that they wanted to keep the Smoke and be fair to the Smoke. It's clear the Smoke has a strong and loyal fan base and they have made their concerns known to Council. Council has tried to address those concerns as they have come to their attention. Council is also concerned about the figure skating and other recreational use of the ice and they have tried to make certain that will still be accommodated. There has been a lot of discussion about the financial impact and Council does not want to put a burden on the City taxpayers. The NBDL has projected attendance of 3,500 per game and Council is highly skeptical about that figure. Council has based their financial analysis on 2,500 per game and even looked at the feasibility if it is less than 2,500 per game. When you look at hockey and basketball operating in the Civic Center arena together and you look at the expense incurred in the change over from the ice to a basketball floor and back, when you look at the revenues that would be received based on current experience and projected attendance, when you look at the expenses the City will incur, including all of that extra labor for the ice, it is still a financial benefit to the City to do the NBDL deal. At an average attendance of 2,500 per game in the first year there is a gain of almost $56,000, in the second year and the third year that gain is reduced and then it gets up over $100,000 for the rest of the term. That is a combination of hockey and basketball combined. Hockey and basketball also contribute substantially to the parking enterprise fund and the figures used are based on actual experience. When he talks about a gain, he is talking about the combined effect of the Civic Center enterprise fund and the parking enterprise fund. Based on that, he feels this is a good deal for the City – it provides us an extra entertainment venue for those people who are not Smoke fans and do want to see basketball, and yet it protects the venue for those people who are Smoke fans. He said that even if the Civic Center is not renovated in three years and the NBDL leaves, this is still financially positive for the City.

Councilwoman Field said she has been looking for more activity at the Civic Center. She felt the more activity at the Civic Center, the better it is for downtown and the whole community and the opportunity to renovate the Civic Center is much higher.

Councilman Peterson said there has been a lot of financial projections but it's all speculative. He felt the City would lose money in first three years given all the expenses and potential losses. He said we don't know what's going to happen to the Civic Center and it's speculative that the City is going to be able to renovate it within two years. He felt we will be in pretty much the same position in two years and if basketball is here, they are likely to leave. With so many unknowns out there, the City should be fiscally cautious and this deal seems to be too risky. In the long run it may work out for the City, but he thinks we will not get substantial progress within the next two year on the Civic Center. He was also concerned about the negative impact on the hockey team. The NBA has been good about trying to be flexible to accommodate the hockey team, but he thinks it will have a negative impact. He was also concerned about the loss of ice time for public skating in addition to the lost revenue. He felt the City needs to be a little more fiscally cautious and we need to be further along on the efforts to fix the arena. This is just not the best timing since we really haven't developed public consensus or support for either renovations or building something new.

Councilman Hay said throughout this entire process, he has learned how much interest there is in public skating and figure skating. One beneficial outcome of this process is that City Council now realizes that Asheville does need a year round ice skating facility. He suggested Council revisit that part of the Parks Master Plan and see how that might be worked in. From the beginning of negotiations, the NBDL was told the City has two essential criteria: (1) we cannot negotiate any contract that will under any circumstances cost the City money; and (2) we cannot do anything that will run the Smoke out of town. On that basis they moved forward and the negotiations went well throughout because we had something to sell. A lot of what we've heard is the fear of the unknown. But what we need to do in any opportunity is to assess the risk, and very carefully make sure we think ahead to look at everything from every angle. But too many unknowns is not what keeps people from moving on and seizing a special opportunity. Eliminating the unknowns, assessing the risk, and then seizing the opportunity is what you do in a city that grows. He thinks the benefits that the NBDL will bring is something to remember. This will be a new entertainment event at the Civic Center, it will make money for the City, and there are several economic development benefits. He also thinks that the Smoke will benefit from it as well. He hoped that in the future the City would be able to provide the facility for the SFX Arena Ventures/NBDL basketball and 30 entertainment events by SFX.

Vice-Mayor Cloninger said that Councilmen Hay and Worley articulated his views on this issue but he did want to thank them for the countless hours they have worked on this issue.

Mayor Sitnick stated that we do need things in this area for our young people to do. People are now coming forward that agree that we need additional recreational opportunities for our young people and we are trying to find a way, with land and resources, to create that opportunity. She said it may start with an ice rink, but the proposal has been to look at the possibility of a multi-venue sports recreational family oriented complex, that has an ice rink, a roller rink, a bowling alley, a ballroom, a climbing wall, a tot land, an in-line outdoor track, and maybe some tennis courts and basketball courts. She has asked staff to look at what it involves, what it might cost, how it can be done, and has been talking to several people in the community. She hopes that we will be able to put some plan of that nature into the future for our parks and recreational budgets. She wouldn't feel very good about not allowing the NBDL to come to Asheville with this incredible revised contract and take a chance on our Civic Center and our community. She knows that we have a good thing in the Asheville Smoke and we have a lot of fans who love hockey. She is mostly concerned about the fact that Smoke's survival is based on what they are able to generate enthusiasm-wise in the community. She doesn't think the

Smoke's survival has anything to do with the NBDL if it joins the Civic Center to produce events there. She thinks the attendance numbers projected by the NBDL are unrealistic, but she feels that if we don't take a chance on this, then we will never know.

The motion made by Councilman Hay and seconded by Councilman Worley carried on a 6-1 vote, with Councilman Peterson voting "no".

Councilwoman Bellamy acknowledged that Asheville Smoke has stayed at the Civic Center when others have pulled out. Council did not discount the passion of Smoke fans during their deliberations. She felt that Asheville needs to take this chance because it's a different venue for people in our City. This is an opportunity for people to take part in something they haven't been able to in the past. She thinks it will work. We had to take a chance on hockey coming to Asheville and that has worked well. She has listened to both sides of the story and has taken into consideration Asheville Smoke. She said Council is doing what is in the best interest of the City of Asheville for all citizens. She felt this is a great opportunity for the NBDL to come to Asheville.

RESOLUTION BOOK NO. 26 – PAGE 389

CLOSED SESSION

At 6:56 p.m., Councilman Hay moved to continue their closed session discussions in Room 209 of the City Hall Building for the following reasons: (1) to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is N. C. Gen. Stat. sec. 160A-168, the Personnel Privacy Act – G. S. 143-381.11 (a) (1); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Betty Donoho, County of Buncombe, Western North Carolina Air Pollution Control Agency and City of Asheville – G. S. 143-381.11 (a) (3). This motion was seconded by Councilman Worley and carried unanimously.

At 8:10 p.m., Councilwoman Bellamy moved to come out of closed session This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – June 26, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF CITY OF ASHEVILLE EMPLOYEES IN PUBLIC SERVICE RECOGNITION PROGRAM

Mayor Sitnick read a proclamation recognizing several City of Asheville employees who participated in the Public Service Recognition Program. Employees recognized included Cathy Ball, Richard Bass, Jeff Trantham, Quentin Miller, Gladys McDaniel, John Kutscher, Keith Whittington, Gary Stamey, Tim Haynes, Mark Case, Joe Chennault, Harry Taylor and Tom Eggers. Mayor Sitnick noted that Gladys McDaniel, Jeff Trantham and Quentin Miller won awards for their respective category and Quentin Miller won the overall award for 2001.

II. CONSENT:

Vice-Mayor Cloninger asked to remove Consent Agenda "C" from the Consent Agenda, due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 12, 2001, AND THE WORKSESSION HELD ON JUNE 19, 2001

B. RESOLUTION NO. 01-92 - RESOLUTION AUTHORIZING THE SALE OF A VACANT LOT AT 125 IRIS DRIVE TO BRIAN K. PERRY

Summary: The consideration of a resolution authorizing the Mayor to convey 125 Iris Drive to Brian K. Perry in the amount of $12,200.

On June 12, 2001, the City Council directed the City Clerk to advertise for upset bids on 125 Iris Drive. The advertisement ran in the Asheville Citizen-Times on June 15, 2001, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Brian K. Perry in the amount of $12,200 was not upset and the sale to Brian K. Perry should be approved.

Approval of the resolution will authorize the sale of the property to Brian K. Perry for the amount of $12,200.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 391

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C. RESOLUTION AUTHORIZING THE SALE OF A PORTION OF 36 GROVE STREET TO BOC ENTERPRISES

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

D. RESOLUTION NO. 01-93 - RESOLUTION SETTING A PUBLIC HEARING ON JULY 10, 2001, TO CONSIDER THE DEMOLITION OF 191 SULPHUR SPRINGS ROAD

RESOLUTION BOOK NO. 26 – PAGE 392

E. RESOLUTION NO. 01-94 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE FOR A COMMUNITY MEETING ON TUESDAY, JULY 31, 2001, BEGINNING AT 7:00 P.M. IN THE WEST ASHEVILLE COMMUNITY CENTER LOCATED AT 970 HAYWOOD ROAD, ASHEVILLE, NORTH CAROLINA

RESOLUTION BOOK NO. 26 – PAGE 394

F. ORDINANCE NO. 2822 - BUDGET AMENDMENT FOR PRITCHARD PARK

Summary: The consideration of a budget amendment, in the amount of $4,000, for donations from the French Broad River Garden Club and the Asheville Downtown Association for Pritchard Park.

The City of Asheville staff met with several members of the French Broad River Garden Club about their interest in supporting the renovation of Pritchard Park. The Garden Club is able to make a donation in the amount of $3,000 for the beautification of the park space.

At a later date, the City of Asheville will place a plaque paid for by the French Broad River Garden Club in an area of the park to acknowledge their contribution.

City staff was also approached by the Asheville Downtown Association who expressed interest in the project and committed $1,000 towards the renovation.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Pritchard Park.

ORDINANCE BOOK NO. 19 – PAGE 185

G. MOTION SETTING A PUBLIC HEARING ON JULY 10, 2001, TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR AN ANCILLARY USE (PARKING LOT AND GRAVEL ACCESS DRIVE) IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT FOR THE HOT SPOT AT 103 NEW LEICESTER HIGHWAY

H. MOTION SETTING A PUBLIC HEARING ON JULY 10, 2001, TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A DUPLEX ON PROPERTY ZONED RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT AT 15 BROWNDALE ROAD IN THE OTEEN AREA

I. RESOLUTION NO. 01-95 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE HAW CREEK VOLUNTEER FIRE DEPARTMENT, THE RICEVILLE VOLUNTEER FIRE DEPARTMENT, THE WEST BUNCOMBE VOLUNTEER FIRE DEPARTMENT AND THE ENKA-CANDLER VOLUNTEER FIRE DEPARTMENT FOR FIRE PROTECTION SERVICES FOR ANNEXED AREAS

Summary: The consideration of a resolution authorizing the City Manager to enter into agreements with the Haw Creek Volunteer Fire Department, the Riceville Volunteer Fire Department, the West Buncombe Volunteer Fire Department and the Enka-Candler Volunteer Fire Departments for fire protection services for annexed areas.

With the annexations effective July 1, 2001, for the City of Asheville, there are four areas that the City is required to contract with volunteer fire departments for service under North Carolina General Statutes. The same standard fire protection contract applies to all four of the affected volunteer fire departments.

The four areas that are effective July 1, 2001, and their associated volunteer fire departments are as follows:

01A	Piney Mountain Road area	Haw Creek VFD
01B	Riceville Road area	Riceville VFD
01E	New Leicester Highway area	West Buncombe VFD
01F	Wedgefield Drive area	Enka-Candler VFD

Contracts have been provided to and accepted by the above listed volunteer fire departments. The contracts are consistent with requirements set forth in N.C. Gen. Stat. sec. 160A-49.1. The Statute require a five-year contractual period. The contract documents have been written to allow for year-to-year continuance after the mandatory period, if both parties are agreeable to continue the contract.

City staff recommends City Council authorize the City Manager to contract with the necessary agencies for fire protection services as required by N. C. Gen. Statutes for annexed areas.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA DUE TO CONFLICT OF INTEREST

RESOLUTION NO. 01-96 - RESOLUTION AUTHORIZING THE SALE OF A PORTION OF 36 GROVE STREET TO BOC ENTERPRISES

Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Summary: The consideration of a resolution authorizing the Mayor to convey a portion of 36 Grove Street to BOC Enterprises in the amount of $111,000.

On June 12, 2001, the City Council directed the City Clerk to advertise for upset bids on 36 Grove Street. The advertisement ran in the Asheville Citizen-Times on June 14, 2001, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from BOC Enterprises in the amount of $111,000 was not upset and the sale to BOC Enterprises should be approved.

Approval of the resolution will authorize the sale of the property to BOC Enterprises for the amount of $111,000.

Finance Department and Parks & Recreation staff recommends adoption of the resolution.

Councilman Hay moved for the adoption of Resolution No. 01-96. This motion was seconded by Councilman Worley and carried unanimously.

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III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE SOIL AND EROSION CONTROL ORDINANCE

At the request of City staff, Councilman Worley moved to postpone this public hearing indefinitely. This motion was seconded by Councilwoman Field and carried unanimously. City Attorney Oast stated that when this matter is brought before City Council in the future, it will be re-advertised.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR NON-RESIDENTIAL ACCESS ONTO RESIDENTIAL STREETS

ORDINANCE NO. 2823 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR NON-RESIDENTIAL ACCESS ONTO RESIDENTIAL STREETS

Mayor Sitnick opened the public hearing at 5:21 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to limit access by non-residential uses onto residential streets.

The Planning and Zoning Commission has recommended adoption of an amendment to the UDO limiting access by non-residential access onto residential streets. Access onto residential streets by non-residential uses located on corner and through lots can impact the residential character of the residential streets. Currently, the City Council often reserves a strip of residentially zoned property along the residential street frontage to limit access onto the residential street by non-residential uses. This results in a cumbersome zoning pattern and restricts the use of the residentially zoned property for buffering and other appropriate uses. The proposed standards would not apply to non-residential uses permitted in residential zones, such as churches, schools, and libraries, or to non-residential uses located in non-residential or mixed use zoning districts that have their only access onto residential streets. Non-residential uses located on corner lots, through lots, and other lots with frontage on more than one street would be required to have their access from the street that is abutted by similar uses. Access onto residential streets by non-residential uses located on corner lots would be permitted if certain conditions are met and the City's Traffic Engineer approves the proposed access. As proposed, the standards would preserve the residential character of streets that function primarily to provide access to residences. The proposed ordinance amendment identifies clear standards for access, making it easier for staff, developers, and citizens to understand and adhere to them.

The Planning and Zoning Commission voted unanimously to recommend approval of the wording amendment limiting access by non-residential uses onto residential streets. The Planning and Development staff recommends approval of the wording amendment.

Mr. Green responded to a question from Councilman Hay regarding the definition of a residential street. He said that City staff will develop a definition and bring it back for City Council consideration in the near future.

Mayor Sitnick closed the public hearing at 5:32 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2823. This motion was seconded by Councilman Peterson and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER AMENDING A PREVIOUSLY GRANTED CONDITIONAL USE PERMIT FOR THE CLINGMAN AVENUE CONDOMINIUMS

ORDINANCE NO. 2824 - ORDINANCE AMENDING A PREVIOUSLY GRANTED CONDITIONAL USE PERMIT FOR THE CLINGMAN AVENUE CONDOMINIUMS

At the request of Councilwoman Bellamy, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the consideration of amending a previously granted conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:35 p.m.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 6/12/01) and City Exhibit 4 (Staff Report dated 6/26/01). This public hearing was advertised on June 15 and 22, 2001.

Ms. Merten said that this is the consideration of a motion to amend the conditional use permit to allow offices as part of the previously approved Conditional Use Zoning request for the Clingman Avenue Condominiums (Merritt Park).

The property is located at the intersection of Merritt Street and Clingman Avenue (City Exhibit 5) and was rezoned Central Business District – Conditional Use Zoning district. The original conditional use permit was to allow the construction of a three story condominium complex with 16 units and a community room.

Mountain Housing Opportunities has requested an amendment to the conditional use permit for the Clingman Avenue Condominiums, now referred to as Merritt Park, to increase the mix of uses and allow the former community space to be utilized for 3,200 sq. feet of office space. The design of the office space will incorporate a large conference room that will still be available for use by the community. The total number of units in the project will remain unchanged at 16.

There have also been some minor changes to the building façade (City Exhibit 6) that were approved by the Planning & Development Director per the original conditional use permit.

Findings

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The City of Asheville Technical Review Committee reviewed the proposed use and found no health or safety concerns. The Project is required to meet the technical standards set forth in the UDO, the Asheville Standards and Specifications Manual, the North Carolina Building Code, and other applicable laws and standards which protect the public health and safety.

2) That the Project is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

3) That the Project will not substantially injure the value of the adjoining or abutting property.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located.

   The proposed use will create an appropriate transition from the commercial, urban land use pattern above to the historic, single family development below. And will be of similar scale and building materials as the surrounding development.

5) That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

   The Asheville City Plan 2010 and the West End Clingman Small Area plan indicate residential uses for this area.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The project was reviewed for compliance with technical standards by the City of Asheville Technical Review Committee, which includes representatives of the Water Resources

Department, the Fire Department, MSD, the Engineering Department, and the Public Works Department.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The City's traffic engineer has determined that the adjacent roads have more than adequate capacity to carry the traffic expected to be generated from this site.

Based on information available to the Planning & Development Department in advance of the public hearing, staff recommends approval of the amendment to the conditional use permit to allow office use as part of the development.

Councilwoman Field and Councilmen Hay, Peterson and Worley disclosed that they did talk to someone from Mountain Housing Opportunities about this issue (they were unaware that this amendment would be a quasi-judicial hearing), however, their discussions will not influence their decisions in any way.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, spoke about how this will benefit the neighborhood and how the neighborhood association has endorsed this request.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 5:45 p.m.

After discussion about the possibility of expanding the uses for the development, City Attorney Oast reviewed the legal notice and recommended to Council to confine their motion to only permit office use as part of the development.

Councilwoman Field moved to adopt Ordinance No. 2824 to amend the conditional use permit to allow office use as part of the development; and, to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Worley and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER AN APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR A COMMUNITY DEVELOPMENT BLOCK GRANT SECTION 108 GUARANTEED LOAN AND AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR THE REHABILITATION OF BUILDINGS IN SOUTH PACK SQUARE

RESOLUTION NO. 01-97 - RESOLUTION AUTHORIZING SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OF APPLICATIONS FOR A SECTION 108 GUARANTEED LOAN AND AN ECONOMIC DEVELOPMENT INITIATIVE GRANT

At the request of Councilwoman Bellamy, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 5:50 p.m.

Ms. Charlotte Caplan, Community Development Director, said that this is a public hearing on the consideration of an application to the U.S. Dept. of Housing and Urban Development

(HUD) for a Community Development Block Grant (CDBG) Section 108 Guaranteed Loan of $800,000 and an Economic Development Initiative (EDI) Grant of $340,000 for the rehabilitation of buildings in South Pack Square. This public hearing was advertised on June 21, 2001.

Eagle/Market Streets Development Corporation (EMSDC) has requested that the City apply to HUD for a total of $1,140,000 in linked grant and loan funding to assist in a $2.4 million project that will acquire and rehabilitate three substandard buildings in the South Pack Square area and construct a fourth on a vacant site between the existing buildings. The completed buildings will be leased as a mixture of retail, office, affordable housing, and market rate housing units.

Location

The buildings are:

25 South Market Street (PIN # 9648-06-49-6888) – also known as the Del Cardo Building;
19 Eagle Street (PIN # 9648-06-49-6834) – the row of stores on the south side of Eagle Street;
3 Wilson Alley (PIN # 9648-06-49-5793) – a small building, formerly used as a crack house.

The land for the infill construction is part of the 19 Eagle Street parcel, but fronts on S. Market Street.

EMSDC has already acquired 25 South Market Street and 3 Wilson Alley, using CDBG funds, and is in negotiation with the owner of 19 Eagle Street.

Financial Plan

Total project cost is estimated at $2,428,500. The proposed sources of funding are:

Section 108 Guaranteed Loan	$800,000
Economic Development Initiative grant	$340,000
CDBG	$530,000 (already approved)
Equity contributions	$758,500
TOTAL	$2,428,500

To receive the Section 108 loan guarantee, the City must pledge its future CDBG entitlement grants as security, backed up by a first mortgage on the real estate. The EDI program is a competitive grant program designed by HUD to provide additional support for projects receiving Section 108 loan funding.

Staff has reviewed the financial plans, put together by EMSDC with assistance from the National Development Corporation, and believe that this is a viable project. Together with some private sector initiatives already under way, it will bring an entire block back into productive economic activity and should transform the area.

A public hearing is required before the Section 108 application can be submitted.

Staff recommends, after the public hearing, approving the resolution which authorizes the Mayor to submit applications for an $800,000 Section 108 Guaranteed Loan and a $340,000 EDI grant.

Ms. Caplan then explained how the Section 108 Guarantee Loan program is administered.

Mayor Sitnick urged citizens to write to their state legislators to encourage them not to diminish the opportunity provided by Historic Preservation Tax Credits.

Mayor Sitnick closed the public hearing at 6:06 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 01-97. This motion was seconded by Councilman Worley and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2825 - ORDINANCE ADOPTING THE FISCAL YEAR 2001-02 ANNUAL OPERATING BUDGET

Mayor Sitnick said that a public hearing was held on the Fiscal Year 2001-02 Annual Operating Budget on June 12, 2001.

Budget Director Ben Durant said that this report presents the Fiscal Year 2001/2002 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal 2001/2002 Annual Operating Budget was presented to City Council on May 10, 2001. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the budget along with a notice of the public hearing was published on June 1 and June 8, 2000. The City Council conducted a public hearing on the budget on June 12, 2001.

The Fiscal Year 2001/2002 Annual Operating Budget is balanced with a tax rate of $0.56 per $100 of assessed valuation, which reflects no increase over the current property tax rate. All essential City programs and services are maintained.

The budget as currently presented to City Council includes a net budget of $88,739,599 and a General Fund appropriation of $64,263,688. Key items for Council's review are summarized and discussed below:

- Outside Agency funding is presented in accordance with the Outside Agency Committee recommendations to allow most agencies that currently receive City funding to receive the same appropriation for FY 2001/2002 as originally appropriated in FY 2000/2001. Funding for the A-B Community Relations Council is maintained at $63,000 and a new, one time appropriation of $1,000 is provided for the Kids Voting program.

- Civic Center fees have been revised to reflect the charging of arena changeover fees during hockey season to trade show tenants whose events generate less than $35,000 in ticket sales. Arena change-over fees will be waived for events generating $35,000 or more in ticket sales or for tenants who held events at the Civic Center prior to the inception of the hockey program.

- Additional appropriations to the Civic Center Operating Fund in the amount of $637,897 have been added to the FY 2001/2002 Annual Operating Budget presented to Council to support the National Basketball Developmental League (NBDL). This appropriation is balanced with additional Civic Center operating revenues of $490,550 and an increased transfer from the General Fund of $147,347.

- The increased General Fund transfer to the Civic Center Operating Fund of $147,347 is funded with an offsetting reduction to the Manager's contingency account, which has been reduced from $300,000 to $152,653. As a result of the reduction to the contingency account, no increase to the General Fund Budget was needed to fund the additional transfer to the Civic Center Operating Fund.

- The budget as currently presented to City Council includes a merit package which allows for an average increase in employee pay of four percent. Beginning July 1, 2001, employee performance appraisals will be conducted according to normal schedules, however, merit pay increases that may result will be delayed until the North Carolina General Assembly makes a final decision regarding local government reimbursements payments. If the General Assembly discontinues reimbursement payments during FY 2001/2002 and provides no additional replacement revenues, the City may need to reduce the funding available for merit pay increases. If reimbursement revenues are restored, or sufficient replacement revenues are provided, employees will receive full merit awards, retroactive to their original eligibility date.

Staff requests that Council review the FY 2001/2002 Annual Operating Budget and make necessary recommendations or adjustments followed by adoption of the budget ordinance.

Upon inquiry of Vice-Mayor Cloninger, City Manager Westbrook explained that due to the uncertainty of the state reimbursements, all merit and cost of living increases will be temporarily held until we hear about the reimbursement money from the State. This will only affect employees who have anniversary dates during approximately the first six weeks of the new fiscal year (or until the State budget is passed). In the unlikely event that the State withholds the full $2.2 million reimbursement, it could potentially mean a reduction in services for citizens and layoffs for employees. However, by temporarily holding merit and cost of living pay for approximately 6 weeks until the General Assembly passes a budget, he has preserved the option of reducing merit pay rather than laying off employees in this worst case scenario. He did not feel the State will discontinue the funding; however, this is a decision of the General Assembly and he would rather have the option to preserve jobs at this critical point. Again, the City expects to hear something from the State by the end of August. As soon as we are informed that we will be receiving all or a portion of the reimbursements, merit and cost of living increases that have been held in abeyance will be processed retroactive back to the employees' anniversary date.

Upon inquiry of Councilwoman Bellamy, Mr. Westbrook explained what other contingency plans there were in the event the City does not receive the state reimbursement.

There was a brief discussion on the details of the Civic Center operating budget as it related to the NBDL, and also the compromise with the Regional Water Authority's budget (which Authority agreed to a 2.5% increase).

Upon inquiry of Mayor Sitnick regarding her concern of the Criminal Justice Information Services (CJIS) monies, Finance Director Bill Schaefer gave City Council a brief update on where that program stands at the present time.

Upon inquiry of Mayor Sitnick, Transit Services Director Bruce Black said that the Transit Center enclosure should be completed by mid-November but stressed he would do everything he could to have the enclosure completed by the cold months.

Mayor Sitnick stressed how seriously City Council takes their responsibility on how they spend the City taxpayer's money. Even though she would have preferred putting more money in traffic calming, transportation services, and an across the board minimal reduction to outside agencies, she did feel this is a fat-free and waste-free budget.

Councilman Peterson also said that there are minor items in the budget he did not agree with, but all of Council has been allowed to voice their concerns. He also agreed that this has been a tight budget year.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2825. This motion was seconded by Councilman Worley and carried unanimously.

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At 6:55 p.m., Mayor Sitnick announced a 15 minute recess.

V. NEW BUSINESS:

A. RESOLUTION NO. 01-98 - RESOLUTION DESIGNATING THE SILVERMAN COMPANY STEEL ROOFTOP SIGN AT 48 SWANNANOA RIVER ROAD AS A LANDMARK SIGN

Historic Resources Director Maggie O'Connor said that this is the consideration of a resolution designating the Silverman Company steel rooftop sign at 48 Swannanoa River Road historically significant and/or a landmark sign.

The owner of the Silverman Company steel rooftop sign located at 48 Swannanoa Road requests landmark sign designation of the 6 feet x 64 feet (384 square feet) steel roof top Silverman Company sign. The sign erected in 1924 has been maintained over the years. Sec. 7-13-2(c) of the Unified Development Ordinance (UDO) "Signs Exempt from Regulation," provides in paragraph 12 that landmark or historically significant signs are exempt from regulation, and that signs may be designated historically significant and/or landmark signs by the city council provided the signs satisfy one or more of the following criteria:

A. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.

B. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.

C. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.

Pursuant to UDO sec. 7-3-4(a)(2), the Historic Resources Commission (HRC) may recommend to the City Council that certain objects be designated as historic or landmark. Though not specifically mentioned, this function includes signs. At its February 9, 2000, meeting, the Historic Resources Commission of Asheville and Buncombe County (HRC) reviewed a request for landmark sign designation for the Silverman Company sign. By a unanimous vote the motion to recommend that designation passed. The HRC found the Silverman Company steel rooftop sign meets Criteria A; Criteria B because it denotes a local business; and Criteria C because a steel company made the sign out of steel for their business and, it is the only one of its kind that the Silverman Company designed and built.

This is an unusual case in that the Silverman sign, despite its historic characteristics, appears to be a relatively standard roof-top sign. Staff recognizes that approval of this request may result in similar requests for similar type signs that do not have the same level of historicity as the Silverman sign. By recommending approval, the HRC has taken a broad view with regard to the intent of the ordinance. If Council prefers that the ordinance be more tightly construed so that signs like the Silverman sign and Dreamland Flea Market sign are not considered eligible for such designation, staff would appreciate a discussion on the intent of the ordinance in order to provide appropriate direction to HRC and to modify our code requirements and guidelines as needed.

The HRC recommends approval of the request to designate the Silverman Company steel rooftop sign at 48 Swannanoa River Road historically significant and/or a landmark sign. If Council wishes to designate the Silverman Company steel rooftop sign as a landmark or historic sign, adoption of a resolution is required. If Council wishes to deny the request, a motion to that effect may be made, but is not required, or Council may vote down the resolution. If council denies the request, staff asks that you assist us in clarifying the intent of the ordinance that allows for the designation of historically significant/landmark signs.

Ms. O'Connor reported back to Council the information they requested at the June 19, 2001, worksession.

Vice-Mayor Cloninger stated that he could not see how this sign is significant to Asheville. He felt the sign was not responsive to the "B" criteria of the ordinance. He feels this may be an attempt to circumvent the sign ordinance.

Upon inquiry of Councilwoman Field, Ms. O'Connor said that if the sign is not designated as a landmark or historic sign, they must remove the sign as it does not meet the sign ordinance.

Councilman Peterson felt that taking into the context of what kinds of businesses that were in the area at the time the building was built, he felt the sign did quality as a landmark sign.

Mayor Sitnick was concerned about setting a precedence if Council approves this sign.

Even though Councilman Worley felt that the sign appears to be the original sign and the Silverman Company is part of the history of the City of Asheville, he too, was concerned about setting a precedence for these type signs.

Mr. Kevin Rollins and Ms. Hazel Fobes each spoke in favor of designating the sign as a historic sign.

Councilman Hay suggested that we invite the HRC members to a worksession to get their assistance in clarifying the intent of the ordinance allowing for the designation of historically significant/landmark signs.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 01-98. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Vice-Mayor Cloninger voting "no".

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B. RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Mayor Sitnick explained that she and Councilman Hay, liaison to the Civic Center Commission, will be meeting with Civic Center Commission Chair Carl Mumpower and she asked that City Council consider posting appointments to the Commission until after that meeting. Therefore, Councilman Worley moved to postpone taking action on the Civic Center Commission appointments. This motion was seconded by Councilwoman Bellamy and carried unanimously.

City Attorney Oast noted that even though the appointments expire on June 30, 2001, all Commission members are appointed to serve until their successor has been appointed.

C. RESOLUTION NO. 01-99 - RESOLUTION REAPPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Cloninger said that the term of Gene Bell, as a member on the Civil Service Board, expired on May 21, 2001.

On June 5, 2001, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Bell as a member of the Civil Service Board to serve an additional two year term, term to expire on May 21, 2003, or until his successor has been appointed.

Councilwoman Bellamy moved to reappoint Gene Bell as a member to the Civil Service Board, term to expire May 21, 2003, or until his successor has been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

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D. RESOLUTION NO. 01-100 - RESOLUTION APPOINTING MEMBERS TO THE CLEAN AIR COMMUNITY TRUST BOARD

Vice-Mayor Cloninger said that on June 6, 2000, Resolution No. 00-88 was adopted which established the Clean Air Community Trust Board. City Council must name two trustees to the Trust Board.

On June 12, 2001, City Council interviewed Ms. Tracy Kreider, Ms. Kimberly Kirstein, Ms. Molly Rose and Mr. Ned Guttman. Mr. Mike Lewis and Mr. Keith Thomson are also candidates for consideration.

Tracy Kreider received 4 votes, Kimberly Kirstein received 1 vote, Molly Rose received 0 votes, Ned Guttman received 0 votes, Mike Lewis received 3 votes and Keith Thomson received 6 votes. Therefore, Tracy Kreider and Keith Thomson were appointed to each serve a two year term, terms to expire June 1, 2003, or until their successors have been appointed.

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E. RESOLUTION NO. 01-101 - RESOLUTION APPOINTING MEMBERS TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Vice-Mayor Cloninger said that Ashly Maag has resigned from the Educational Access Channel Commission leaving an unexpired term. In addition, the terms of Michelle Price, Patti Cutspec, Gerry Kovach, Greg Dillingham and Rusty Holmes expired on June 1, 2001.

On June 5, 2001, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Patti Cutspec (City School representative), Gerry Kovach (County School representative), Greg Dillingham (UNC-Asheville representative), Rusty Holmes (A-B Technical

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Community College representative) and Michelle Price (at large representative), to each serve a four-term respectively, terms to expire June 1, 2005, or until their successors are appointed.

On June 12, 2001, City Council interviewed Adam Baylus and Kimberly Kirstein for the unexpired term of Ms. Maag. Wally Bowen is also a candidate for consideration.

Adam Baylus received 6 votes, Kimberly Kirstein received 1 vote, and Wally Bowen received 0 votes. Therefore, Adam Baylus was appointed to serve the unexpired term of Ms. Maag, term to expire June 1, 2003, or until his successor has been appointed.

Councilman Worley moved to reappoint Patti Cutspec (City School representative), Gerry Kovach (County School representative), Greg Dillingham (UNC-Asheville representative), Rusty Holmes (A-B Technical Community College representative), and Michelle Price (at large representative) to each serve a four-term respectively, terms to expire June 1, 2005, or until their successors are appointed. This motion was seconded by Councilwoman and carried unanimously.

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F. RESOLUTION NO. 01-102 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Cloninger said that Bruce Mulkey and Crystal Pace have resigned from the Greenway Commission.

On June 5, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) appoint Linda Giltz to serve the unexpired term of Mr. Mulkey, term to expire December 31, 2002; and (2) appoint Phyllis Stiles to serve the unexpired term of Ms. Pace, term to expire December 31, 2003.

Councilman Worley moved to appoint Linda Giltz to serve the unexpired term of Mr. Mulkey, term to expire December 31, 2002; and (2) appoint Phyllis Stiles to serve the unexpired term of Ms. Pace, term to expire December 31, 2003. Both respective terms are until their successor have been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

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G. RESOLUTION NO. 01-103 - RESOLUTION APPOINTING MEMBERS TO THE HISTORIC RESOURCES COMMISSION

Vice-Mayor Cloninger said that the terms of Allen Roderick, Betty Lawrence and Kevan Frazier expire on July 1, 2001.

On June 12, 2001, City Council interviewed Annamarie Rickman, Marsha Shortell and Peggy Gardner.

Annamarie Rickman received 4 votes, Marsha Shortell received 2 votes, and Peggy Gardner received 1 vote. Therefore, Annamarie Rickman was appointed to serve a three year term, term to expire July 1, 2004, or until her success has been appointed.

Councilwoman Field moved to reappoint Allen Roderick and Kevan Frazier to the Historic Resources Commission to each serve an additional 3 year term respectfully, terms to expire July

1, 2004, or until their successors have been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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H. RESOLUTION NO. 01-104 - RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Vice-Mayor Cloninger said that on June 27, 2000, City Council adopted a revised ordinance regulating noise in the City of Asheville. Said ordinance established a Noise Ordinance Appeals Board.

On June 5, 2001, it was the consensus of City Council to instruct the City Clerk to (1) appoint Susan Andrew as a regular member to serve a two year term; and (2) appoint Scott Fowler as an alternate member to serve a two year term.

Councilman Peterson moved to (1) appoint Susan Andrew as a regular member to serve a two year term, term to begin immediately and expire on July 1, 2003; and (2) appoint Scott Fowler to serve as an alternate member to serve a two year term, term to begin immediately and expire on July 1, 2003. Both respective terms will be until their successors have been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 408

I. RESOLUTION NO. 01-105 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Cloninger said that due to the recent death of Mr. Lionel Williams, there currently exists a vacancy on the Planning & zoning Commission.

On June 12, 2001, City Council interviewed Ms. Selina Sullivan. Ms. Jane Mathews is also a candidate for consideration.

Selina Sullivan received 7 votes and Jane Mathews received 0 votes. Therefore, Selina Sullivan was appointed to serve the unexpired term of Mr. Williams, term to expire August 14, 2002, or until her successor has been appointed.

RESOLUTION BOOK NO. 26 – PAGE 409

J. RESOLUTION NO. 01-106 - RESOLUTION APPOINTING A MEMBER TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Vice-Mayor Cloninger said that there currently exists a vacancy on the Police Officers and Firefighters Disability Review Board.

On June 5, 2001, the City Clerk was instructed to prepare the proper paperwork to appoint Dr. Alexander Maitland III to fill the unexpired term of Dr. Michael Keleher, term to expire July 19, 2002, or until his successor has been appointed and qualified.

Councilman Worley moved to appoint Dr. Alexander Maitland III to fill the unexpired term of Dr. Michael Keleher, term to expire July 19, 2002, or until his successor has been appointed. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 410

K. RESOLUTION APPOINTING MEMBERS TO THE TAXICAB ADVISORY BOARD

Vice-Mayor Cloninger said that Ordinance No. 2773 adopted on November 28, 2000, established the Taxicab Advisory Board. Said Board shall consist of five members.

On June 12, 2001, City Council interviewed Mr. Richard Mann.

Since the Taxicab Advisory Board is to be made up of five members, the City Clerk was directed to advertise for vacancies in the next quarterly appointment process. City Clerk Burleson was also directed to contact Mr. Mann and advise him of the circumstances of this Board and this in no way reflects his excellent interview with City Council.

L. RESOLUTION NO. 01-107 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Vice-Mayor Cloninger said that S. Douglas Spell has resigned as a member of the Board of Directors of Victoria of Asheville Inc., thus leaving an unexpired term.

On June 5, 2001, the City Clerk was instructed to prepare the proper paperwork to appoint Mr. Jeff Richardson, Assistant City Manager, as a member of the Board of Directors of Victoria of Asheville Inc. to fill the unexpired term of Mr. Spell, term to expire November 29, 2003, or until his successor has been appointed.

Councilman Worley moved to appoint Jeff Richardson, Assistant City Manager, to fill the unexpired term of Mr. Spell, term to expire November 29, 2003, or until his successor has been appointed. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 411

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 8-21, 2001: Hal Blakely (Water), William Hensley (Sanitation), Lisa Young (Finance), Christine Gordner (Police), Deanna L. Sluder (Police), Jessy Lynn Smith (Streets), John Laughter (Water), John Laughter (Water), Frank Griffin (Water), David Jones (Water) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City has filed a Complaint on June 14, 2001, as follows: City v. Anderson & Son Construction Co., Inc. This is a complaint for recovery of damages to water main located at 2 Buckstone Place. This lawsuit will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

CLOSED SESSION

At 7:55 p.m. Councilwoman Bellamy moved to go into closed session for the following reasons (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease – G. S. 143-318.11 (a) (5); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Henderson County, Cane Creek Water and Sewer District, Asheville-Buncombe-Henderson Water Authority, Buncombe County, and City of Asheville – G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Worley and carried unanimously.

At 9:27 p.m., Councilman Hay moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:27 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – July 10, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO AGENDA

Mayor Sitnick requested that the following two items be added under "Other Business": (1) air quality; and (2) I-26 widening project in Henderson County.

I. PROCLAMATIONS:

A. RECOGNITION OF COL. ROBERT MORGAN

Mayor Sitnick read a proclamation recognizing Col. Robert Morgan for his many years of fine service to our country and to our community.

B. PROCLAMATION PROCLAIMING JULY, 2001, AS "RECREATION AND PARKS MONTH"

Councilman Worley read the proclamation proclaiming July, 2001, as "Recreation and Parks Month" in the City of Asheville. He presented the proclamation to Mr. Tom House, member of the Recreation Board, who thanked City Council for their support.

C. PROCLAMATION PROCLAIMING JULY 9-15, 2001, AS "CHILDREN IN CAR SAFETY WEEK"

Mayor Sitnick read the proclamation proclaiming July 9-15, 2001, as "Children in Car Safety Week " in the City of Asheville. She presented the proclamation to Ms. Julie Kepple, who briefed City Council on some activities taking place during the week.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 26, 2001

B. ORDINANCE NO. 2826 - BUDGET AMENDMENT TO APPROPRIATE A GRANT FROM THE N.C. PARKS AND RECREATION TRUST FUND FOR THE BURTON STREET COMMUNITY CENTER PLAYGROUND

Summary: The consideration of a budget amendment, in the amount of $50,000, for an appropriation from the North Carolina Parks and Recreation Trust Fund.

The City of Asheville applied for grant funds in January 2001 to the North Carolina Parks and Recreation Trust Fund. The grant was recently awarded in the amount of $50,000 and designated to pay for the cost associated with renovating the playground and general park improvements at the Burton Street Community Center.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Burton Street Community Center playground.

ORDINANCE BOOK NO. 19 – PAGE 202

C. **MOTION SETTING A PUBLIC HEARING ON JULY 24, 2001, TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTIES ON OAK HILL DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE**

D. **MOTION SETTING A PUBLIC HEARING ON JULY 24, 2001, TO REZONE PROPERTY AT 35 AND 47 ACTON CIRCLE AND 7 ACTON WOODS ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

E. **MOTION SETTING A PUBLIC HEARING ON JULY 24, 2001, TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARDS REQUIRING THAT ALL RESIDENTIAL LOTS ABUT A PUBLICLY MAINTAINED STREET IN BINTER SUBDIVISION LOCATED AT 296 DEAVERVIEW ROAD**

F. **RESOLUTION NO. 01-108 - RESOLUTION AUTHORIZING EXECUTION OF "LANDLORD'S CONSENT" IN CONNECTION WITH THE REFINANCING BY FRENCH BROAD GOLF CENTER OF CERTAIN PROPERTY LEASED FROM THE CITY**

Summary: The consideration of a resolution authorizing City Manager to execute consent for refinancing by tenant in city-owned property.

The City owns the land on which the Asheville Regional Airport is located. The Airport Authority leases this land from the City. Some of the land subject to the lease is located south of N.C. Highway 280, but is a "clear zone," and is not actually improved with Airport facilities. Some of this property is also used by the French Broad Golf Center for its clubhouse access road.

The owners/operators of FBGC have pledged their lease from the City as security for a private loan that they are now seeking to re-finance. The lender bank is requiring the FBGC owners to obtain the City's consent as landlord to this refinancing, and to provide the bank with certain notices under the lease.

This is a standard practice in capital lease financing, which is becoming an increasingly prevalent way of doing business. There are some details to be negotiated in the language of the document, but executing this "Landlord's Consent" will not impair the City's ownership interest, and the resolution makes the City's execution subject to the City Attorney's approval.

If Council wishes to consent to the refinancing of FBGC's loan and the transfer of the lease to another lender as security, approval of the resolution is recommended.

RESOLUTION BOOK NO. 26 – PAGE 412

G. RESOLUTION NO. 01-109 - RESOLUTION AUTHORIZING THE CITY MANGER TO ENTER INTO A LICENSE AGREEMENT WITH TRITON PCS PROPERTY COMPANY LLC FOR A CONCEALED WIRELESS COMMUNICATION FACILITY AT 300 MERRIMON AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 300 Merrimon Avenue.

The Notice of Intent to enter into a License Agreement with Triton PCS Property Company was published on Wednesday, June 27, 2001, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested,

The proposed License Agreement provides for Triton to rehabilitate the training tower in accordance with plans approved by City staff and the State Historic Preservation Office at an estimated cost of $60,000. Triton will install a 15' flag pole on top of the training tower which will house their concealed wireless communication facility along with a 9' x 13' equipment shed on the ground at the rear of the building. The term of the License Agreement will be 5 years with one 4.5 year renewal period. Triton will pay a License Fee of $14,400 the first year with a 4% annual increase each year thereafter.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 413

H. RESOLUTION NO. 01-110 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO ENTER INTO A RENEWAL OF A LEASE/LICENSE AGREEMENT WITH MOTIENT COMMUNICATIONS INC. FOR ITS ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding renewal of a License Agreement with Motient Communications, Inc., for an antenna at 36 Reservoir Road.

The property at 36 Reservoir Road is the site of the former White Fawn Reservoir. In recent years the site was used as a beneficial fill site for the City of Asheville. Currently, three telecommunication towers are located on the property and the City of Asheville leases antenna space on two of the towers and ground space for related equipment to a total of eight tenants. One tower is not in use. The property is the proposed future site of the "Sister Cities Park."

Motient Communication, Inc. has operated an antenna and related equipment at the site since October, 1995. The antenna is located on the tower known as the "BellSouth Tower" which is immediately west of the proposed Sister Cities Park. The proposed License Agreement will enable Motient to continue operating an antenna at that site; however, there is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Motient will pay a License Fee of $5,400 the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee Motient will pay a Utility Fee of $150.00 per annum.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 414

I. RESOLUTION NO. 01-111 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE ADOPTED BY THE N.C. DEPARTMENT OF CULTURAL RESOURCES

Summary: The consideration of a resolution authorizing the Mayor to sign an amendment to the 1997 Municipal Records Retention & Disposition Schedule.

On September 23, 1997, by Resolution No. 97-158, the City approved the Municipal Records Retention and Disposition Schedule issued August 15, 1997, by the N. C. Department of Cultural Resources, Division of Archives and History.

The N. C. Department of Cultural Resources has now amended said Schedule. The first amendment to Standard 3 (Budget and Fiscal Records) covers the Escheat and Unclaimed Property File by amending the retention period for this file. The second amendment to Standard 15 (Police Department Records) clarifies the minimum retention period for items in the Communications Records File.

It is in the best interest of the City of Asheville to promote municipal records management as provided by the N. C. Department of Cultural Resources, Division of Archives and History by adopting these amendments.

Staff recommends City Council authorize the Mayor to execute an amendment dated June 15, 2001, to the Municipal Records Retention and Disposition Schedule.

RESOLUTION BOOK NO. 26 – PAGE 415

J. RESOLUTION NO. 01-112 - RESOLUTION AUTHORIZING THE CITY TO JOIN IN AN EASEMENT TO THE N.C. DEPT. OF TRANSPORTATION PERMITTING USE OF PROPERTY AT THE INTERSECTION OF BREVARD ROAD AND SHELBURNE ROAD FOR RIGHT-OF-WAY PURPOSES

Summary: The consideration of a resolution authorizing City Manager to execute an easement to NCDOT.

The City previously owned the property at the intersection of Brevard Road, Shelburne Road, and I-240, now occupied by the National Guard Armory. This property was deeded to the State of North Carolina in August of 1960. The deed contains restrictions that essentially require the property to be used in perpetuity "for military purposes."

In connection with the recent improvements to Brevard Road, the State DOT redesigned the Shelburne Road / Brevard Road intersection in the area of the National Guard Armory, essentially cutting away and stabilizing the dirt bank on the northern side of the road. In order to accommodate this, the State (for the National Guard) wishes to execute an easement to DOT.

The State has requested that the City acknowledge that the use of the National Guard property in connection with the intersection redesign does not violate the applicable restrictions in the deed, and to join in the easement.

Because the subject property continues to be used for a National Guard Armory, and the use of a small portion of it for the intersection redesign neither interferes with nor is inconsistent with that use, it does not appear to violate the 1960 deed restriction to military uses.

If Council agrees that the use restrictions on the property are not violated by the encroachment, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 26 – PAGE 416

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE DEMOLITION OF 191 SULPHUR SPRINGS ROAD

City Manager Westbrook said that within the last few days, 191 Sulphur Springs Road was demolished by the owner. Therefore, the public hearing will not be necessary.

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR AN ANCILLARY USE (PARKING LOT AND GRAVEL ACCESS DRIVE) IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT FOR THE HOT SPOT LOCATED AT 103 NEW LEICESTER HIGHWAY

ORDINANCE NO. 2827 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR AN ANCILLARY USE (PARKING LOT AND GRAVEL ACCESS DRIVE) IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT FOR THE HOT SPOT LOCATED AT 103 NEW LEICESTER HIGHWAY

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use permit process. This process is the consideration of granting a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:23 p.m.

All of City Council, except for Councilman Peterson, disclosed that they either drove by or visited the site in question.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on June 29 and July 6, 2001.

Mr. Green said that this is the consideration of a motion to issue a Conditional Use Permit for an ancillary use (parking lot and gravel access drive) in an RM-16 Residential Multi-Family High Density District for property located at 103 New Leicester Highway (City Exhibit 3 – Location Map).

The applicant is requesting a Conditional Use Permit (CUP) to permit the planting of a landscape buffer and construction of a gravel access drive on residentially zoned property (City Exhibit 5 – Site Plan). The landscape buffer will screen the recently remodeled Hot Spot gas station/convenience store from the adjacent residential uses; the gravel access drive will provide access to mechanical equipment located at the rear of the store. The subject property contains 0.25 acres. The commercially zoned lot upon which the Hot Spot is located is not large enough to accommodate the remodeled gas station/convenience store, the required landscaping and buffering, and the gravel access drive. The residentially zoned lot behind the commercial use, which is owned by the applicant, offers a good location for the landscape buffer. The property is vacant with several existing trees located on it. The existing trees will be incorporated into the required buffer. A gravel access drive has been constructed to provide for access by service personnel to the mechanical equipment located behind the store. The gravel access drive extends approximately 15 feet into the residential zoning district. A landscape buffer ranging in width from 10 to 30 feet buffers the gravel drive from adjacent residential properties.

The Technical Review Committee (TRC) reviewed this project and took action to approve with conditions. All conditions identified by TRC have been met. This project meets all the technical standards for ancillary commercial uses in a residential district. Staff review of this application determined that all of the technical standards of the ordinance have been met. No Traffic Impact Analysis was required for this project. The site plan submitted and the conditions identified by City staff assure that the impacts of the proposed project on the surrounding uses are mitigated.

Conditional Use Findings: The findings that must be made by City Council in the issuance of a CUP for the project are listed below with staff analysis for each standard.

1. The proposed use or development of the land will not materially endanger the public health and safety. The planting of the landscape buffer will protect adjacent residential uses from the noise and light generated by the commercial use. The gravel access drive will enable service personnel to access the mechanical equipment for maintenance purposes.
2. The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region. The landscape buffer will enhance the quality of life of those living in the adjacent residential properties by minimizing the impacts of noise and light.
3. The proposed use or development of the land will not substantially injure the value of adjoining or abutting property. The establishment of a landscape buffer on this property will not injure the value of adjoining properties. Many of the existing trees will be preserved and additional trees will be planted. The gravel access drive will be located adjacent to the commercial structure and will be screened from view.
4. The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. The development of the residentially zoned property will be minimal. The only development proposed for this property will be limited to a narrow gravel access drive approximately 15 ft in length.
5. The proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the City. The Asheville City plan 2010 appears to show this area as commercial.

6. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. All services are available at this location, as confirmed during the review of the proposed development by the TRC.
7. The proposed use will not cause undue traffic congestion or create a traffic hazard. The landscape buffer and gravel access drive will not create a traffic hazard. The commercial use on this property is a gas station /convenience store that has been extensively remodeled. Plans for the renovation were reviewed and approved by the City's Traffic Engineer. Due to the low volume of traffic that will be generated by the use, no Traffic Impact Analysis was required.

The proposed project is a landscape buffer that will buffer adjacent residential properties from the gas station/convenience store and a gravel drive that will provide access to the mechanical equipment located at the rear of the store. The approval of this ancillary use in this residential district holds the line on commercial intrusion into the residential zone. Under the ancillary use standards, no further expansion is possible. The residential zoning of this parcel reserves the parcel for residential use at some point in the future.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council issue the Conditional Use Permit for an ancillary use (landscape buffer and gravel access drive) to be located at 103 New Leicester Highway with the condition that lights located at the rear of the store shall be located so as not to shine onto adjacent residential properties. These lights shall be full cut-off types and directed away from the residential properties.

Mr. Wilton Jordon, applicant, spoke in support of his request.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 5:38 p.m.

Councilman Worley moved to adopt Ordinance No. 2827 to approve the conditional use permit with the condition that lights located at the rear of the store shall be located so as not to shine onto adjacent residential properties and that these lights shall be full cut-off types and directed away from the residential properties; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 204

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A DUPLEX ON PROPERTY ZONED RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT LOCATED AT 15 BROWNDALE ROAD IN THE OTEEN AREA

ORDINANCE NO. 2828 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A DUPLEX ON PROPERTY ZONED RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT LOCATED AT 15 BROWNDALE ROAD IN THE OTEEN AREA

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use permit process. This process is the consideration of granting a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Councilmen Peterson and Worley disclosed that they visited the site.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:40 p.m.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 6/26/01) and City Exhibit 4 (Staff Report dated 7/10/01). This public hearing was advertised on June 29 and July 6, 2001.

Mr. Green said that this is the consideration of a motion to issue a conditional use permit for a duplex on property zoned RS-8 located at 15 Browndale Road in the Oteen area (City Exhibit 5 – Location Map).

Pamela Cunningham has submitted an application to construct a 1660 sq. ft. duplex in a single-family residential zoning district on a .17 acre parcel.

The proposed site plan and building elevation drawings meet the requirements of the Unified Development Ordinance (UDO). The proposed duplex will be constructed with a single front entrance, with the parking located to the rear of the building (City Exhibit 6 – Building Elevation) (City Exhibit 7 – Site Plan).

The applicant submitted revised plans that address the conditions of the Technical Review Committee (TRC) approval. A Transportation Impact Analysis was not required for this project.

Findings:

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The City of Asheville TRC reviewed the proposed project and found no health or safety concerns. The Project is required to meet the technical standards set forth in the UDO, the Asheville Standards and Specifications Manual, the North Carolina Building Code, and other applicable laws and standards which protect the public health and safety.

2) That the Project is reasonably necessary for the health and general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

   The proposed duplex will provide an opportunity infill housing in an established neighborhood.

3) That the Project will not substantially injure the value of the adjoining or abutting property.

   The proposed duplex will be of a scale and design in keeping with the other homes in the neighborhood (see comment regarding Condition 4 below).

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located.

The proposed use will be constructed so that there is only a single entrance visible from the street. The size and orientation of the building is similar to other single family development in the area. The parking will be located to the rear and screened with appropriate landscaping.

5) That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City.

The Asheville City Plan 2010 indicates residential uses for this area.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project was reviewed for compliance with technical standards by the City of Asheville TRC, which includes representatives of the Water Resources Department, the Fire Department, MSD, the Engineering Department, and the Public Works Department.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The City's Traffic Engineer has determined that the adjacent roads have more than adequate capacity to carry the traffic expected to be generated from this site.

Based on information available to the Planning & Development Department in advance of the public hearing, staff recommends approval of the conditional use permit to allow construction of a duplex in an RS-8 zoning district.

Mr. Green said that one issue City staff would like to added to the conditional use permit, if granted by City Council, is that the driveway must meet the setback and width requirements as established in the City's Standard Specifications and Details Manual.

Upon inquiry of Councilman Peterson, Mr. Green said that a single family house would have to meet the same setback requirements. He said the only difference here with the conditional use is that the house does have to have a single front entrance and the lot has to be a bit larger than if it were to be a single family home.

Ms. Pamela Cunningham, applicant, said that the purpose of the duplex is for investment property. She said the property will be aesthetically pleasing and would enhance the surrounding properties.

Mr. Randy Pitts felt that the applicant knew the property was zoned for single-family residences and they should not be allowed to build a duplex on the property. He said that this is a community of elderly people and they would welcome a single family unit on that lot which will contribute to the character of the community.

Ms. Debra Pitts, resident at 16 Browndale Road, said that the area is zoned for single family units and there is only one duplex on their street which was built in the 1940's (and that lot is three times the size of this proposed lot). She said the proposed lot is very small and the community would welcome a single-family unit, however, a duplex is not in keeping with the character of the community. She said the street is on the water critical needs list and there are currently run-off problems in the area. She urged City Council not to grant the conditional use permit.

Mr. Linda Hawthorne, owner of 13 Browndale Road, spoke in opposition to the duplex stating that she did not want a duplex next to her property and that the lot was too small. She passed out some pictures of neighborhood houses (Neighborhood Exhibit 1). She said that there are some large trees on this lot that will be cut down. She suggested a survey be performed to make sure the trees are actually on the applicant's property.

Mr. Green said that Council can place a condition on the conditional use permit that a survey with the trees located be provided to the Planning Department for review prior to the issuance of the conditional use permit for the project.

Ms. Cunningham said that there are some trees that seem to follow the property line and if they are close enough to be at all against or on the property line, then they will fall within the five foot buffer that will be landscaped.

Councilwoman Bellamy explained the difference between a modular home and a manufactured home, stressing modular homes must meet all N. C. building standards.

Upon inquiry of Councilwoman Field, Mr. Green explained how in-fill housing applies to the City's Smart Growth Policy.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:12 p.m.

Mayor Sitnick expressed a little concern that Condition No. 4 may not have been met. However, if the permit is approved, she asked that a condition be attached to the permit that a survey be conducted to make sure that any trees that are on the property line can be saved.

Councilwoman Field moved to adopt Ordinance No. 2828 to approve the conditional use permit with the following conditions: (1) The driveway must meet the setback and width requirements as established in the City's Standard Specifications and Details Manual; and (2) a survey, with the location of the trees, be provided to the Planning Department for review prior to the issuance of the conditional use permit or before any tree is removed or before construction begins; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 208

IV. UNFINISHED BUSINESS:

A. REPORT FROM THE TASK FORCE ON THE FUTURE OF THE CIVIC CENTER

Councilman Hay, Chair of the Future of the Civic Center Task Force, acknowledged the following Task Force members: Councilman Worley, Tommy Sellers, Mike Kryzanek, Jan Davis, Laverne Laney, Mark Rosenstein, David Gantt and Tom Byers. He also acknowledged the advisory members who were as instrumental in this process as the Task Force members: Steve Steinert, Alfred White, Kelly Miller, Herb Smith, Alan Levy, Dan Wilhelm, Councilwoman Field and Steve Hagaman.

Councilman Hay then made the following report: Over the course of the past year the Task Force and its advisory members studied the three elements of the Civic Center: conventions, arena activities, and the performing arts. We considered a study commissioned by the TDA regarding the convention center, reports from visits to performing arts centers throughout the southeast, and made a through review of possible arena locations. In the late fall, consensus was reached that a first class performing arts center should be sited at the present location, and identified three arena locations (the existing site, UNC-Asheville, and City-County Plaza). It became clear to the Task Force that no further progress could be made without expert advice on the suitability of the existing complex for renovation, and it sought City Council authorization to commission an architectural and engineering study. Heery International was selected to perform the work, and the study was ongoing throughout the Spring of 2001. The architects met with the Task Force on several occasions, commissioned engineering and acoustical studies of its own, and made reports throughout the process.

On June 26, 2001, Heery made it's final presentation, which was shared with City Council on the same day. In summary, the report was as follows:

- The study began with a thorough review of the existing Center, which revealed that the buildings are in sound condition and suitable for renovation, but badly in need of upgrading and improvement. In addition, the existing Center, though sound if improved, presents significant programming issues if we want to continue to offer a wide range of events. The cost of the minimum improvements necessary to simply keep the Center operational with no modernization was set a $10 million.

- The existing arena is suitable for renovation, and a facility which meets the expectations of potential tenants as well as offering the amenities necessary for the maintenance of successful events can be constructed within the existing building at a cost (exclusive of site expenses) of $25 million. A new, similar arena meeting the same specifications on a different location would cost $40 million (also exclusive of site expenses). The study recommends renovation of the existing arena.

- The Thomas Wolfe Auditorium, although structurally sound, cannot be up-fitted to make it a first-class performing arts center, due to the limitations it presents in accommodating stage and acoustical improvements. The study recommends that the Auditorium not be renovated as a performing arts center, but that a new facility for that purpose be constructed on the east side of the Center.

- The study goes further to recommend that the Auditorium be renovated to create a 25,000 square foot fall (shown in the report as the "Great Hall") which would preserve its historical significance and also provide new opportunities for conventions, banquets, exhibits, and trade shows, as well as serving as a connection to events at the other venues. The cost of this portion was set at $6 million.

The Task Force met on July 2, 2001, to review the report, and by unanimous vote of those present, resolved to recommend to City Council that the Heery study be adopted as the plan for the Civic Center. In their opinion, the Heery plan addresses Civic Center concerns in the following ways:

- Renovation, rather than relocation, of the arena is significantly less expensive while providing the opportunity for a fully-functional facility. The study is very careful to state that the costs presented do not include site preparation, but are meant to compare the actual expenses of constructing the buildings. The Task Force believes that the use of the existing Civic Center would cost less for site preparation than at a new location, and would permit construction without the addition of ancillary features, such as new parking. Renovation offers the opportunity for a fully functional facility with 8,000 seats for concerts and sports tournaments, 4,500 to 5,000 prime seats for hockey and basketball, and stage facilities for shows and concerts which we presently can't host. In addition, the plan anticipates the construction of modern amenities, such as restaurants, luxury suites, and merchandise displays, making the events more attractive and financially viable.

- The arena plan utilizes retractable seating to preserve the exhibit space on the arena floor, and provides a connection to the Thomas Wolfe Auditorium for an enhanced venue for trade shows and conventions.

- The anticipated eastern orientation will allow for redirection of traffic from the redesigned Merrimon Avenue interchange with I-240, and stimulate investment on Lexington Avenue.

- The new performing arts center will give the community an improved facility for existing performances, and attract new entertainment events. By providing excellent facilities, it can be the centerpiece for further development of downtown as an arts and entertainment district.

- The renovation of the Thomas Wolfe Auditorium will not only preserve the historic significance of the building but also give it new life as a community resource worthy of banquets, community events, graduations, and exhibits (as "new space," we expect that its uses cannot be fully foreseen, which is part of its appeal). In addition, it will complement the activities in the arena and the performing arts center, and provide enhanced space for events like the Southern Highlands Craft Show, which we believe are an essential part of the City's downtown vitality.

- The plan anticipates the creation of flexible space, with meeting rooms and other amenities which are necessary for attraction and retention of conventions and conferences. The Hunter Interest Report of several years ago identified the need for a new 25,000 square foot ballroom, which is accomplished by the renovation of the Thomas Wolfe Auditorium.

The Task Force has been mindful of several issues throughout the process which they feel must be emphasized as City Council considers adopting the plan:

- Parking and Access. The Task Force believes that the planned parking deck on Battery Hill and the N. C. Dept. of Transportation re-design of the Merrimon Avenue interchange, both of which are to be completed in the very near future, will address parking and access concerns. The plan anticipates these improvements in order to take full advantage of these opportunities. It is important, however, that the Civic Center plan is taken into account as designs are provided for these projects. City Council should affirmatively state its intentions so that all efforts will complement one another.

- Funding: A funding plan cannot be established until we have adopted a clear vision of what we seek to build. The funding sources should be a mix of local government, state authorized tax revenue, commercial investment, and private contributions. We cannot expect those who will be asked to make difficult funding decisions to act without being clear about where the money will go. It is our responsibility to develop a vision for what will best serve our community. Adoption by City Council will represent a significant step in securing the financial support necessary to make the plan a reality.

This report represents several years work by the Task Force and its advisory members, and has required a considerable investment of the City's time and resources. Although we have endured more than one period of frustration and disappointment, we have always known that the effort was important. Our Civic Center is a fundamental part of our community life, and expression of who we are. We believe that the Heery Report embodies that goal and it is with pride that we recommend its adoption.

Specifically, the Task Force recommends (1) that City Council adopt the Heery Report as the City's Conceptual Plan for the Asheville Civic Center; and (2) that the Task Force be directed to identify steps necessary to implement the Plan, and report to the City with its recommended next actions.

Councilman Worley emphasized that $25 Million for a renovated arena vs. $40 Million for a new arena are exclusive of site costs. It is very reasonable to believe that the site costs at the existing site would be minimal because utilities are already there, the grading has already been done, etc. Those site costs would likely be very substantial at another site. In addition, parking for example, can actually by itself run into millions of dollars.

Councilwoman Field asked that the report be revised to correct the mislabeling of "Broadway" instead of "Lexington".

Mr. Mickey Mahaffee felt that this is a wonderful plan if we had money from the private sector. He opposed any taxes being raised for this purpose. If the City puts a lot of money into this venture, there will be many other things important neglected.

Mr. Steve Steinert, President of the Asheville Area Arts Council, spoke about how enthusiastic the arts community is with this project. He said that discussions are underway for a public/private relationship to fund the facility.

Councilwoman Field pointed out that there are funding opportunities that we haven't even been considered. She said that the City needs to put together the right team to bring ideas to the forefront.

Ms. Sharon Martin was concerned about the funding for the project. She wondered how the Tourism Development Authority plans on supporting this so that the citizens of Asheville, who may or may not take part in this Civic Center directly, will avoid having to subsidize this through our tax dollars.

Mr. Dennis Justice, representing Save our Smoke, expressed concern over the seating capacity, the costs for renovation and the location.

Mr. Fred English, resident in Haw Creek, suggested the City build a new arena somewhere else, put a penny tax on everything and pay for it.

Mr. David Hantz spoke in support of the performing arts center.

Mr. Chad Nesbitt questioned how the City is going to raise money for this renovation.

Dr. Joe Dunn, representing Citizens for Change, expressed concern about the access to the Civic Center, the seating capacity, and security in the parking deck at night. He felt the Civic Center should not be located downtown and the entire issue should be put on the ballot in the fall and let the citizens decide. He also felt the City should give the Thomas Wolfe Auditorium to the arts community and let them renovate it themselves.

Councilwoman Field explained why the Civic Center should be renovated at its present location stressing that what matters is that we keep a strong central core for the growth of our community.

Dr. Carl Mumpower, Chairman of the Civic Center Commission, spoke in support of the conceptual plan noting that people may criticize the current Civic Center, but it has touch a lot of lives and has a rich history and this is a reasonable effort to set the stage for a rich future.

A brief discussion surrounded whether City Council should vote at this meeting to accept the Conceptual Plan or whether to postpone action in order to give the public time to review the report. As a result, Vice-Mayor Cloninger moved to consider adoption of the Heery International

Report as the City's Conceptual Plan for the Asheville Civic Center at the July 17, 2001, worksession. This motion was seconded by Mayor Sitnick and carried unanimously.

V. NEW BUSINESS:

A. RESOLUTION NO 01-113 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Cloninger said that the terms of Carl Mumpower, Joyce Dorr, Paul Hornyak and Laverne Laney, as members on the Civic Center Commission, expire on June 30, 2001.

Dr. Mumpower, Mr. Hornyak and Ms. Laney are eligible for reappointment and all have expressed interest in reappointment.

On June 12, 2001, City Council interviewed Mr. James Grant and Mr. Dan Breneman.

Councilman Hay moved to reappoint Carl Mumpower, Paul Hornyak and Laverne Laney to each serve an additional 3 year term respectfully, terms to expire June 30, 2004, or until their successor have been appointed. This motion was seconded by Councilman Worley and carried unanimously.

James Grant received 2 votes and Dan Breneman received 5 votes. Therefore, Dan Breneman was appointed to the Civic Center Commission to serve a three year term, term to expire June 30, 2004, or until his successor has been appointed.

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VI. OTHER BUSINESS:

A. RESOLUTION NO. 01-114 – RESOLUTION SUPPORTING SENATE BILL 1078 AND HOUSE BILL 1015 ENTITLED AN ACT TO IMPROVE AIR QUALITY IN THE STATE BY REQUIRING REDUCTIONS IN THE EMISSIONS OF CERTAIN POLLUTANTS FROM CERTAIN FACILITIES THAT BURN COAL TO GENERATE ELECTRICITY

Mayor Sitnick explained the importance of air quality in Western North Carolina. She passed out to City Council Senate Bill 1078 entitled "An Act to Improve Air Quality in the State by Requiring Reductions in the Emissions of Certain Pollutants from Certain Facilities that Burn Coal to Generate Electricity." She asked City Council to consider adoption of a resolution supporting Senate Bill 1078 and House Bill 1015.

Mayor Sitnick read a resolution stating that legislation to reduce air pollution from North Carolina's 14 coal-fired power plans by 70% has been introduced by local legislators Senator Steve Metcalf (SB 1078) and Representative Martin Nesbitt (HB 1015). The Act introduced will reduce nitrogen oxide, sulfur dioxide and mercury pollution emissions from the coal-fired power plants during the next decade and will direct the state to take the necessary steps to address out-of-state sources of air pollution that are damaging North Carolina's public health and environment. The coal-fired plants built before 1975 were exempted from current air quality standards under the federal Clean Air Act and are the largest source of air pollution in North Carolina. The City Council is of the opinion that passage of the proposed legislation would be in the best interest of the citizens and residents of Buncombe County and would help protect public health, preserve our environment and improve our economy. The City Council does hereby support the passage of House Bill 1015 and Senate Bill 1078 and the immediate implementation of said legislation.

Councilman Worley moved to adopt Resolution No. 01-114 as read by Mayor Sitnick and that said resolution be sent to the N. C. League of Municipalities for dissemination to North Carolina cities, the local legislative delegation, Governor Mike Easley, Speaker of the House James Black, President Pro Tempore of the Senate Marc Basnight, Chair of the House Public Utilities Committee Ronald Smith, and Chair of the House Committee on Environmental and Natural Resources Pryor Gibson.. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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B. RESOLUTION NO. 01-114 – RESOLUTION REQUESTING THE N. C. DEPT. OF TRANSPORTATION AND THE FEDERAL HIGHWAY COMMISSION HOLD A PUBLIC HEARING ON PROJECT I-4400 (I-26 WIDENING) IN THE CITY OF ASHEVILLE

Mayor Sitnick passed out to Council several pieces of information regarding the N. C. Dept. of Transportation's Project I-4400 which would widen I-26 from four to six lanes from Hendersonville in Henderson County to the Asheville Regional Airport in Buncombe County, and would be a pilot design/build project to begin in the autumn of 2001 and completed prior to 2004 at a cost of $74,400,000. While only a half-mile section of this project is in Buncombe County, there are concerns and questions about the widening as it is presently designed and planned, and a public hearing is being requested in Buncombe County. The Metropolitan Planning Organization has requested a public hearing, however, there has been no response to this request. She asked City Council consider adopting a resolution requesting the N. C. Dept. of Transportation (NC DOT) and the Federal Highway Commission hold a public hearing on this project in the City of Asheville, which is the geographic and population center of Buncombe County.

Ms. Betty Lawrence explained how this project is on the fast track and the importance of public participation in transportation planning. Council asking for a public hearing in Asheville on this project could give more time for them to work collaboratively with the NC DOT.

Vice-Mayor Cloninger moved to request the NC DOT and Federal Highway Administration to hold a public hearing on Project I-4400 in the City of Asheville. Said resolution should (1) reference the vote taken by the City of Hendersonville in which they have expressed concerns, some of which relate to how the project will serve both of our cities; (2) ask that the public hearing not be held on a Tuesday and/or the hearing be held after 5:00 p.m.; and (3) note that City Council is opposed to NC DOT proceeding with the project before a public hearing is held in Buncombe County. This motion was seconded by Councilwoman Bellamy and carried unanimously.

C. CLAIMS

The following claims were received by the City of Asheville during the period of June 22-July 5, 2001: Larissa Clegg (Streets), Wayne Earley (Sanitation), Natasha Allen (Streets), Coquitta Fleming (Parks & Recreation), BellSouth (Water) and Ted Warner (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUIT

The City filed a Complaint on June 27, 2001, against Buncombe County. It was a complaint for a declaratory judgment invalidating Buncombe County Resolution No. 01-05-11;

and for a preliminary and permanent injunction prohibiting the County from interfering with the City's exercise of its extraterritorial jurisdiction. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Chad Nesbitt

Mr. Chad Nesbitt felt it was inappropriate for City Council to consider only building a civic center in the City limits and not in Buncombe County.

Comments by Mickey Mahaffee

Mr. Mickey Mahaffee, representing Peacemakers, reported that the City is doing a good job in keeping litter up off the streets in downtown and suggested that businesses take more care with where they put their trash. He did note that there is a severe shortage of trash cans in the downtown area. With regard to the Civic Center conceptual plan, he didn't have a problem with it, however, because of the severity of other situations in our City, he didn't feel the Civic Center should take priority. He felt City Council should put as much effort and energy into our water system as they do to the Civic Center. He asked City Council to remove the payment in lieu of taxes from the water system.

Comments by Fred English

Mr. Fred English felt City Council should put the Civic Center renovation vs. rebuild on the ballot in November for the citizens to decide.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:40 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday – July 17, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Renewal of License Agreement with Motient Communications Inc. for Antenna at 36 Reservoir Road

Summary: The consideration of a resolution authorizing the City Manager to enter into a License Agreement with Motient Communications, Inc., for an antenna at 36 Reservoir Road.

The Notice of Intent to enter into a License Agreement with Motient Communications Inc. was published on Friday, July 13, 2001, in the Asheville Citizen-times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

The property at 36 Reservoir Road is the site of the former White Fawn Reservoir. In recent years the site was used as a beneficial fill site for the City of Asheville. Currently, three telecommunication towers are located on the property and the City of Asheville leases antenna space on two of the towers and ground space for related equipment to a total of eight tenants. One tower is not in use. The property is the proposed future site of the "Sister Cities Park."

Motient Communications, Inc. has operated an antenna and related equipment at the site since October, 1995. The antenna is located on the tower known as the "BellSouth Tower" which is immediately west of the proposed Sister Cities Park. The proposed License Agreement will enable Motient to continue operating an antenna at that site; however, there is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Motient will pay a License Fee of $5,400 the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee Motient will pay a Utility Fee of $150.00 per annum.

Planning Department staff recommends adoption of the resolution authorizing the City Manager to execute the License Agreement with Motient Communications Inc.

Budget Amendment for Pritchard Park Donation

Summary: The consideration of a budget amendment, in the amount of $3,000, for a donation from the Dogwood Fund of the Community Foundation of Western North Carolina.

The City of Asheville staff had several conversations with representatives of the Dogwood Fund of the Community Foundation of Western North Carolina about their interest in supporting the renovation of Pritchard Park. The fund is able to make a donation in the amount of $3,000 towards the purchase of pedestrian lighting and tables in the park space.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Pritchard Park.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook said that he would provide a report to Council regarding the cost of Pritchard Park and the breakdown of donations vs. City money.

Minority Business Commission Appointments

Summary: The consideration of a resolution confirming the appointment of three members and the reappointment of six members to the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Mr. Iba Taye has been named by Eagle/Market Streets Development Corporation to represent them on the Minority Business Commission. Mr. Taye has been nominated to replace Stephanie Coleman who resigned on December 14, 2000. Mr. Taye's term will expire August, 2004.

Ms. Lisa Slechter has been named by the National Association of Women in Construction to represent them on the Minority Business Commission. Ms. Slechter has been nominated to replace Lynn Staton whose term will expire August, 2001. Ms. Slechter's term will expire August, 2004.

Mr. Alejandro 'Al' Cortés, owner of AC Interpreting Service, has been named by the Minority Business Commission to replace Ms. Gráinne Brophy, former owner of Altura Environmental, Inc., who resigned on December 29, 2000, as a minority business owner representative. Mr. Cortés will complete the unexpired term of Ms. Brophy through August, 2002.

The following MB Commission members whose term expires August, 2001, have requested reappointment:

Ms. Jacquelyn Schauer	American Institute of Architects
Ms. Vonna Cloninger	Council of Independent Business Owners
Ms. Debra Weaver	Minority Business Alliance
Ms. Carol Hensley	Asheville Area Chamber of Commerce
Mr. Wendell Howard	Associated General Contractors of America
Ms. Valerie Dennis	Minority Business Owner (Val's Frame Shop)

City staff recommends City Council adopt the resolution confirming the appointments members of the Minority Business Commission.

Clerk to Advertise for Upset Bids on Property at 5 - 7-1/2 Biltmore Avenue and Parking Lot on South Lexington Avenue

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase 5 - 7 1/2 Biltmore Avenue and the parking lot on South Lexington Avenue.

The property at 5 - 7 1/2 Biltmore Avenue is located about 75 feet south of Pack Square. It is improved with two store front buildings dating from the 1920s. The land area comprises 8,030 square feet and the total combined building area is approximately 5,535 square feet. The lot located on the east side of South Lexington Avenue, about 75 feet south of the intersection with Patton Avenue, is contiguous with the Biltmore Avenue lot and is improved with marked and metered parking spaces on an asphalt surface. Both lots are rectangular in shape and mostly flat with street level access. The combined appraised value of the property is $461,000.

Robert Camille Jr., Peter Y. Alberice and Robert M. Todd have submitted a proposal to purchase the property in the amount of $461,000. The bid from Camille, Alberice and Todd includes the proposal to renovate 5 Biltmore Avenue as well as to construct a new mixed use building containing parking, retail, offices and residential units on South Lexington Avenue. The new building would contain approximately 40,000 square feet and an estimated value after completion of about $6.8 million.

Approval of the resolution will establish the appraised value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Request to Withdraw Bid to Purchase Property at 125 Iris Drive and Refund of Bid Deposit

Summary: The consideration of a resolution authorizing the release of the bidder and return of the bid deposit, less advertising expenses, in connection with an offer to purchase 125 Iris Drive.

Brian K. Perry was the successful bidder on the vacant lot at 125 Iris Drive in the amount of $12,200. Mr. Perry submitted a bid deposit with his bid in the amount of $610. After City Council approved the sale to Mr. Perry, he was notified by his employer, Square D Company, that he would be included in a permanent workforce reduction. As a result of this change in his financial capacity, Mr. Perry is unable to complete the purchase of the property and has requested that the City release him from his bid on 125 Iris Drive and return his bid deposit. Staff recommends return of the bid deposit, less the cost of advertising. Mr. Perry has indicated his acceptance of staff's recommendation. The cost of advertising for upset bids amounted to $98.28. The amount of bid deposit recommended to be returned to Mr. Perry is $511.72.

Approval of the resolution will authorize the release of Mr. Perry from the bid and return of his bid deposit less advertising cost.

Planning staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COMMISSION INFORMATION TECHNOLOGY UPDATE

Mr. Dave Porter, Vice-President of Economic Development at the Chamber of Commerce, and Mr. Daniel Prevost, Chairman of the Asheville Area Information Technology Council, updated City Council on the use of funds for Fiscal Year 2000-01 which involved the information technology marketing plan and the office market analysis. They explained that the Commission (1) established the Asheville Area Information Technology Council (over 70 members); (2) completed the Information Technology Marketing Plan; (3) had their first success of eWorker Technologies which relocated their corporate headquarters to Asheville; (4) outlined their publicity; and (5) explained how they partnered with the local real estate community and AdvantageWest to develop a sophisticated office market report which will enhance their ability to market the area to high technology firms.

Mr. Porter explained that the Economic Development Commission will allocate the City's entire $50,000 for the implementation stage of the Information Technology Marketing Plan. Developing a website will be the first priority followed by direct mail and/or special advertisements to drive people/targeted companies to the website.

Mr. Porter responded to inquiries from Council, some being, but are not limited to: what the Commission is doing in particular to capture companies who are closing in California because of the current energy crisis and impending water crisis; is the Commission doing anything regarding bringing educational resources to WNC; how well connected are we with band width; and the need to be cautious with the bio-tech industry.

Councilman Hay, City appointee to the Buncombe County Economic Development Commission, spoke in support of the work of the Commission.

On behalf of City Council, Mayor Sitnick thanked Mr. Porter and Mr. Prevost, along with the entire Economic Development Commission for their work.

LEASE AGREEMENT WITH DISCOVERY MOUNTAIN CORPORATION LTD.

Civic Center Director David Pisha said that this is the consideration of authorizing the City Manager to enter into a three year contract with Discovery Mountain Corporation, Ltd., (herein DMC) for indoor football games at the Civic Center.

The Civic Center has considered the interest shown by DMC in placing a minor league football team in the facility. There are advantages to the City in pursuing this opportunity. These advantages along with highlights of the contract are as follows:

Premises: The areas of use will include the arena, concourse around the arena, locker rooms A, B, C and D, meeting rooms and Banquet Hall on game days. The team, DMC, may practice in the arena for up to one hour on the field. They will not be supplied air conditioning during practice. No office space will be provided for the team or administration offices. If office space within the Center becomes available, they have the option to sign a second lease for it.

Rent: Rent is $6,500.00 per game. They intend to play eight (8) home games during a regular season. They have agreed to pay the entire rental amount due, $52,500.00, by September 1 of each year prior to the start of the season. The season would start in April of the following calendar year.

Staffing: The City has agreed to supply event staffing out of rental proceeds. This staff includes an event coordinator, ticket takers, ushers, door guards, police and emergency medical

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personnel. Stagehands are excluded from the above definition of staffing. If they are used, there will be an additional charge. If the usage of such personnel exceeds $2,000.00 for any game, DMC will pay the excess over this cutoff. It is not anticipated that staffing costs will exceed the cutoff.

No staffing will be provided by the City to present the game itself. This staffing will be the responsibility of DMC. This type of staff includes scorekeepers, referees, football officials, cheerleaders and personnel necessary to secure their locker rooms on game days. No security will be provided for any season ticket holder lounge nor will medical personnel be provided to the teams. This staffing will also be the responsibility of DMC.

Equipment: The City has agreed to provide limited equipment. This includes spotlights, use of the forklift, tables and electrical service. If the charges for provided equipment exceed $750.00 as stated in the Center's fee document, DMC will pay the amount in excess of that cutoff. It is not anticipated that usage will exceed the cutoff.

Other Expenses: DMC will still be responsible to pay any TicketMaster charges, credit card fees, taxes or surcharges in addition to the rental payment shown above. Any staffing costs to install or remove temporary advertising will be at their cost as well.

Term: The term is for three years. It begins July 1, 2001, and ends with the last home game of the 2004 season or September 1, 2004, whichever comes first.

Storage: The City has agreed to provide the team with 250 square feet of storage space during their season.

PA System & Scoreboard: The City has agreed to make the existing PA and scoreboard available to the team. The City is responsible for maintaining the equipment. DMC is responsible for any equipment conversion of the scoreboard for use for their games. The City has agreed to pay the labor for any such installation.

Arena Advertising: DMC has the right to sell temporary advertising during their season. If their season overlaps with hockey, hockey advertising will have priority until the hockey season is completed.

Ticket Sales: All ticket sales must be handled under the existing TicketMaster contract the City currently uses.

Concession Sales: The City keeps 100% of all such sales.

Merchandise Sales: The team keeps 100% of all such sales up to an agreed upon cutoff. DMC will pay the City 10% of any net sales beyond $500,000 per year.

Locker Room: The team will share locker room space with other tenants in the building. No improvements were requested by them or anticipated by the City.

Termination by City: The City may terminate the contract for good cause.

Other Facts/Advantages:

- Indoor football uses a "dasher" system just like hockey. Since the City already owns this equipment, no extraordinary start-up costs are necessary.
- DMC will provide, at it's own cost, the playing surface needed for their event.

- Labor costs to re-install or remove this playing surface should be minor. It can be handled in several hours.

- DMC will provide, at it's own cost, covers to protect arena lighting from any possible damage that may occur at the games.

- Staffing and other expenses are projected to be reasonable in relation to rental income.

- Indoor football games are conducted from April through July. This is a time of low event activity at the Civic Center. Furthermore the games would not conflict with the other two sports tenants in the building, nor would the games reduce the opportunity to book other events into the arena.

Mr. Pisha then reviewed with Council the following indoor football pro forma for three attendance scenarios (all figures being based on eight home games): 2,500 - $73,000; 3,000 - $79,400; and 3,500 - $85,600.

City staff recommends that City Council approve the lease and direct the City Manager to sign the contract.

Mr. Pisha responded to a question from Councilwoman Bellamy regarding the Assistant Director position being shared with the NBDL and hockey and why those figures were not included in the pro forma.

Upon inquiry of Mayor Sitnick, Mr. Cedric Scott said that DMC has no relationship to XFL. He said that they have 18 teams across the County and are moving toward 24 next season.

When Councilwoman Bellamy asked about local participation, Mr. John Barisa said that they plan to involve hometown talent.

Councilwoman Bellamy said that what makes this so appealing is that the owners are local and they are doing business with people in our community.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 01-116 - RESOLUTION ADOPTING HEERY INTERNATIONAL INC.'S ARCHITECTURAL FEASIBILITY STUDY AS THE CITY'S CONCEPTUAL PLAN FOR THE ASHEVILLE CIVIC CENTER

Councilman Hay, Chair of the Future of the Civic Center Task Force, reviewed with Council the Task Force's report given in detail at the July 10, 2001, formal meeting of City Council. A motion was made, seconded and carried unanimously on July 10 to take formal action on the Heery Report at this worksession.

Councilman Worley emphasized that if the Report is approved, that it is not a commitment to spend the money. It is, in fact, a plan to take out to the public to try to find the resources of build it. Adoption will direct the Task Force to identify steps necessary to implement the Plan and report back to City Council with its recommended next actions.

Councilwoman Bellamy spoke in support of the concept, however, her concerns surrounded if it can be built and can that amount of money be raised.

The following individual spoke in support of adoption of the Heery Report, all pledging their time, energy and support to raise necessary funds:

Mr. Robert Hart Baker, Music Director of the Asheville Symphony Orchestra
Mr. David Craig Starkey, Founder and General Director of the Asheville Lyric Opera
Ms. Linda Alford, President of Asheville Bravo Concerts Board of Directors
Mr. Peter Carver, Executive Director of the Asheville Community Theatre
Mr. Alan Levy, resident and merchant of Asheville
Mr. Joseph Egger, Conductor/Music Director of the Symphony for United Nations in New York and Florida
Ms. Jan Millen, Executive Director of Asheville Bravo Concerts
Mr. Steve Steinert, President of Asheville Arts Council
Mr. Dan Henry, Technical Director of Diana Wortham Theatre
Dr. R. Carl Mumpower, Chair of Civic Center Commission

The following individuals spoke in opposition to Council adopting the Heery Report for several reasons, some being, but are not limited to: the plan doesn't have financial backing or support of all City residents; UNC-Asheville would have been a better location for a new arena; and City Council seems in too much of a rush to adopt the plan; and seating capacity for hockey games is not adequate:

Mr. Jerry Rice, Buncombe County resident
Dr. Joe Dunn
Mr. Dennis Justice, representing Asheville Smoke Booster Club

Councilman Peterson asked about how the renovation would coincide with the indoor football schedule. Councilman Hay said that when the Heery Report was being prepared, the indoor football proposal was not before City Council. However, he said that the City basically asked Heery if they felt the renovations could be performed without interfering with the sports teams schedules, and they felt it could.

Upon inquiry of Councilman Peterson about naming rights for a new arena vs. a renovated arena, Councilman Worley said that there was no discussion about that. He said this is more of a re-build within an existing shell rather than a renovation.

Vice-Mayor Cloninger spoke in support of this concept in that it will be one of the most challenging projects our community has ever had. He felt the only way is to get different groups together, i.e., business, arts, tourism, sports community, etc. in order to work together to get the support that is needed. Since the City will not use property taxes to fund this, they will be looking at other sources. City Council will look locally in the community from private sources and hope to go to the legislature to get some help there as well. But before we go to the legislature, we need to build that support locally in order to convince our legislators that this is a project Asheville wants and then they will have the confidence to help us with what we need.

Mayor Sitnick noted that Asheville is an arts destination and this kind of facility will help promote that image. She explained how the civic cultural centers and arts are part of economic development. She said from a quality of life point of view, you can't beat having a cultural civic arts center. She said that since 80% of the people who use the Civic Center are from outside the City of Asheville, we need to explore all the sources of funding this facility, e.g., naming rights, private funding, state funding, some local government funding by way of a local option sales tax, and most importantly some of the room tax ear-marked for this project.

Councilman Worley said that the present Civic Center has been a fine facility over the years, but has lost its functionality. He realized that we have a challenge to come up with the funding but if we don't have a vision, we will never reach that challenge.

Councilwoman Bellamy said that in order for this concept to be accepted by the full community, City Council needs to have a unified front. Her concern over how we are going to pay for this is real, however, the concept is good and she will vote in favor of the plan. She agreed with the rest of Council that property taxes will not be used on this project.

Councilman Peterson believed that a better approach for the arena is to build something new either at that location or at another location, possibly in cooperation with UNC-Asheville near the campus. He said that even with the renovations there are a lot of problems, e.g., site lines from the balcony. He felt the performing arts center is a good long-term goal, but the immediate need is the arena and that is what the City should be focusing on. He wished there had been more information about constructing something different.

Councilman Hay moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Worley and Councilman Hay both moved to adopt the Heery International Inc. Architectural Feasibility Study as the City's Conceptual Plan for the Asheville Civic Center and direct the Task Force to identify steps necessary to implement the Plan and report to the City with its recommended next actions. This motion was seconded by Vice-Mayor Cloninger and carried on a 6-1 vote, with Councilman Peterson voting "no".

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At 5:20 p.m., Mayor Sitnick announced a ten minute recess.

SALE OF LAND AND AWARD OF GRANT FOR DEVELOPMENT OF EAST END PLACE SUBDIVISION

Community Development Director Charlotte Caplan said that this is the consideration of the sale of land and award of subsidies for development of East End Place Subdivision.

On September 12, 2000, the City Council authorized a request for proposals (RFP) for development of a six-unit subdivision off Martin Luther King. Jr. Drive, called East End Place Subdivision. After amending the original site design from seven units to six, the RFP was advertised on April 24, 2001. Proposals had to include the developer's bid for purchase of the land and details of the design and cost of the homes. The City offered a Community Development Block Grant (CDBG) subsidy of $78,000 towards infrastructure costs and $42,000 in secondary financing for the homebuyers.

Responses were received from Asheville Area Habitat for Humanity, Inc. and Ron Moser Homes, Inc. A panel comprising the neighborhood association president, an architect, and staff evaluated the proposals using criteria set out in the RFP. The panel recommended the proposal from Habitat.

The Housing and Community Development Committee has reviewed and supported the panel's recommendation.

Staff recommends approval of the resolution authorizing the sale of the property to Asheville Area Habitat for Humanity, Inc. for $77,000 and award of the CDBG subsidies.

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Councilwoman Field and Councilman Hay, both members on the Housing & Community Development Committee, explained that the Committee is going to review the process of how non-profits and for-profits can both be involved in creating affordable housing.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER BUSINESS

Upon a request by Mayor Sitnick to adopt a resolution that requests a consolidated environmental assessment of the N. C. Dept. of Transportation Project I-4400, it was the consensus of City Council to instruct the City Manager to arrange for a worksession to update City Council on the N.C. Dept. of Transportation I-26 widening project.

Mayor Sitnick asked City Council members for ways in which the City can honor the memory of Ben Slosman.

CLOSED SESSION

At 5:55 p.m., Councilman Hay moved to go into closed session for the following reasons (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session - G.S. 143-318.11(a)(4); (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. Williams, Paul E. Fruits, B. Joy MacFadyen Bulluck, Buncombe County, and City of Asheville - G.S. 143-318.11(a)(3); (3) to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee - G.S. 143-318.11(a)(3); and (4) to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - G.S. 143-318.11(a)(2). This motion was seconded by Councilman Worley and carried unanimously.

At 6:32 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:32 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – July 24, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor M. Charles Cloninger and Councilman Edward C. Hay Jr.

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 14, 2001, AS THE "WILLIAM F. WOLCOTT JR. SCHOLARSHIP FUND DAY"

Mayor Sitnick read the proclamation proclaiming Tuesday, August 14, 2001, as "William F. Wolcott Jr. Scholarship Fund Day." She presented the proclamation to Mrs. Mary Ellen Wolcott and her son Billy and her daughter Debbie, who thanked City Council for their support. She also recognized Mr. John Miall, Mr. Ken Michalove and Mr. Tom Byers.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 10, 2001, AND THE WORKSESSION HELD ON JULY 17, 2001

B. RESOLUTION NO. 01-117 - RESOLUTION APPOINTING MEMBERS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of three members and the reappointment of six members to the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Mr. Iba Taye has been named by Eagle/Market Streets Development Corporation to represent them on the Minority Business Commission. Mr. Taye has been nominated to replace Stephanie Coleman who resigned on December 14, 2000. Mr. Taye's term will expire August, 2004.

Ms. Lisa Slechter has been named by the National Association of Women in Construction to represent them on the Minority Business Commission. Ms. Slechter has been nominated to replace Lynn Staton whose term will expire August, 2001. Ms. Slechter's term will expire August, 2004.

Mr. Alejandro 'Al' Cortés, owner of AC Interpreting Service, has been named by the Minority Business Commission to replace Ms. Gráinne Brophy, former owner of Altura

Environmental, Inc., who resigned on December 29, 2000, as a minority business owner representative. Mr. Cortés will complete the unexpired term of Ms. Brophy through August, 2002.

The following MB Commission members whose term expires August, 2001, have requested reappointment:

Ms. Jacquelyn Schauer	American Institute of Architects
Ms. Vonna Cloninger	Council of Independent Business Owners
Ms. Debra Weaver	Minority Business Alliance
Ms. Carol Hensley	Asheville Area Chamber of Commerce
Mr. Wendell Howard	Associated General Contractors of America
Ms. Valerie Dennis	Minority Business Owner (Val's Frame Shop)

City staff recommends City Council adopt the resolution confirming the appointments members of the Minority Business Commission.

RESOLUTION BOOK NO. 26 – PAGE 421

C. RESOLUTION NO. 01-118 - RESOLUTION AUTHORIZING A TELECOMMUNICATION LEASE RENEWAL WITH MOTIENT COMMUNICATIONS INC. FOR AN ANTENNA AT 36 RESERVOIR ROAD

Summary: The consideration of a resolution authorizing the City Manager to enter into a License Agreement with Motient Communications, Inc., for an antenna at 36 Reservoir Road.

The Notice of Intent to enter into a License Agreement with Motient Communications Inc. was published on Friday, July 13, 2001, in the Asheville Citizen-times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

The property at 36 Reservoir Road is the site of the former White Fawn Reservoir. In recent years the site was used as a beneficial fill site for the City of Asheville. Currently, three telecommunication towers are located on the property and the City of Asheville leases antenna space on two of the towers and ground space for related equipment to a total of eight tenants. One tower is not in use. The property is the proposed future site of the "Sister Cities Park."

Motient Communications, Inc. has operated an antenna and related equipment at the site since October, 1995. The antenna is located on the tower known as the "BellSouth Tower" which is immediately west of the proposed Sister Cities Park. The proposed License Agreement will enable Motient to continue operating an antenna at that site; however, there is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Motient will pay a License Fee of $5,400 the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee Motient will pay a Utility Fee of $150.00 per annum.

Planning Department staff recommends adoption of the resolution authorizing the City Manager to execute the License Agreement with Motient Communications Inc.

RESOLUTION BOOK NO. 26 – PAGE 423

D. ORDINANCE NO. 2829 - BUDGET AMENDMENT FOR A DONATION FROM THE DOGWOOD FUND OF THE COMMUNITY FOUNDATION OF WNC FOR PRITCHARD PARK

Summary: The consideration of a budget amendment, in the amount of $3,000, for a donation from the Dogwood Fund of the Community Foundation of Western North Carolina.

The City of Asheville staff had several conversations with representatives of the Dogwood Fund of the Community Foundation of Western North Carolina about their interest in supporting the renovation of Pritchard Park. The fund is able to make a donation in the amount of $3,000 towards the purchase of pedestrian lighting and tables in the park space.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for the Pritchard Park.

ORDINANCE BOOK NO. 19 - PAGE 212

E. RESOLUTION NO. 01-119 - RESOLUTION ESTABLISHING MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR PROPERTY AT 5 – 7-1/2 BILTMORE AVENUE AND THE PARKING LOT ON SOUTH LEXINGTON AVENUE

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase 5 - 7 1/2 Biltmore Avenue and the parking lot on South Lexington Avenue.

The property at 5 - 7 1/2 Biltmore Avenue is located about 75 feet south of Pack Square. It is improved with two store front buildings dating from the 1920s. The land area comprises 8,030 square feet and the total combined building area is approximately 5,535 square feet. The lot located on the east side of South Lexington Avenue, about 75 feet south of the intersection with Patton Avenue, is contiguous with the Biltmore Avenue lot and is improved with marked and metered parking spaces on an asphalt surface. Both lots are rectangular in shape and mostly flat with street level access. The combined appraised value of the property is $461,000.

Robert Camille Jr., Peter Y. Alberice and Robert M. Todd have submitted a proposal to purchase the property in the amount of $461,000. The bid from Camille, Alberice and Todd includes the proposal to renovate 5 Biltmore Avenue as well as to construct a new mixed use building containing parking, retail, offices and residential units on South Lexington Avenue. The new building would contain approximately 40,000 square feet and an estimated value after completion of about $6.8 million.

Approval of the resolution will establish the appraised value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 424

F. RESOLUTION NO. 01-120 - RESOLUTION AUTHORIZING THE RELEASE OF BIDDER AND RETURN OF BID DEPOSIT REGARDING AN OFFER TO PURCHASE 125 IRIS DRIVE

Summary: The consideration of a resolution authorizing the release of the bidder and return of the bid deposit, less advertising expenses, in connection with an offer to purchase 125 Iris Drive.

Brian K. Perry was the successful bidder on the vacant lot at 125 Iris Drive in the amount of $12,200. Mr. Perry submitted a bid deposit with his bid in the amount of $610. After City Council approved the sale to Mr. Perry, he was notified by his employer, Square D Company, that he would be included in a permanent workforce reduction. As a result of this change in his financial capacity, Mr. Perry is unable to complete the purchase of the property and has requested that the City release him from his bid on 125 Iris Drive and return his bid deposit. Staff recommends return of the bid deposit, less the cost of advertising. Mr. Perry has indicated his acceptance of staff's recommendation. The cost of advertising for upset bids amounted to $98.28. The amount of bid deposit recommended to be returned to Mr. Perry is $511.72.

Approval of the resolution will authorize the release of Mr. Perry from the bid and return of his bid deposit less advertising cost.

Planning staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 425

G. RESOLUTION NO. 01-121 - RESOLUTION AUTHORIZING THE SALE OF LAND AND AWARD OF GRANT FOR DEVELOPMENT OF EAST END PLACE SUBDIVISION

Summary: The consideration of the sale of land and award of subsidies for development of East End Place Subdivision.

On September 12, 2000, the City Council authorized a request for proposals (RFP) for development of a six-unit subdivision off Martin Luther King. Jr. Drive, called East End Place Subdivision. After amending the original site design from seven units to six, the RFP was advertised on April 24, 2001. Proposals had to include the developer's bid for purchase of the land and details of the design and cost of the homes. The City offered a Community Development Block Grant (CDBG) subsidy of $78,000 towards infrastructure costs and $42,000 in secondary financing for the homebuyers.

Responses were received from Asheville Area Habitat for Humanity, Inc. and Ron Moser Homes, Inc. A panel comprising the neighborhood association president, an architect, and staff evaluated the proposals using criteria set out in the RFP. The panel recommended the proposal from Habitat.

The Housing and Community Development Committee has reviewed and supported the panel's recommendation.

Staff recommends approval of the resolution authorizing the sale of the property to Asheville Area Habitat for Humanity, Inc. for $77,000 and award of the CDBG subsidies.

RESOLUTION BOOK NO. 26 – PAGE 426

H. **MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS BILTMORE PARK AREA(SOUTH OF BLUE RIDGE PARKWAY, WEST OF OVERLOOK ROAD, LONG SHOALS ROAD WEST TO CLAYTON ROAD)**

I. **MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS FAIRVIEW ROAD/US 74 (SOUTH AND EAST OF I-40 IN THE FAIRVIEW ROAD/US 74 CORRIDOR)**

J. **MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA (SOUTH AND WEST OF THE CITY FROM SOUTH OF I-40 TO WEST OF 1-26, INCLUDING ALL OF SARDIS ROAD)**

K. **MOTION SETTING A PUBLIC HEARING ON AUGUST 14, 2001, TO INITIALLY ZONE THE ANNEXED AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (KNOWN AS AREA 2001-B)**

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. **PUBLIC HEARING RELATIVE TO CONSIDER CONDITIONAL USE REZONING FOR PROPERTIES ON OAK HILL DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:10 p.m.

City Attorney Oast said that because there are two Council members absent, for any ordinance to be passed on its first reading will require a unanimous vote. If the vote is not unanimous, the ordinance will require a second reading at the next formal meeting.

Mayor Sitnick and Councilmen Peterson and Worley disclosed that they had all visited the site.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 7/10/01) and City Exhibit 4 (Staff Report dated 7/24/01). This public hearing was advertised on July 13 and 20, 2001.

Mr. Green said that this is the consideration of rezoning properties on Oak Hill Drive from RM-16 Residential Multi-Family High Density District to Highway Business District, and issuance of a conditional use permit (conditional use zoning) for a vehicle repair/service facility and interior storage.

Mr. William Baldwin, applicant, is requesting the conditional use rezoning of property located on Oak Hill Road, off Leicester Highway, from RM-16 to Highway Business/Conditional Use and the issuance of a Conditional Use Permit (CUP) to allow the use of the property for a vehicle repair/service facility and interior storage. The property is located behind the commercial development along Leicester Highway and is separated topographically from the residential development located on Oak Hill Drive (City Exhibit 4 – Location Map). The subject property contains 3.87acres. Access to the property is from Oak Hill Drive, which is primarily a residential street. Although some uses permitted in the Highway Business District could have adverse impacts on the adjacent residential property, the restrictions placed on the use and site design of the property through the conditional use permit will assure that the impacts of the proposed use on surrounding properties are minimized. The requested use is a 10,000 square foot building that will house a vehicle repair/service facility and interior storage. The site plan calls for significant buffering of the use from adjacent residential properties, using existing vegetation and new plantings (City Exhibit 4 – Site Plan). The proposed building is set back from adjacent residential uses in order to minimize the visual and noise impacts of the proposed use. Lighting of the site will be kept to a minimum to prevent adverse impacts on the adjacent residences. The site plan and proposed use have been reviewed by the City's Traffic Engineer, who determined that no Traffic Impact Analysis would be required due to the small amount of traffic that would be generated by the use. As shown on the site plan and with the conditions recommended by the staff, the proposed use of the site will serve as a good transition between the commercial uses fronting on Leicester Highway and the residential uses on Oak Hill Drive.

The property for which the rezoning is requested was zoned Commercial Service prior to the adoption of new zoning that was done as part of the adoption of the Unified Development Ordinance (UDO). The owner undertook significant grading and related site preparation when the property was zoned for commercial development. The grading and site work has resulted in the site being physically separated from the adjacent residential properties. Staff feels that the proposed use is an appropriate use of the property and that the proposed design, with conditions recommended by staff, will minimize impacts on surrounding residential uses. The Technical Review Committee (TRC), who took action to approve it with conditions, reviewed this project for compliance with the technical requirements of the UDO. The following conditions are those identified by the TRC that have not been met:

- Provide a revised site plan that shows the following:
    - Location and screening of dumpster, if one is proposed
    - Extend landscaping strip and buffer strip along railroad right-of-way
    - Note location of exterior lighting
    - Indicate location of protective barriers for landscaping that will be preserved
    - Indicate location, size, and species of existing plant material if using for landscape credit
    - Provide calculations for determining the number of parking spaces

- The driveway must be paved for a distance of 10' from its intersection with Oak Hill Drive
- The encroachment of the vehicular use area onto the railroad right-of-way must be approved by Norfolk-Southern Railway
- No trees can be placed in the existing sewer easement.

The site plan submitted and the conditions identified by City staff assure that the impacts of the proposed project on the surrounding uses are mitigated.

The findings that must be made by City Council in the issuance of a CUP for the project are listed below with staff analysis for each standard.

1. The proposed use or development of the land will not materially endanger the public health and safety. The proposed development has been reviewed by the TRC to ensure that neither the use nor the design will endanger the public health and safety.
2. The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region. The proposed vehicle repair/service facility will provide a place for residents of the surrounding area to take their vehicles for repair and service.
3. The proposed use or development of the land will not substantially injure the value of adjoining or abutting property. A vehicle repair/service facility at this location, designed as proposed and meeting the conditions recommended by staff and the Planning and Zoning Commission, will not adversely injure the value of adjoining or abutting property.
4. The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. The proposed 10,000 square foot building is in harmony with the commercial structures located along Leicester Highway. Buffering and screening of the proposed building will ensure its compatibility with adjacent residential uses. The parking/vehicular use area will be graveled to maintain harmony with the surrounding neighborhood.
5. The proposed use or development of the land will generally conform with the comprehensive plan and other official plans adopted by the City. The Asheville City Plan 2010 appears to indicate low density residential for this area. The conditions in the area have changed significantly since the adoption of the 2010 Plan in 1987, as evidenced by the prior zoning of Commercial Service for this property. The changing conditions warrant the requested rezoning of the property.
6. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. All services are available at this location, as confirmed during the review of the proposed development by the TRC.
7. The proposed use will not cause undue traffic congestion or create a traffic hazard. The site plan for the proposed development has been reviewed by the City's Traffic Engineer, who has determined that the use will not cause undue traffic congestion or create a traffic hazard.

In summary, the proposed project is a 10,000 square foot building that will house a vehicle repair/service use with some interior storage. The 3.87-acre site has been graded so as to separate it topographically from adjacent residential uses. Extensive buffering using existing vegetation supplemented by new planting is proposed to screen the use from adjacent residential uses. As proposed, the use of the property will provide a good transition from the commercial uses along Leicester Highway to the residential uses on Oak Hill Drive. Conditions recommended for the approval of the CUP for this project will ensure that the impacts on surrounding property owners are mitigated.

The Asheville Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their June 21, 2001, meeting. No one spoke in opposition to the requested rezoning or the proposed use during the public hearing held by the Planning and Zoning Commission. After reviewing the request and the site plans, the Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning, subject to the conditions identified by staff. In response to concerns regarding future building expansion, impacts of lights, and hours of operation, the Commission recommended that conditions be added to address these issues.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the Conditional Use Permit with the following conditions:

1. Provide a revised site plan that shows the following:
   - Location and screening of dumpster, if one is proposed
   - Extend landscaping strip and buffer strip along railroad right-of-way
   - Note location of exterior lighting
   - Indicate location of protective barriers for landscaping that will be preserved
   - Indicate location, size, and species of existing plant material if using for landscape credit
   - Provide calculations for determining the number of parking spaces
   - The driveway must be paved for a distance of 10' from its intersection with Oak Hill Drive
2. The encroachment of the vehicular use area onto the railroad right-of-way must be approved by Norfolk-Southern Railway
3. No trees can be placed in the existing sewer easement.
4. Exterior lighting shall be cut-off type and directed away from residential uses.
5. Any enlargement of the building shall not encroach into the buffer areas as identified on the approved site plan.
6. Hours of normal business operation shall be from 6 a.m. to 7 p.m.

When Councilwoman Field asked why the Planning & Zoning Commission recommended extending the buffer along the railroad right-of-way, Mr. Green explained that with regard to buffering, a railroad right-of-way is treated like a street.

Councilwoman Bellamy asked if one entrance from the street was acceptable. Mr. Green responded that the City's Traffic Engineer advised that the one driveway as being adequate.

Councilwoman Bellamy was concerned that there is not a lot of RM-16 land in the City and wondered if the Planning staff tried to persuade the applicant to build multi-family housing instead. Mr. Green said that Mr. Baldwin's initial application was received in September or October of 2000. Planning staff has been working with him since then to persuade him to develop the property for some type of residential use. Mr. Baldwin has owned the property for approximately 15 years and it was zoned for a more intense use prior to adoption of the UDO. Mr. Baldwin stated that he is not interested in considering other options to develop the property. Mr. Green did state though, that the Planning staff routinely tries to discourage applicants from rezoning residential property.

Councilman Peterson was concerned about the several residential homes in the immediate area of the driveway. He felt a diesel repair shop, with tractor trailers going in between the residential area, will naturally have greater noise, possibly smoke from diesel engines and people who work later into the night on engines. This is sort of an industrial entrance in between residential areas. Mr. Green said that this concern was expressed at the Planning & Zoning Commission meeting but the applicant argued that his business would have far less traffic impacts than would an apartment development.

Councilman Peterson said that the site plan looks as though the applicant has tried to put the business as far back from Oak Hill Road as possible. He asked that if the repair show prospered, what would prevent them from expanding into the front part of the property. Mr. Green said that the project must be built according to the site plan which is approved as part of the conditional use permit issuance. If there is a violation of that site plan, it would be considered a violation of the zoning ordinance and would be treated accordingly.

Mr. Green then responded to Councilman Peterson about how wide the buffer is and where the existing sewer easement lies on the property.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the Conditional Use Permit Order drafted will be limited to only allowing a vehicle repair/service facility and interior storage on the property.

Councilman Worley questioned if the repairs would be limited to only the tractors and not the entire tractor-trailer. Mr. Green said that the applicant said that he might expand his business to include some repair to trailers, However, City Council could place a condition on the issuance of the conditional use permit that the repair be limited to the tractors, which would eliminate the pulling of the trailers in there.

Mayor Sitnick stated several concerns as follows: the radius of the turn from Oak Hill Drive to the applicant's driveway; the storage of the units; if the trucks are running when they being repaired, then a noise and pollution factors need to be considered; hours of operations; and buffer density.

Councilwoman Field was concerned about the high cost of land in the city, especially along major thoroughfares, like Leicester Highway, in that a small businessman cannot afford to be in the areas that we have zoned commercial and highway. Has staff looked at any nodes of development or any second tier development. Mr. Green said that Planning staff has investigated nodes and tiers, but then run into the problem of trading residential property for commercial property. Our real problem is that within the city limits we are running out of land and development is maxing out. City staff is working with our smart growth principles, changes in our ordinance, and development in our new Comprehensive Plan to promote infill development and building up instead of out.

When Councilwoman Field asked if staff has received any comments from abutting property owners, Mr. Green said there were some neighboring property owners at the first Planning & Zoning Commission public hearing. At that meeting, the request was tabled and the applicant was told to re-think his project and meet with neighboring property owners. Six months later, the applicant came back with the same project, and to date they have not heard from any neighboring property owners. He did note, however, that the property owners were notified recently about this public hearing.

Councilwoman Field said that she believes in mixed use and she believes that any use can be appropriately designed and buffered from any other use. She hoped that there was some way within the City's smart growth policies to allow for this balance, so that we don't push this kind of business outside the city.

Because Councilwoman Field is very concerned about affordable housing, she would like to take a real hard look at the 2025 Comprehensive Plan to make sure that we do provide for an appropriate amount of multi-family in all districts.

Upon inquiry of Councilwoman Bellamy, Mr. Green said that because this property does not have any other street frontage, the recent ordinance amendment would permit them to have the driveway access onto a residential street. They would have a wider entrance requirement to accommodate the types of vehicles that would be using this facility and to ensure there is an ability to turn safely in and out of the driveway.

Councilwoman Bellamy said that Pioneer Welding in the West End/Clingman Avenue neighborhood area is an example of something that looks good on paper, but when you put it in practice, it doesn't always work. She explained that the sidewalks and streets are just not wide enough to accommodate the vehicles going in and out of that business.

When Councilman Peterson asked how far back is the development from Oak Hill Drive, Councilwoman Field responded that it looks to be approximately 425-450 feet.

Upon inquiry of Mayor Sitnick, Mr. Green said that the City has not heard anything from Norfolk Southern about the encroachment of the vehicular use area onto the railroad right-of-way. Mr. Green said that the City's typical policy is to require some type of agreement or acknowledgement from the Railway that the approve their easement being used for the purposes on the site plan.

Councilman Peterson said that if Mr. Baldwin was present he could respond to some of his concerns. In addition, he suggested Mr. Baldwin contact his neighboring property owners and ask them if they would be willing to attend the public hearing to give City Council their thoughts about this project. Therefore, he asked if City Council would be willing to continue the public hearing until their next formal meeting.

City Attorney Oast said that if City Council closes the public hearing, it is subject to be re-opened if the matter is continued. This would not require re-advertisement.

In response to a question from Mayor Sitnick, Mr. Green said that if City Council issues the conditional use zoning to highway business now, is it possible that the property owner could come and request a change of use in the future if the decision-making bodies at that time chose to grant that change.

Councilwoman Field pointed out that this property was purchased before the UDO and it was originally zoned commercial service. It seems that the property owner purchased the land with the idea that they were going to use it for a vehicle service garage and they held onto for this long in order to build on the site. But between the time he purchased the property and now, the City changed the zoning.

City Attorney Oast said that as far as participation by the two absent members of City Council, he felt that what the law requires is that they acquaint themselves with the information presented. They can do that by reading the staff report, reading the minutes of the Council meeting and/or reviewing the video tape. He said that those members will need to be asked if they have acquainted themselves with this matter when the public hearing is continued.

Councilman Peterson moved to continue this public hearing until August 14, 2001, without further advertisement. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick instructed the City Attorney to inform Vice-Mayor Cloninger and Councilman Hay what they have to do in order to participate in the continued public hearing. In addition, she asked Mr. Green to invite Mr. Baldwin to be present at the meeting to address Council's concerns.

B. PUBLIC HEARING TO REZONE PROPERTY AT 35 AND 47 ACTON CIRCLE AND 7 ACTON WOODS ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 2830 - ORDINANCE TO REZONE PROPERTY AT 35 AND 47 ACTON CIRCLE AND 7 ACTON WOODS ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Sitnick opened the public hearing at 6:05 p.m.

Chief Planner Gerald Green said that this is consideration of an ordinance to rezone property at 35 and 47 Acton Circle and 7 Acton Woods Road from Neighborhood Business District to Community Business II District. This public hearing was advertised on July 13 and 20, 2001.

The City has received a petition requesting the rezoning of property located at 35 and 47 Acton Circle and 7 Acton Woods Road (PIN Nos. 9617.11-66-2579, 2629, and 2812) from Neighborhood Business District to Community Business II District. The 2.09-acre tract is located off Smoky Park Highway at the intersection of Acton Circle and Acton Woods Road. It is bounded on the south and the east by Highway Business zoning. A Home Depot building supply store is located to north of the site and a Bi-Lo shopping center is under construction on adjacent property to the southwest of the site. These developments have resulted in a change in the character of the area. The requested CB II zoning would provide a good transition from the Highway Business zoning to the residential zoning to the northwest and west of the site. Development standards for the CB II zoning district would assure that any development of the site would be compatible with the surrounding area. The CB II development standards permit structures of a size that the site could be developed in a uniform fashion with a single design approach. Uses permitted in the CB II zoning district are intended to serve adjacent neighborhoods.

Staff has received no comments in opposition to the requested rezoning.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 35 and 47 Acton Circle and 7 Acton Woods Road from Neighborhood Business District to Community Business II District. The Planning and Development staff recommends approval of the requested rezoning.

Mayor Sitnick closed the public hearing at 6:12 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2830. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilman Peterson said that he was not happy to be losing more residential stock, but since Acton Circle has changed from a residential street to a very busy commercial street, it's not fair for these homeowners to live on such a thoroughfare, if they would prefer something else.

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C. PUBLIC HEARING TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARDS REQUIRING THAT ALL RESIDENTIAL LOTS ABUT A PUBLICLY MAINTAINED STREET IN BINTER SUBDIVISION LOCATED AT 296 DEAVERVIEW ROAD

Mayor Sitnick opened the public hearing at 6:13 p.m.

Chief Planner Gerald Green said that this is the consideration of a request to grant a modification to the subdivision regulations to permit the creation of two residential lots that do not abut a publicly maintained street in Binter Subdivision. This public hearing was advertised on July 13 and 20, 2001.

The City has received a request from Stephen Bitner to permit the creation of two residential lots that do not abut a publicly maintained street. All new residential lots are required by the City's subdivision regulations to abut a publicly maintained street unless a modification is granted by City Council. The property for which the modification is requested is located between Deaverview Road and Huffman Road. A publicly maintained street does not abut the property; access is provided via deeded rights-of-way Two homes are located on the property and no additional construction is proposed. The property owner wishes to subdivide the existing lot into two separate lots so that each home has its own lot. Access to the homes is currently provided via a 15' wide right-of-way from Deaverview Road (accesses one of the homes) and a 10' wide right-of-way from Huffman Road (accesses the other home). The status of access to the property and the homes would not change as a result of the requested modification. Granting of the modification would permit the sale of one or both homes to separate owners. The modification request was reviewed by the Technical review Committee, which recommended approval of the request. No concerns regarding the proposed subdivision and requested modification have been received from any City department.

Staff has received no comments in opposition to the requested modification.

The Planning and Zoning Commission voted 6-0 to recommend approval of the request for a modification of the subdivision regulations to permit the creation of two residential lots that do not abut a publicly maintained street. The Planning and Development staff recommends approval of the requested modification.

Councilwoman Bellamy said that this is a good example of infill lots.

Mayor Sitnick closed the public hearing at 6:17 p.m.

Councilwoman Bellamy moved to approve a modification from the subdivision standards requiring that all residential lots abut a publicly maintained street in Binter Subdivision located at 296 Deaverview Road. This motion was seconded by Councilwoman Field and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 01-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH DISCOVERY MOUNTAIN CORPORATION LTD FOR INDOOR FOOTBALL

Civic Center David Pisha said that this is the consideration of authorizing the City Manager to enter into a three year contract with Discovery Mountain Corporation, Ltd., (herein DMC) for indoor football games at the Civic Center.

The Civic Center has considered the interest shown by DMC in placing a minor league football team in the facility. There are advantages to the City in pursuing this opportunity. These advantages along with highlights of the contract are as follows:

Premises: The areas of use will include the arena, concourse around the arena, locker rooms A, B, C and D, meeting rooms and Banquet Hall on game days. The team, DMC, may practice in the arena for up to one hour on the field. They will not be supplied air conditioning during practice. No office space will be provided for the team or administration offices. If office space within the Center becomes available, they have the option to sign a second lease for it.

Rent: Rent is $6,500.00 per game. They intend to play eight (8) home games during a regular season. They have agreed to pay the entire rental amount due, $52,500.00, by September 1 of each year prior to the start of the season. The season would start in April of the following calendar year.

Staffing: The City has agreed to supply event staffing out of rental proceeds. This staff includes an event coordinator, ticket takers, ushers, door guards, police and emergency medical personnel. Stagehands are excluded from the above definition of staffing. If they are used, there will be an additional charge. If the usage of such personnel exceeds $2,000.00 for any game, DMC will pay the excess over this cutoff. It is not anticipated that staffing costs will exceed the cutoff.

No staffing will be provided by the City to present the game itself. This staffing will be the responsibility of DMC. This type of staff includes scorekeepers, referees, football officials, cheerleaders and personnel necessary to secure their locker rooms on game days No security will be provided for any season ticket holder lounge nor will medical personnel be provided to the teams. This staffing will also be the responsibility of DMC.

Equipment: The City has agreed to provide limited equipment. This includes spotlights, use of the forklift, tables and electrical service. If the charges for provided equipment exceed $750.00 as stated in the Center's fee document, DMC will pay the amount in excess of that cutoff. It is not anticipated that usage will exceed the cutoff.

Other Expenses: DMC will still be responsible to pay any TicketMaster charges, credit card fees, taxes or surcharges in addition to the rental payment shown above. Any staffing costs to install or remove temporary advertising will be at their cost as well.

Term: The term is for three years. It begins July 1, 2001, and ends with the last home game of the 2004 season or September 1, 2004, whichever comes first.

Storage: The City has agreed to provide the team with 250 square feet of storage space during their season.

PA System & Scoreboard: The City has agreed to make the existing PA and scoreboard available to the team. The City is responsible for maintaining the equipment. DMC is responsible for any equipment conversion of the scoreboard for use for their games. The City has agreed to pay the labor for any such installation.

Arena Advertising: DMC has the right to sell temporary advertising during their season. If their season overlaps with hockey, hockey advertising will have priority until the hockey season is completed.

Ticket Sales: All ticket sales must be handled under the existing TicketMaster contract the City currently uses.

Concession Sales: The City keeps 100% of all such sales.

Merchandise Sales: The team keeps 100% of all such sales up to an agreed upon cutoff. DMC will pay the City 10% of any net sales beyond $500,000 per year.

Locker Room: The team will share locker room space with other tenants in the building. No improvements were requested by them or anticipated by the City.

Termination by City: The City may terminate the contract for good cause.

Other Facts/Advantages:

- Indoor football uses a "dasher" system just like hockey. Since the City already owns this equipment, no extraordinary start-up costs are necessary.
- DMC will provide, at it's own cost, the playing surface needed for their event.
- Labor costs to re-install or remove this playing surface should be minor. It can be handled in several hours.
- DMC will provide, at it's own cost, covers to protect arena lighting from any possible damage that may occur at the games.
- Staffing and other expenses are projected to be reasonable in relation to rental income.
- Indoor football games are conducted from April through July. This is a time of low event activity at the Civic Center. Furthermore the games would not conflict with the other two sports tenants in the building, nor would the games reduce the opportunity to book other events into the arena.

City staff recommends that City Council approve the lease and direct the City Manager to sign the contract.

Mr. Pisha then reviewed with Council the following indoor football pro forma for three attendance scenarios (all figures being based on eight home games): 2,500 - $73,000; 3,000 - $79,400; and 3,500 - $85,600.

Upon inquiry of Councilman Peterson, Mr. Pisha said the dashers will stay in place during indoor football and trade shows have been able to work around them.

Councilwoman Field noted that in the pro forma there is no mention of any benefit to the City for parking or the 2% ticket fee. Mr. Pisha said that what he has presented here is just a simple financial statement highlighting items in the contract.

Councilwoman Bellamy asked if we would get any revenue from arena advertising? Mr. Pisha said DMC hold's the temporary advertising, just as hockey and basketball teams.

Councilwoman Bellamy noted that the budget only shows the revenues from concession stands and from ticket sales and does not take into any parking revenue, possible facilities fee and a 2% ticket fee, which will also be added to the hockey and basketball tickets. She thanked the local investors for considering the Civic Center for this venture.

Councilman Worley said that roughly calculating at 2,500 attendees, we are looking at an additional $50,000 in revenue to the City. Even though the parking revenues go straight to the Parking Fund and not to the Civic Center Fund, they all ultimately go to the City's bottom line.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 01-122. This motion was seconded by Councilman Peterson and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of July 6-19, 2001: Jessica Folston (Parks & Recreation), Dan Bradshaw (Parks & Recreation), Rae Stoll (Water), Wanda Winslow (Sanitation), Sybil Jones (Water) and Ronnie Whitmire (Sanitation). These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City was served with the following Complaint on July 10, 2001, filed by James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. William, Paul E. Fruits and B. Youce MacFadyen Bulluck. The nature of proceeding is a complaint for a declaratory judgment, preliminary and permanent injunction relative to the City exercising its extraterritorial jurisdiction. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

CLOSED SESSION

At 6:31 p.m., Councilwoman Bellamy moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, involving the following parties: Henderson County, Buncombe County, City of Asheville, and Regional Water Authority - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley and carried unanimously.

At 7:55 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – July 31, 2001
West Asheville Community Center
970 Haywood Road

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; Assistant City Attorney Martha McGlohon; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

The following topics were raised by residents and addressed by City Council and City staff: animal control ordinance not being enforced; more resources needed at West Asheville Resource Center; is Sonny's Towing Service in compliance; make sure redevelopment in West Asheville reflects the diversity of West Asheville; drag racing and cruising on Patton Avenue; need for shuttle bus every hour to downtown and back to West Asheville Friday and Saturday nights to Midnight for the youth; support of façade loan program, underground utilities and streetscaping; request for trash containers at street corners in neighborhoods; suggestion that businesses adopt a City-placed neighborhood trash container and then reward neighborhoods every quarter on who collected the most trash; and if there are plans to move West Asheville Resource Center and Fire Station from Haywood Road.

Mayor Sitnick adjourned the meeting at 8:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – August 7, 2001 - 3:00 p.m.

Worksession

Present:	Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Mayor Leni Sitnick

CONSENT:

Contract for Maple Springs Road Sanitary Sewer System Improvements

Summary: The consideration of a resolution awarding the contract for Maple Springs Road Sanitary Sewer System Improvements to T & K Utilities, Inc., in the amount of $132,760.00.

This project will provide sanitary sewer service to several parcels on Maple Springs Road, which were inadvertently overlooked for service at the time of the 1983 annexation. It is called the Maple Springs Road Sanitary Sewer System Improvements and consists of the installation of approximately 1,713 linear feet of eight-inch (8") diameter sanitary sewer line and 350 linear feet of four-inch (4") diameter sanitary sewer service line and related appurtenances.

The Engineering Department received and publicly opened eight (8) bids on Thursday, July 19, 2001, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, T & K Utilities, Inc., was found to be the lowest responsible bidder with a total bid of $132,760.00. The Engineer's estimate for this project was $163,430.00.

Funding for this project is included in the Fiscal Year 2000/2001 Capital Improvement Program and will be financed through the two-thirds bonds, previously issued by the City.

T & K Utilities Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 90 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council accept a resolution awarding the bid for Maple Springs Road Sanitary Sewer System Improvements to T & K Utilities, Inc., and authorize the City Manager to execute all necessary agreements and contracts.

Sand Hill Road Sidewalk Replacement Contract

Summary: The consideration of a resolution authorizing the City to enter into a contract with Candler Concrete Works Inc. to install sidewalks along Sand Hill Road.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along Sand Hill Road in accordance with N.C. Gen. Stat. sec. 143-131. Informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Candler Concrete Works Inc	0	Yes	Yes	$93,843.75
Mobley Construction Co.	100	Yes	Yes	Disqualified
M&M Construction	100	Yes	Yes	No Bid Booked Up
Calloway Contracting	0	Yes	Yes	Received No Bid
J & R Concrete	0	Yes	Yes	Disqualified
Precision Contracting Inc.	100	Yes	Yes	Received No Bid
Carolina Cornerstone Construction	100	Yes	Yes	Received No Bid

Funding for this project is allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Candler Concrete Works Inc.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

Removal of Requirement for City Council to Set Public Hearings

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on August 28, 2001. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to delete the requirement for City Council to set date for public hearings.

The proposed ordinance amendment would delete the requirement for City Council to set the date for public hearings for review of development proposals, including Level 3 site plan projects, Planned Unit Developments, and conditional uses. Under the current ordinance, City Council must take action at a formal Council meeting to approve (set) the date for a public hearing after that date has been scheduled by the City Clerk. The requirement for Council to officially set the date for the public hearing prolongs the review process by at least two (2) weeks. A public hearing before City Council would still be required under the proposed wording amendment, but the Council would not have to take official action to approve the date scheduled for the public hearing. The change in procedure proposed by the ordinance amendment would result in a more efficient process for all involved – the applicants, the City Council, the City staff, and the general public. The proposed ordinance amendment would help streamline the development review process by removing an unnecessary step. No individual or organization involved in the development review process will be adversely impacted by the simplification of the development review process proposed in the draft ordinance amendment. Staff will keep you informed of these projects and requests by providing you with a memorandum detailing the project or request and providing location and development intensity specifics at least two weeks prior to your consideration of the case.

At their July 11, 2001, meeting, the Asheville Planning and Zoning Commission voted 7-0 to recommend approval of the wording amendment eliminating the requirement that City Council formally set the public hearing date for review of certain development projects. The Planning and Development staff recommends approval of the wording amendment.

City Attorney Oast noted that an amendment to City Council Rules of Procedure will also be required with connection with the change and he will have that prepared for City Council as well.

Upon inquiry of Councilman Worley, Mr. Shuford said that he would look into the feasibility of amending the ordinance further to state who will set the public hearings.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on August 28, 2001.

PACK SQUARE CONSERVANCY AGREEMENT

At the request of Vice-Mayor Cloninger, Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest and to designate Councilman Hay to preside over this item. This motion was seconded by Councilwoman Field and carried unanimously.

Planning and Development Director Scott Shuford said that this is consideration of a resolution authorizing the City to enter into an agreement between the City of Asheville and the Pack Square Conservancy with respect to the design, construction and maintenance of the Pack Square Renaissance Project.

The Pack Square Conservancy is seeking an agreement with the City in order to facilitate the redevelopment and sustained maintenance of the public areas of Pack Square, which includes the City-County Plaza area. The agreement defines roles to be played by both the City and the Conservancy and addresses such issues as funding, design, construction and maintenance.

Following a meeting between the Pack Square Conservancy Chair and City staff, the Conservancy prepared an original draft agreement. The current draft reflects changes requested by City staff.

The Pack Square Conservancy is also seeking this agreement with Buncombe County.

City staff recommends that the City enter into this agreement with the Pack Square Conservancy.

Upon inquiry of Councilman Hay, Ms. Carol King, Chair of the Pack Square Conservancy, explained the current make-up of the 501 (c) (3) board.

Mr. Shuford responded to various questions from Council regarding the term of the contract, what happens if the City want to make an improvement that is not part of the design, and what is the City's financial liability (limited to only what the City accepts as part of the design).

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BROADWAY/REED CREEK GREENWAY MASTER PLAN

Mr. Alan Glines, Urban Planner, said that this is the consideration of a resolution approving the Broadway/Reed Creek Greenway Master Plan.

Mr. Matt Kern, member of the Greenway Commission, said that in Fiscal Year 2000/01, City Council approved the development of a master plan for the Broadway/Reed Creek corridor as one of the 1¢ projects for Parks and Recreation. A total of $75,000 was appropriated for this project. The Greenway Commission, along with City staff, decided that the master plan could be developed internally using the Greenway Commission as the lead organization for developing a public process to solicit input. City staff would then take information gathered through the public process and develop a master plan. The savings would result in allowing for funds to be used for actual construction of the corridor. In December of 2000, the Greenway Commission held a public forum which resulted in 75 – 100 people attending. From this meeting, a task force was developed that included approximately 20 individuals who worked with the Commission and staff to further refine the information received from the public forum at a meeting held in March of 2001. During the spring, staff developed a master plan which was shared with the task force on July 25, 2001. Using the savings from this process, plus an additional $75,000 appropriated from the Fiscal Year 2001/02 1¢ projects, construction can begin on the Broadway/Reed Creek Greenway as early as this winter. He said that the short-term goal is the actual trails. Long term goals include herb gardens, water fountains, historical markers, etc. Those were will added as funds become available in the future.

Mr. Glines then explained the details of the Master Plan, noting that the gravel trail will begin at "5 points" and tie into the system on W. T. Weaver Boulevard.

The Greenway Commission and City staff is recommending City Council approval of the Broadway/Reed Creek Master Plan.

Mr. Glines then responded to several questions/comments from Council, some being, but are not limited to: will the City be using in-house expertise, there will be some integration of art along the trail, and are there parking areas to support the greenway.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OTHER MATTERS

Reimbursements to Local Governments

At the request of Vice-Mayor Cloninger, it was the consensus of City Council to place on the next formal meeting a resolution requesting General Assembly support for local government revenues.

Waterline on Fanning Fields Road in Henderson County

Councilman Worley explained that Henderson County requested installation of a regional waterline. The cost of construction has been agreed upon, however, no agreement has been reached on accounting for the cost of administering and maintaining that line. The City has refused to proceed because of failure to agree on all aspects of the line, failure to adopt policies and procedures, and because of recognized need to renegotiate the Regional Water Agreement. The Water Authority is ready to go ahead and contract with Henderson County to oversee construction of the waterline if the City does not do so.

Henderson County must adopt policies and procedures substantially conforming to the Water Authority's policies and procedures, fees, etc which must be adopted by the Water Authority before the first customer is served by a regional water line. This is in process and will probably be completed by the Water Authority's next regular meeting.

Construction of capital improvements must be in accordance with the Water Authority's Master Plan. The Regional Water Agreement requires that regional water lines be added to the Master Plan. This is in process. The Water Authority adopted a resolution on August 7, 2001, amending the Master Plan to include the line requested by Henderson County. Buncombe County and the City of Asheville need to approve that amendment.

Councilman Worley suggested the following motion: That the City Council, without prejudice to its position that the Regional Water Agreement procedures with respect to a regional water line have been strictly complied with and without prejudice to the methods and procedures with respect to future requests for regional water lines, agrees (1) to account for, on a temporary basis, the costs, expenses and administration of the regional water line currently requested by Henderson County on a temporary basis and to work with the Chair of the Budget Committee of the Water Authority and with Henderson County to arrive at a mutually agreeable method for such temporary accounting in a cost effective manner; (2) to authorize the City Manager to proceed with the management of the construction of the waterline in the same manner and with the same responsibilities as performed in the construction of other waterlines for the Water Authority; and (3) to agree with the classification of the waterline so constructed as a regional water line as that term is used in the Regional Water Agreement upon the approval of the Henderson County policies and procedures by the Water Authority and upon approval by Asheville City Council and the Buncombe County Commissioners of the amendment to the Water Authority's Master Plan as requested by the Water Authority.

Councilman Worley suggested the following motion regarding the Master Plan amendment: That the City Council, without prejudice to its position that the Regional Water Agreement procedures with respect to a regional water line have been strictly complied with and without prejudice to the methods and procedures with respect to future requests for regional water lines, does hereby approve the amendment to the Master Plan of the Water Authority as approved by the Water Authority on August 7, 2001.

Councilman Worley explained that the Water Authority has postponed their meeting held earlier in the day until tomorrow (August 8, 2001) in order to give City Council the opportunity to agree on a compromise and direct City staff to build the waterline.

Discussion surrounded the concerns of City staff and the requested rush approval by the City Council at this meeting.

Councilman Hay, along with Vice-Mayor Cloninger, Councilman Peterson and Councilwoman Bellamy, all noted that Mayor Sitnick is very interested in this matter she is out-of-town this week. They requested that the formal vote on this matter be delayed one week until the formal meeting on August 14, 2001, in order for the Mayor to participate in discussions, for City Council to have an opportunity to review the issues involved and to get a staff report with recommendations.

Councilman Worley explained that the Water Authority was clear that they will take action tomorrow to contract with Henderson County to build the 36 feet of 12-inch waterline and the one-inch line to connect it to the property. American Freightways plans to open on September 1, 2001.

Vice-Mayor Cloninger was uncomfortable in taking action on this complicated issue immediately and asked that any action be postponed until the August 14 meeting.

Councilwoman Field felt the City should proceed with the installation of this line and provide water to the customer. Then we move forward and resolve the water agreement.

Upon inquiry of Councilman Hay, Interim Water Resources Director David Hanks said that his staff could install the waterline in approximately 7 days.

Mr. Jack Tate, Chair of the Regional Water Authority, explained the number of roadblocks that has been placed in the way of providing water service to American Freightways. He urged City Council to take action at this meeting because the Water Authority will consider in their morning meeting to go forward with the contract with Henderson County to provide their customer with the water service they have been waiting month for. Mr. Tate did state that he would relay Council's request to the Water Authority for a week delay on any action.

All of Council expressed interest in wanting to get past this issue and start renegotiation of the water agreement.

By a show of hands, Councilman Worley and Councilwoman Field felt they were comfortable enough to proceed with taking formal action at this meeting. Vice-Mayor Cloninger, Councilmen Hay and Peterson and Councilwoman Bellamy preferred to wait a week for the reasons stated above.

Councilman Worley encouraged as many Council members as possible to attend the Water Authority's morning meeting in order to clearly communicated to the Water Authority that City Council desires to get past the American Freightways waterline issue and their willingness to work with the Water Authority to this end.

Closed Session

At 4:46 p.m., Councilwoman Field moved to go into closed session in order to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session - G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 5:05 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

Water Authority Meeting

There was a brief discussion of who could attend the Water Authority meeting at 8:00 a.m. on August 8, 2001, and what to say. Councilman Worley indicated that he was planning to attend and Councilman Hay said that he would try to attend as well. City Council wanted it clearly communicated to the Water Authority that City Council desired to get past the American Freightways issue and would work with the Water Authority to this end.

ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 5:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – August 14, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson (arrived in meeting at 5:20 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Vice-Mayor Cloninger asked that Consent Agenda Item D be removed from the Consent agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 24, 2001; THE COMMUNITY MEETING HELD ON JULY 31, 2001, AND THE WORKSESSION HELD ON AUGUST 7, 2001

B. RESOLUTION NO. 01-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH T & K UTILITIES INC. FOR THE PROJECT KNOWN AS MAPLE SPRINGS ROAD SANITARY SEWER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution awarding the contract for Maple Springs Road Sanitary Sewer System Improvements to T & K Utilities, Inc., in the amount of $132,760.00.

This project will provide sanitary sewer service to several parcels on Maple Springs Road, which were inadvertently overlooked for service at the time of the 1983 annexation. It is called the Maple Springs Road Sanitary Sewer System Improvements and consists of the installation of approximately 1,713 linear feet of eight-inch (8") diameter sanitary sewer line and 350 linear feet of four-inch (4") diameter sanitary sewer service line and related appurtenances.

The Engineering Department received and publicly opened eight (8) bids on Thursday, July 19, 2001, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, T & K Utilities, Inc., was found to be the lowest responsible bidder with a total bid of $132,760.00. The Engineer's estimate for this project was $163,430.00.

Funding for this project is included in the Fiscal Year 2000/2001 Capital Improvement Program and will be financed through the two-thirds bonds, previously issued by the City.

T & K Utilities Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 90 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council accept a resolution awarding the bid for Maple Springs Road Sanitary Sewer System Improvements to T & K Utilities, Inc., and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 26 – PAGE 428

C. RESOLUTION NO. 01-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CANDLER CONCRETE WORKS INC. TO INSTALL SIDEWALKS ALONG SAND HILL ROAD

Summary: The consideration of a resolution authorizing the City to enter into a contract with Candler Concrete Works Inc. to install sidewalks along Sand Hill Road.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along Sand Hill Road in accordance with N.C. Gen. Stat. sec. 143-131. Informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	Bid
Candler Concrete Works Inc.	$93,843.75
Mobley Construction Company	Disqualified
M&M Construction	No Bid Booked Up
Calloway Contracting	Received No Bid
J&R Concrete	Disqualified
Precision Contracting Inc.	Received No Bid
Carolina Cornerstone Construction	Received No Bid

Funding for this project is allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Candler Concrete Works Inc.

RESOLUTION BOOK NO. 26 – PAGE 433

D. RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE PACK SQUARE CONSERVANCY FOR THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE PACK SQUARE RENAISSANCE PROJECT

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

E. RESOLUTION NO. 01-125 - RESOLUTION ADOPTING THE BROADWAY/ REED CREEK GREENWAY MASTER PLAN

Summary: The consideration of a resolution approving the Broadway/Reed Creek Greenway Master Plan.

In Fiscal Year 2000/01, City Council approved the development of a master plan for the Broadway/Reed Creek corridor as one of the 1¢ projects for Parks and Recreation. A total of $75,000 was appropriated for this project. The Greenway Commission, along with City staff, decided that the master plan could be developed internally using the Greenway Commission as the lead organization for developing a public process to solicit input. City staff would then take information gathered through the public process and develop a master plan. The savings would result in allowing for funds to be used for actual construction of the corridor. In December of 2000, the Greenway Commission held a public forum which resulted in 75 – 100 people attending. From this meeting, a task force was developed that included approximately 20 individuals who worked with the Commission and staff to further refine the information received from the public forum at a meeting held in March of 2001. During the spring, staff developed a master plan which was shared with the task force on July 25, 2001. Using the savings from this process, plus an additional $75,000 appropriated from the Fiscal Year 2001/02 1¢ projects, construction can begin on the Broadway/Reed Creek Greenway as early as this winter.

The Greenway Commission and City staff is recommending City Council approval of the Broadway/Reed Creek Master Plan.

RESOLUTION BOOK NO. 26 – PAGE 434

F. MOTION SETTING A PUBLIC HEARING ON AUGUST 28, 2001, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE REQUIREMENT FOR CITY COUNCIL TO SET DATE FOR PUBLIC HEARINGS

G. MOTION SETTING A PUBLIC HEARING ON AUGUST 28, 2001, TO REZONE 350 SHORT MICHIGAN AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

H. MOTION SETTING A PUBLIC HEARING ON AUGUST 28, 2001, TO REZONE 100-120 COXE AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT

I. RESOLUTION NO. 01-126 - RESOLUTION AUTHORIZING THE SALE OF 5 – 7-1/2 BILTMORE AVENUE AND PARKING LOT ON SOUTH LEXINGTON AVENUE

Summary: The consideration of a resolution authorizing the conveyance of 5 – 7-1/2 Biltmore Avenue and the parking lot on South Lexington Avenue to Robert Camille Jr., Peter Y. Alberice and Robert M. Todd in the amount of $461,000.

On July 24, 2001, the City Council directed the City Clerk to advertise for upset bids on 5 - 7 1/2 Biltmore Avenue (PIN 9649.18-40-2028) and the parking lot on South Lexington Avenue (PIN 9649.18-40-1018). The advertisement ran in the Asheville Citizen-Times on August 3, 2001, as provided in N. C. Gen. Stat. sec. 160A-269.. No response was received. Therefore, the offer to purchase from Robert Camille, Jr., Peter Y. Alberice and Robert M. Todd in the amount of $461,000 was not upset and the sale should be approved.

Approval of the resolution will authorize the sale of the property to Robert Camille, Jr., Peter Y. Alberice and Robert M. Todd for the amount of $461,000.00.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 435

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Hay moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 01-127 - RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE PACK SQUARE CONSERVANCY FOR THE DESIGN, CONSTRUCTION AND MAINTENANCE OF THE PACK SQUARE RENAISSANCE PROJECT

At the request of Vice-Mayor Cloninger, Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution authorizing the City to enter into an agreement between the City of Asheville and the Pack Square Conservancy with respect to the design, construction and maintenance of the Pack Square Renaissance Project.

The Pack Square Conservancy is seeking an agreement with the City in order to facilitate the redevelopment and sustained maintenance of the public areas of Pack Square, which includes the City-County Plaza area. The agreement defines roles to be played by both the City and the Conservancy and addresses such issues as funding, design, construction and maintenance.

Following a meeting between the Pack Square Conservancy Chair and City staff, the Conservancy prepared an original draft agreement. The current draft reflects changes requested by City staff.

The Pack Square Conservancy is also seeking this agreement with Buncombe County.

Staff recommends that the City enter into this agreement with the Pack Square Conservancy.

Councilman Hay moved to adopt Resolution No. 01-127. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 436

III. PUBLIC HEARINGS:

A. PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT GRANT TO PECHINEY PLASTIC PACKAGING INC.

RESOLUTION NO. 01-128 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH PECHINEY PLASTIC PACKAGING INC. FOR AN ECONOMIC DEVELOPMENT INCENTIVE GRANT

Mayor Sitnick opened the public hearing at 5:10 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution approving an economic development incentive grant to a local company proposing an expansion involving purchase of new equipment and creation of new jobs.

Mr. Jeff Denny, representing the Chamber of Commerce, gave a brief history of how Pechiney Plastic Packaging Inc. came to request the economic development incentive grant and asked for City Council's support for this grant.

Mr. Ed Knapp, Plant Manager of Pechiney Plastic Packaging, Inc., explained how his company is a local manufacturing plant located at 3055 Sweeten Creek Road in Asheville. The company is proposing an expansion of their production capacity through the purchase of new equipment representing an investment of $12 million. To support the new capacity, the company is also proposing to create 36 new full time positions. The average hourly wage of the 36 new positions is calculated at $13.47 plus benefits. He said they are looking forward to grow in Asheville and urged City Council for their support.

Economic Development Director Mac Williams explained that based on the stated level of investment of $12 million, the project would qualify for a Level 3 Grant as provided for by the City of Asheville Economic Development Incentives policy. Level 3 grants (when investment levels are $10 million or greater) allow grants of up to 85% of new taxes for up to 5 years.

For this project, the total grant amount would equal $285,600 payable in 5 equal installments of $ 57,120 each beginning in January, 2003. The calculation determining the grant amount is as follows:

CALCULATION OF LEVEL 3 GRANT

NEW INVESTMENT	$ 12,000,000 (div. by $100)
NEW TAX BASE VALUE	$ 120,000 (x $.56/$100)
NEW ANNUAL TAX REVENUE	$ 67,200 (x .85)
ANNUAL GRANT AMOUNT	$ 57,120 (x 5)
TOTAL GRANT AMOUNT	$ 285,600

Payment of the grant funds would not begin until January 1, 2003, after the City has received documentation of actual values and payment in full of property taxes reflecting the increased values.

The grant document, in the form of a performance agreement, has been drafted according to the terms outlined above and has been accepted by representatives of Pechiney Plastic Packaging, Inc. Acceptance and execution of the agreement and provision of the grant, or not, is the subject of this formal public hearing pursuant to N. C. Gen. Stat. sec.158-7.1. The terms of the agreement being considered and the notice of public hearing have been published and made available in accordance with the referenced statute.

City staff recommends Council accept and execute the proposed Performance Agreement and offer the economic development incentive grant to Pechiney Plastic Packaging, Inc. under the terms and conditions set forth in that Agreement.

Councilman Worley explained that these are new taxes that the City is not collecting now and by making this grant, we are not granting away any of the current tax proceeds that we are receiving. Mr. Williams agreed and stated that this is in addition to what is already being received through City taxes.

Mayor Sitnick said that the City has a good incentive policy.

Upon inquiry of Mayor Sitnick, Mr. Williams explained the number of different ways companies find out about incentive policies. He explained that it is a very competitive environment and everyone has some kind of incentive package to offer at some level.

Mayor Sitnick closed the public hearing at 5:24 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-128. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 437

B. CONTINUATION OF PUBLIC HEARING RELATIVE TO CONSIDER CONDITIONAL USE REZONING FOR PROPERTIES ON OAK HILL DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2831 - ORDINANCE TO REZONE PROPERTIES ON OAK HILL DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2832 - ORDINANCE GRANTING A CONDITIONAL USE REZONING FOR PROPERTIES ON OAK HILL DRIVE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

Mayor Sitnick stated that this public hearing was opened on July 24, 2001, and continued until this date.

Vice-Mayor Cloninger and Councilman Hay, who were absent at the July 24, 2001, meeting, both announced that they had reviewed the minutes and staff report. Councilman Hay disclosed that he had visited the site.

Mr. Gerald Green, Chief Planner, briefly reviewed with Council the requested consideration of rezoning properties on Oak Hill Drive from RM-16 Residential Multi-Family High Density District to Highway Business District, and issuance of a conditional use permit (conditional use zoning) for a vehicle repair/service facility and interior storage.

Mr. William Baldwin, applicant, is requesting the conditional use rezoning of property located on Oak Hill Road, off Leicester Highway, from RM-16 to Highway Business/Conditional Use and the issuance of a Conditional Use Permit (CUP) to allow the use of the property for a vehicle repair/service facility and interior storage. The property is located behind the commercial development along Leicester Highway and is separated topographically from the residential development located on Oak Hill Drive (City Exhibit 5 – Aerial Photo). The subject property contains 3.87acres. Access to the property is from Oak Hill Drive, which is primarily a residential street. Although some uses permitted in the Highway Business District could have adverse impacts on the adjacent residential property, the restrictions placed on the use and site design of the property through the conditional use permit will assure that the impacts of the proposed use on surrounding properties are minimized. The requested use is a 10,000 square foot building that will house a vehicle repair/service facility and interior storage. The site plan calls for significant buffering of the use from adjacent residential properties, using existing vegetation and new plantings. The proposed building is set back from adjacent residential uses in order to minimize the visual and noise impacts of the proposed use. Lighting of the site will be kept to a minimum to prevent adverse impacts on the adjacent residences. The site plan and proposed use have been reviewed by the City's Traffic Engineer, who determined that no Traffic Impact Analysis would be required due to the small amount of traffic that would be generated by the use. As shown on the site plan and with the conditions recommended by the staff, the proposed use of the site will serve as a good transition between the commercial uses fronting on Leicester Highway and the residential uses on Oak Hill Drive.

The property for which the rezoning is requested was zoned Commercial Service prior to the adoption of new zoning that was done as part of the adoption of the Unified Development Ordinance (UDO). The owner undertook significant grading and related site preparation when the property was zoned for commercial development. The grading and site work has resulted in the site being physically separated from the adjacent residential properties. Staff feels that the proposed use is an appropriate use of the property and that the proposed design, with conditions recommended by staff, will minimize impacts on surrounding residential uses. The Technical Review Committee (TRC), who took action to approve it with conditions, reviewed this project for compliance with the technical requirements of the UDO. The following conditions are those identified by the TRC that have not been met:

- Provide a revised site plan that shows the following:
  - Location and screening of dumpster, if one is proposed
  - Extend landscaping strip and buffer strip along railroad right-of-way
  - Note location of exterior lighting
  - Indicate location of protective barriers for landscaping that will be preserved
  - Indicate location, size, and species of existing plant material if using for landscape credit
  - Provide calculations for determining the number of parking spaces
- The driveway must be paved for a distance of 10' from its intersection with Oak Hill Drive
- The encroachment of the vehicular use area onto the railroad right-of-way must be approved by Norfolk-Southern Railway
- No trees can be placed in the existing sewer easement.

After reviewing the request and the site plans, the Planning and Zoning Commission voted unanimously to recommend approval of the conditional use rezoning, subject to the conditions identified by staff. In response to concerns regarding future building expansion, impacts of lights, and hours of operation, the Commission recommended that conditions be added to address these issues.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the Conditional Use Permit with the following conditions:

1. Provide a revised site plan that shows the following:
- Location and screening of dumpster, if one is proposed
- Extend landscaping strip and buffer strip along railroad right-of-way
- Note location of exterior lighting
- Indicate location of protective barriers for landscaping that will be preserved
- Indicate location, size, and species of existing plant material if using for landscape credit
- Provide calculations for determining the number of parking spaces
- The driveway must be paved for a distance of 10' from its intersection with Oak Hill Drive

2. The encroachment of the vehicular use area onto the railroad right-of-way must be approved by Norfolk-Southern Railway
3. No trees can be placed in the existing sewer easement.
4. Exterior lighting shall be cut-off type and directed away from residential uses.
5. Any enlargement of the building shall not encroach into the buffer areas as identified on the approved site plan.
6. Hours of normal business operation shall be from 6 a.m. to 7 p.m.

Mr. Green then addressed several of the concerns expressed by City Council at the July 24 meeting, some being, but are not limited to: impact to adjacent properties, impact of vehicles entering access drive, noise generated by the service and repair operation, number of tractor-trailers that would be entering the proposed business, and hours of operation. Mr. Green said that City staff has not heard any more comments from the adjoining property owners.

Mr. William Baldwin, applicant, explained that his business is open from 8:00 a.m. to 5:00 p.m. but sometimes they have to start early and stay late. With regard to tractor-trailer traffic, he said that 95% of his business is cars and business trucks. He explained that he bought this property 15 years ago when it was zoned highway business with the sole intent of building a garage and he is not interested in developing his property as residential. He said that when the Unified Development Ordinance was adopted in 1997, he was not aware that his property was rezoned to something he could not build his garage on, or he would have fought it then.

There being no request for rebuttal, Mayor Sitnick closed the public hearing at 5:37 p.m.

Councilwoman Field moved to adopt Ordinance No. 2831 to rezone properties on Oak Hill Drive from RM-16 Residential Multi-Family High Density District to Highway Business District/Conditional Use. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 216

Councilwoman Field moved to adopt Ordinance No. 2832 granting the conditional use permit for properties on Oak Hill Drive with the six conditions listed above, with the exception of condition number 6 to be amended as follows: Hours of normal business operation may be from 6 a.m. to 7 p.m.; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 218

C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS BILTMORE PARK AREA (SOUTH OF BLUE RIDGE PARKWAY, WEST OF OVERLOOK ROAD, LONG SHOALS ROAD WEST TO CLAYTON ROAD)

ORDINANCE NO. 2833 - ORDINANCE ESTABLISHING THE ZONING OF THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS BILTMORE PARK AREA (SOUTH OF BLUE RIDGE PARKWAY, WEST OF OVERLOOK ROAD, LONG SHOALS ROAD WEST TO CLAYTON ROAD)

Mayor Sitnick opened the public hearing at 5:42 p.m.

Planning & Development Director Scott Shuford explained to City Council the purpose of extending this and the other recent extraterritorial jurisdiction (ETJ) extensions: (1) Reservation of land for industrial purposes; (2) Increased multifamily zoning along or near major roadways to create nodes of higher density residential development and to offer incentives for redevelopment of sparsely developed property; (3) Protection of key City gateways; (4) Placement of high intensity regional commercial zoning near interstate access points; (5) Insuring an appropriate mix of residential and nonresidential land uses; and (6) Recognition of the need for flexible development of large landholdings under a master plan approach. He then explained the process used in establishing the initial zones.

Urban Planner Paul Benson said that this is the consideration of an ordinance establishing the initial zoning of the Biltmore Park ETJ area. This public hearing was advertised on August 3 and 10, 2001.

Mr. Benson outlined the subject area and said that the Biltmore Park area, consisting of 1,831 acres and 175 properties, was included within the City of Asheville's extraterritorial planning jurisdiction on May 8, 2001. Using a map, Mr. Benson then explained to City Council each of the proposed zoning districts and why City staff and the Planning & Zoning Commission arrived at those designations.

The staff proposal for the initial zoning of this area considered these purposes as well as the 2010 City Plan, where applicable, existing land use, infrastructure and comments from property owners.

The Planning and Zoning Commission has held two public hearings to consider staff proposals and public comment on the initial zoning of this area. At their July 11, 2001, meeting, the Commission recommended zoning the Biltmore Park ETJ extension area as RS-2 Residential Single-Family Low Density District, RS-8 Residential Single-Family High Density District, Commercial Industrial District, Central Business District and Blue Ridge Parkway Overlay District.

The Planning and Development staff recommends adoption of the ordinance establishing the initial zoning of the Biltmore Park ETJ extension area as RS-2, RS-8, Commercial Industrial District, Central Business District and Blue Ridge Parkway Overlay District.

Upon inquiry of Mayor Sitnick, Mr. Shuford said that staff will be bringing to Council soon a number of amendments to the zoning regulations that they think will better clarify the administrative interpretation with regard to preserving farms.

Mr. Benson answered various questions from Council relating to what currently exists on the proposed zoning districts.

Upon inquiry of Councilman Peterson, Mr. Benson explained the Blue Ridge Parkway Overlay and how that is different from the underlying zoning.

Councilman Peterson said that the areas along Long Shoals Road, that are immediately adjacent to the interstate, are natural hubs for high impact use and thinks there maybe some concern in the future from people who live nearby. However, the zoning does seem to be fairly consistent with our smart growth principles of locating some of those higher impact uses near those major transportation nodes.

Mayor Sitnick closed the public hearing at 5:58 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2833. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 222

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS FAIRVIEW ROAD/US 74 (SOUTH AND EAST OF I-40 IN THE FAIRVIEW ROAD/US 74 CORRIDOR)

ORDINANCE NO. 2834 - ORDINANCE ESTABLISHING THE ZONING OF THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS FAIRVIEW ROAD/US 74 (SOUTH AND EAST OF I-40 IN THE FAIRVIEW ROAD/US 74 CORRIDOR)

Mayor Sitnick opened the public hearing at 6:00 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance establishing the initial zoning of the Fairview Road/US 74 extraterritorial jurisdiction (ETJ) area. This public hearing was advertised on August 3 and 10, 2001.

Mr. Benson outlined the subject area and said that the Fairview Road/US 74 area, consisting of 832 acres and 273 properties, was included within the City of Asheville's extraterritorial planning jurisdiction on May 8, 2001. Using a map, Mr. Benson then explained to City Council each of the proposed zoning districts and why City staff and the Planning & Zoning Commission arrived at those designations.

The staff proposal for the initial zoning of this area considered these purposes as well as the 2010 City Plan, where applicable, existing land use, infrastructure and comments from property owners.

The Planning and Zoning Commission has held two public hearings to consider staff proposals and public comment on the initial zoning of this area. At their July 11, 2001, meeting, the Commission recommended zoning the Fairview Road/US 74 ETJ extension area as RS-2 Residential Single-Family Low Density District, RS-4 Residential Single-Family Medium Density District, RM-8 Residential Multi-Family Medium Density District, RM-16 Residential Multi-Family High Density District, Institutional District, Community Business I District, Manufactured Housing Rental Community Overlay District and Blue Ridge Parkway Overlay District.

The Planning and Development staff recommends adoption of the ordinance establishing the initial zoning of the Fairview Road/US 74 ETJ extension area as RS-2, RS-4, RM-8, RM-16, Institutional District, Community Business I District, Manufactured Housing Rental Community Overlay District and Blue Ridge Parkway Overlay District.

Upon inquiry of Mayor Sitnick, Mr. Benson said that with regard to farms, City staff has a long-standing interpretation that bona fide agricultural uses are exempt from our zoning ordinance and that City staff is looking at an ordinance amendment to formalize that interpretation.

Mr. Benson answered various questions from Council relating to what currently exists on the proposed zoning districts.

Discussion took place with regard to Ms. Bocook's property and her disappointment that a development plan she is working on for potential buyers of the property may conflict with the concerns of the Blue Ridge Parkway for their viewshed area. When Mayor Sitnick asked about vested rights, City Attorney Oast said that a property owner can obtain a vested right with a site specific development proposal. Councilwoman Bellamy said that it was her understanding that Ms Bocook has a vested right given by Buncombe County several years ago. As a result of the discussion, Councilman Hay moved to defer action on PIN No. 966710462592 (PIN No. is as of March of 2001) and continue the public hearing on this portion only until the August 28, 2001, meeting in order for City staff to try to arrive at a compromise for all parties concerned with regard to the view issue and the marketability of the property. This motion was seconded by Councilman Peterson. When Ms. Kitzi Bocook, property owner, said that another lot is affected in the same way, Councilman Hay moved to amend his motion to include PIN No. 966710267774 (PIN Nos. is as of March of 2001) in his motion. Councilman Peterson accepted the amendment and said motion carried unanimously.

Mr. Tom Jones, owner of a small mobile park in the Fairview ETJ area, said that his property was originally zone RS-8 He attended the Planning & Zoning Commission meeting on June 22, 2001, and requested his property be given the Manufactured Housing Rental Community Overlay District, which is the proper classification for a mobile home park. Then on July 11, 2001, he attended another Planning & Zoning Commission meeting, the City had reclassified his property as RM-8, but without the requested mobile home overlay. Now his park is a non-conforming use and is subject to several restrictions. Among those restrictions is a clause that states that if he has a mobile home space vacant for 180 days, the City can prevent him from filling that space and render it unusable. He has no control over vacancies, and it is possible, although unlikely, that one will remain vacant for 180 days or more. He explained that it will be possible for the City, over a period of time, to slowly close down a non-conforming park by taking away spaces one at a time. In response to a letter he wrote to Mr. Shuford asking how many existing mobile home parks were in the existing 3 ETJ areas and how many were given a mobile home park overlay zoning, Mr. Shuford said there were 28 parks being zoned and only three have been given the overlay zoning. That means that 89.3% of existing mobile home parks are non-conforming. He questioned whether there is any other type of property usage that is as closely scrutinized for the zoning as mobile home parks. He felt that a zoning ordinance that rejects 90% of any single classification of property needs to be reviewed. Manufactured housing is the only type of single-family, owner-occupied, non-subsidized housing available for a very large portion of our residents. The majority of City Council has expressed their support for affordable housing, but it seems to him that a 90% rejection of existing mobile home parks sends a very strong message – and that message is that the City of Asheville does not want manufactured housing. Not only is it not wanted, the City retains, through the vacancy mechanism, the ability to eventually remove 90% of that housing. The City is discriminating against a very large group of property owners and residents. If the City is truly in favor of affordable housing for all our citizens, he urged them to look into this problem. He asked Council to zone these properties fairly as they exist today as is has been done with other properties. He noted that Mr. Shuford stated earlier that "properties need to be converted and redeveloped." It seems that existing manufactured home communities are the properties to be converted and redeveloped.

Mr. Shuford explained that the City classified the mobile home park as RM-8 to encourage its conversion to a more dense multi-family project that would be more appropriate in that location than the scattering of units along a roadway. In terms of addressing affordable housing issues, mobile home parks, for the most part, unless they are very well maintained communities that have individual lots and home-ownership, don't increase in value. Where there are very good, viable mobile home parks in the ETJ areas, they have classified them with a mobile home park overlay. Where there are cases like Mr. Jones' where the use is sort of a stand-alone, out of character use given the surrounding uses, they placed them into land use classifications that they think have the potential to result in their ultimate conversion. He said if they want to continue as mobile home parks, they are allowed to do so for perpetuity.

In response to Mr. Jones' concern over the 180 vacant period, Mr. Shuford said that if there is an individual lot with a mobile home on it and the mobile home is removed, it would have to be replaced within 180 days. However, if it's a mobile home park and continuing as a park, it would be able to be replaced as long as the park remained active as a mobile home park. Mr. Jones will be able to replace units in his park as long as he has one single trailer on the lot.

City Attorney Oast said that the Code provides that "any manufactured home used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar manufactured home of the same or larger size .... Any replacement authorized by this subsection only can take place if said replacement occurs within 180 days of the removal of the initial manufactured home." It was his opinion that that provision only applies to single lots that are improved with manufactured homes. If the property is being used for a mobile home park, for instance, you can bring homes in and out of there. If a particular lot stayed vacant for longer than 180 days, as long as the entire property was used as a mobile home park, it would be okay.

At Mr. Jones' request, Mr. Shuford said that a letter will be sent to Mr. Jones outlining the provisions stated at this meeting.

Ms. Bocook said that her family has a planned neighborhood commercial development on a tract (PIN No. 966710361686) and the Community Business I zoning proposed will not be in conformance with their development plan. Chief Planner Gerald Green said that Community Business I does permit restaurants, inns, bed & breakfasts, etc. The only restriction on restaurants in CB I is that they cannot have a drive-through facility. There are certain design standards, like the parking must be located behind or beside the building, minimum front setback so the building is located near the street, etc. He said that Planning staff will be happy to work with Ms. Bocook when she comes through for their project approval.

Mr. Brett Bocook explained that their plan, which they put together over a year ago, has a layout with parking in front of the structure because there is an existing historic structure on the property which prohibits them from locating their parking behind the building. Mr. Green said that the lowest category of commercial zoning that would allow parking in front is Highway Business which City staff and the Planning & Zoning Commission feels is inappropriate for this type of area. There is a conditional use rezoning process which would be an appropriate way to deal with the unique circumstances on this property when the property owners are ready to submit their specific plans. City Attorney Oast also reminded Council that when they zone property, any uses allowed in that zoning designation are allowed.

At 6:56 p.m., Mayor Sitnick said that the public hearing will be continued until August 28, 2001, in order for City Council to consider the zoning of the two deferred lots known as PIN Nos. 966710462592 and 966710267774.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2834, excluding PIN Nos. 966710462592 and 966710267774 which will be considered at the August 28, 2001. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 225

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA (SOUTH AND WEST OF THE CITY FROM SOUTH OF I-40 TO WEST OF 1-26, INCLUDING ALL OF SARDIS ROAD)

ORDINANCE NO. 2835 - ORDINANCE ESTABLISHING THE ZONING OF THE RECENTLY EXTENDED EXTRATERRITORIAL JURISDICTION IN AREA KNOWN AS US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA (SOUTH AND WEST OF THE CITY FROM SOUTH OF I-40 TO WEST OF 1-26, INCLUDING ALL OF SARDIS ROAD)

Mayor Sitnick opened the public hearing at 6:56 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance establishing the initial zoning of the US 19-23/Sardis Road, Sand Hill Road, and Brevard Road extraterritorial jurisdiction (ETJ) area. This public hearing was advertised on August 3 and 10, 2001.

Mr. Benson outlined the subject area and said that the US 19-23/ Sardis Road, Sand Hill Road and Brevard Road area, consisting of 3,207 acres and 1,163 properties, was included within the City of Asheville's extraterritorial planning jurisdiction on May 8, 2001. Using a map, Mr. Benson then explained to City Council each of the proposed zoning districts and why City staff and the Planning & Zoning Commission arrived at those designations.

The staff proposal for the initial zoning of this area considered these purposes as well as the 2010 City Plan, where applicable, existing land use, infrastructure and comments from property owners.

The Planning and Zoning Commission has held two public hearings to consider staff proposals and public comment on the initial zoning of this area. At their July 11, 2001, meeting, the Commission recommended zoning the US 19/23 and Sardis, Sand Hill, and Brevard Roads ETJ extension area as RS-2 Residential Single-Family Low Density District, RS-4 Residential Single-Family Medium Density District, RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District, RM-16 Residential Multi-Family High Density District, Office Business District, Community Business II District, Institutional District, Highway Business District, Commercial Industrial District, Industrial District , Manufactured Housing Overlay District, and Manufactured Housing Rental Community Overlay District.

The Planning and Development staff recommends that the 11-acre tract at the intersection of Sand Hill Road and Sardis Road, (part of PIN No. 9617-15-63-8026), be zoned Commercial Business II rather than Commercial Industrial in order to match the proposed Commercial Business II zoning directly across Sand Hill Road. This recommendation will be followed up with an ordinance that will allow research and development, high tech, and light assembly uses in the Community Business II District and higher commercial categories, thereby allowing a limited range of industrial uses to be available in this zoning district for these properties.

The Planning and Development staff recommends adoption of the ordinance establishing the initial zoning of the US 19-23/Sardis Road, Sand Hill Road and Brevard Road ETJ extension area as RS-2, RS-4, RS-8, RM-8, RM-16, Office Business District, Community Business II District, Institutional District, Highway Business District, Commercial Industrial District, Industrial District, Manufactured Housing Overlay District and Manufactured Housing Rental Community Overlay District.

Mr. John Van Dyke explained why he felt his property (PIN No. 962616738425) should be zoned Commercial Industrial rather than the proposed RM-8. He said that at the Planning & Zoning Commission meeting, his property was zoned Commercial Industrial. However, Mr. Wright (an adjoining property owner) requested his lot be zoned RM-8 because he actually lives on that lot. In an effort to be consistent, Planning staff changed the zoning of Mr. Wright's lot, but also changed the zoning of his lot and his neighbor's lot (Mr. Holloway). He felt his neighbor (Mr. Holloway) would also want his property zoned Commercial Industrial as well. After City Council discussion, it was the consensus of City Council to zone PIN No. 962616738425 (Mr. Van Dyke) and PIN No. 962615734160 (Mr. Holloway) to Commercial Industrial.

Mr. Wright explained why he wanted his property to remain zoned RM-8. He also noted that water from Mr. Van Dyke's property has washed away 125 feet of his roadway. Mr. Van

Dyke said that they are working on the problem and City Manager Westbrook said that he would relay that information to Buncombe County.

Ms. Emily B. Raymond asked that her property (PIN No. 962608795421) be zoned Highway Business or Community Business II instead of Industrial for marketability. After discussion, it was the consensus of City Council to zone PIN No. 962608795421 to Community Business II.

Mr. Bill Puckett, owner of Knob Hill Mobile Home Park, explained why his property (PIN No. 962616932393) should be zoned RS-8 with the Manufactured Housing Rental Community Overlay District and not the proposed Commercial Industrial. After discussion and understanding that with the Manufactured Housing Rental Community Overlay Mr. Puckett could expand his mobile home park, it was the consensus of City Council to zone PIN No. 962616932393 Commercial Industrial District with a Manufactured Housing Rental Community Overlay District.

Mr. Bill McDowall, owner of property at 205 Sardis Road, explained why his property (PIN No. 962717103190) should be zoned Community Business II and not Office Business. In addition, the surround properties currently proposed to be zoned Office Business should be zoned Community Business II as well. After discussion of this transition area, it was the consensus of City Council to zone PIN Nos. 962717103190, 962717102423, 962717007224, 962717100036, 962605099932 to Community Business II.

Mr. Don Eisenhauer had no problem with the proposed zoning of his property but asked Council several questions, some being, would he be able to move mobile homes back and forth on his property with his RM-16 designation with the Manufactured Housing Rental Community Overlay District; how long does the rezoning process take; and would he have to comply with all development requirements if a subdivision is built. Even though Mr. Eisenhauer felt that some of his neighbors would probably prefer their zoning changed, City Council felt it would be inappropriate to change their zoning (other than what City staff and the Planning & Zoning Commission recommend) if they have not requested it.

Mr. John Herron felt that City Council should not be allowed to tell property owners what they can do on their property.

Ms. Susan Fletcher questioned the definition of Manufactured Housing Overlay District.

Mayor Sitnick closed the public hearing at 8:10 p.m.

At the request of Councilman Worley, it was the consensus of City Council to defer action on PIN No. 961715638026 in order for City staff to investigate whether BASF has deeded the old Enka Lake Club Building to the Daniel Boone Council of Boy Scouts of America for their service center.

At 8:12 p.m., Mayor Sitnick said that the public hearing will be continued until August 28, 2001, in order for City Council to consider the zoning of the one deferred lot known as PIN No. PIN No. 961715638026.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2835, with the consensus changes outlined above. This motion was seconded by Councilman Worley and carried unanimously.

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F. PUBLIC HEARING TO INITIALLY ZONE THE ANNEXED AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (KNOWN AS AREA 2001-B)

ORDINANCE NO. 2836 - ORDINANCE TO INITIALLY ZONE THE ANNEXED AREA LOCATED NORTH OF U.S. HIGHWAY 70 BETWEEN RICEVILLE ROAD AND LOWER GRASSY BRANCH ROAD (KNOWN AS AREA 2001-B)

Mayor Sitnick opened the public hearing at 8:16 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance zoning the annexed area located north of US Highway 70 between Riceville Road and Lower Grassy Branch Road (known as Area 2001-B). This public hearing was advertised on August 3 and 10, 2001.

The Planning and Zoning Commission, at their July 11, 2001, meeting, reviewed and recommended zoning the recently annexed area (effective June 30, 2001) known as Annexation Area 2001-B as RS-2 Residential Single-Family Low Density District, RM-16 Residential Single-Family High Density District and Blue Ridge Parkway Overlay District. The area to be zoned consists of 117 acres divided into 1 single family property, proposed for RS-2 zoning; the Parkway Vista Townhomes development (31 units), proposed for RM-16 zoning; and the Blue Ridge Parkway property, proposed for RS-2 zoning. In addition, the Blue Ridge Parkway Overlay District is recommended for all property in the area within one-quarter mile of the Parkway centerline.

Mr. Benson reviewed the proposed zoning patterns noting that they reflect existing land use and protects the Blue Ridge Parkway corridor.

The Planning and Development staff recommend that City Council consider an ordinance establishing the initial zoning of this area as RS-2, RM-16 and Blue Ridge Parkway Overlay District.

Mayor Sitnick closed the public hearing at 8:21 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2836. This motion was seconded by Councilwoman Field and carried unanimously.

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At 8:20 p.m., Mayor Sitnick announced a 15-minute break.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION REGARDING WATERLINE ON FANNING FIELDS ROAD IN HENDERSON COUNTY

City Manager Westbrook said that City Council discussed the extension of a waterline in Henderson County at their August 7, 2001, worksession at the request of the Water Authority. The City Council felt it needed time to discuss the issues among themselves, as well as staff. Since that worksession, City Council has been discussing a pro-active way to allow the waterline to go forward, thereby setting aside this particular problem in order that the much larger issue of renegotiating the water agreement could begin. In fact, the City has offered three methods of constructing the waterline but none were accepted by the Authority and/or Henderson County. In working with the Council over the past week, the Council felt the more important issue, the one with the greatest potential benefit for the region, was to renegotiate what has been universally acclaimed as an unworkable agreement. In order to make that happen, the Council feels that the American Freightways waterline should be installed, even though Henderson County has not complied with a number of requirements in the contract. To move the project forward, the Council has worked with staff to develop a motion which would allow for the construction of the line and yet preserve the City's rights under the contract.

Councilman Worley moved that the Asheville City Council, without prejudice to its position as to whether the Regional Water Agreement procedures with respect to a regional waterline have been strictly complied with, and without prejudice as to the methods and procedures with respect to future requests for regional waterlines, agrees: (1) to account for the costs, expenses and administration of the regional waterline currently requested by Henderson County on a temporary basis, pending implementation of permanent procedures; (2) to authorize the City Manager to proceed with the management of the construction of the water line in the same manner and with the same responsibilities as performed in the construction of other water lines for the Water Authority; and (3) to agree with the classification of the water line so constructed as a regional waterline as that term is used in the Regional Water Agreement, upon the approval of the Henderson County Policies and Procedures by the Water Authority.
This motion sets no precedent and applies only to this particular line. The situation presented by this line emphasizes the urgent need to resolve the deficiencies of the current Regional Water Agreement before additional regional water lines are requested. This motion was seconded by Councilwoman Field.

Councilman Worley said that we are currently involved in a lawsuit with Henderson County and with the Water Authority on an issue that is unrelated to this regional waterline, but it certainly sets the stage. We also know that we do have a need to discuss the regional water agreement, that there are some problems with that agreement in terms of the implementation, etc. Our failure to adopt this motion and proceed with the installation of the current regional waterline that has been requested by Henderson County, sets us on a course for confrontation and possibility of litigation and that bodes ill on efforts to discuss the situation. On the other hand, agreeing to this motion and allowing this waterline to go forward with construction, dealing only with this line and setting no precedent for future requests without some productive discussions, sets the stage for productive discussions between the City, Buncombe County, the Water Authority and Henderson County. The efforts to set up that meeting are currently underway and he was sure that all of us hope that those efforts will be fruitful and we will have productive discussions and come out of this with some agreement. He was sure that all of us regret the fact that things are not as neighborly as they should be right now and he would like to see us on a course that hopefully will resolve some of the outstanding issues that have caused a lot of feelings over the last several months. He encouraged support of the motion.

Councilwoman Bellamy asked for the one-week delay for two reasons. One was to give the Mayor the opportunity to participate in the process. The other was to gather more information on the background of the motion presented last week. Since that time, she received a copy of a memo dated July 11 which was from the City Manager offering three options to the Authority for the resolution of this issue. It was made clear to her that staff had been trying to make progress on this issue. It's unfortunate that those options were not taken by the Water Authority and that

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City Council was put in the position last week to make a decision within 24 hours. We do need to look at the customer. She agreed that the water agreement needs to be re-worked.

Vice-Mayor Cloninger supported the motion in order to get on the track of working with the other parties so an agreement can be reached that benefits everyone.

Councilman Peterson said that he had questions about the implementation. He said the Water Agreement sets out a very detailed scheme of projected costs and net revenues and details on how those are exactly determined. If this line is installed under this Agreement, since we are agreeing to construct it as a regional waterline, are we going to have a system in place to track that revenue or will we be just be creating more confusion with Henderson County about what the revenues are and costs of this line, since we haven't followed the agreement to agree upon them first.

City Manager Westbrook said there are two kinds of costs the City was concerned about on behalf of the Water Authority. The first was direct costs and that has been identified. The question was the indirect costs that the Water Authority might incur. Since City Council wants to go forward with this particular waterline, he will be meeting with the City's Finance Director and try to come up with a way to informally track those costs on this particular section of waterline.

City Manager Westbrook responded to other questions from Councilman Peterson regarding a separate account system for the one regional waterline; how is the costs of staff time in tracking those indirect costs not going to be charged to current Water Authority customers; will the Water Authority be able to provide Henderson County with quarterly statements of accounts receivable and accounts payable regarding the regional waterline; how will we keep track of each customer when they want to start tapping onto this 12-inch regional waterline; and has Henderson County adopted polices that are consistent with Asheville's policies.

Councilman Hay felt City Council needs to get this issue behind them and start to talk about the real issues. We still have some work to do on this, especially the permanent procedures, but it's his expectation that that will be done promptly. We need to make sure, on behalf of the ratepayers, that if we are required to do these things under the Water Agreement that everyone is doing exactly what they are supposed to do, including the Asheville City ratepayer. He was satisfied that this is a way to get this issue behind us, and get this customer supplied with water. Also, we can now begin working on issues under the existing agreement, as well as give everybody an extra incentive in getting to work on revising the Agreement.

Councilwoman Field thanked the Council members who worked on this matter with City staff for coming up with some kind of reasonable solution.

Mayor Sitnick submitted a letter to her dated August 14, 2001, from Hazel W. Fobes, Chair of the Citizens for Safe Drinking Water and Air into the record. Said letter read in part "Citizens for Safe Drinking Water and Air strongly support or Regional Water Authority's recent actions concerning City staff installing and connecting a water line to the American Freightways new terminal, which is planned to pen in early September – if it has water. Further, we support the Water Authority's decision to contract with work with Henderson County at its called meeting on Wednesday, August 15, should you refuse once again to accept the compromise presented to you on August 8th when you asked for a week's delay ...."

Mayor Sitnick thanked "Councilman Worley for developing this initial language and thank him for including my suggestions for the last paragraph. It made the motion a little more focused on the specific issue that we are dealing with. Nobody will agree more with the fact that we need to get this issue behind us. Nobody will agree more that the customer is the person, the organization, the business, that is to be served – whether it's the 60% of the ratepayers who are

Asheville residents or the 40% of the ratepayers who are Buncombe County residents or the additional ratepayers who are, and will be, Henderson County residents and businesses. I voted for this agreement, how many years ago, eight, nine years ago – I was one of the people on City Council who voted for the water agreement based on staff reports at that time. And, it is not the fault of any of the participants in the Water Authority, or the Authority that the presentations that were made by staff at that time to us were incomplete and, shall I say, misleading. But, nobody agrees more that this is a water agreement that needs to be renegotiated for the good and for the fairness of all the participants – for the bodies of government who are struggling to make an agreement work and for the customers who are really to be served in a much better way than this particular agreement is allowing them to be served. And so, I'm right there on the front lines with a desire to renegotiate this agreement. It's been called a monster, it's been called a bear, it's been referred to as impossible to comply with – I mean, just the accounting system that has been brought to our attention on a number of occasions, is reason enough. We shouldn't have to be spending so much money, actually, again, you know I'm in this humorous mood lately. I was just going to, just as a demonstration, bring to the Council meeting tonight a couple of thousand brown paper bags and maybe a few thousand envelopes because it's been referred to that we can keep accounts for these waterlines on the back of an envelope or a brown paper bag. And certainly, nobody really means for staff to have to do that. I will say that apropos of Councilman Bellamy's comments regarding the memo that you saw, that I imagine everyone saw, it is true – there have been a number of attempts to serve this customer. To my knowledge, way back in April, April 17, there was either an agreement by consensus, or a vote on the Water Authority, that a temporary line be put in to serve this customer. That was not agreed to. And there have been a number of things that have been said back and forth that I believe have unfairly maligned the Asheville City staff, and in fact, the City Council regarding various things that have been said and implied in various meetings. I believe that our City Manager has taken a lot of heat unfairly. I believe that his intentions were to see to it that the agreement was complied to fairly by everybody. I think that there have been some very aggressive tactics that were unnecessary and unprofessional that were used in some of these meetings. And again, I'm saying all of this because I think it needs to be put on the table. I think that the Asheville taxpayers and ratepayers need to know that our job was to look after them and we were doing that to the max. Our job was also to make sure that all the customers of the Water Authority were getting what they needed by way of water, including American Freightways and that's why I asked at one of the Water Authority meetings, why that temporary line was not given to American Freightways so that they didn't have to wait until the very last minute, probably with great anxiety to find out whether or not they were going to get their waterline. I will say that I'm very disturbed about some things that have happened. Mr. Westbrook has been excluded from two closed session meetings. He is a full, non-voting member of the Water Authority and by right, he or his designee, have a right to be at every meeting, including executive and closed sessions of the Water Authority. He's been excluded twice and yet the City has been portrayed as the obstructionist in this issue and I again that that has been very unfair. Several weeks ago, and again on August 10, I sent a memo in an attempt to set up a meeting between the City of Asheville, Buncombe County, Henderson County and the Water Authority. So far we have only heard from Buncombe County as to some of the dates that are listed on the bottom to set up that meeting. Again, in the City's attempt to get everybody together – to create some neighborliness, to make sure that we're working for the good of the region, which I believe is what everyone wants, including the Water Authority. And so, I'm going to vote for this motion, especially with the inclusion of the final paragraph in it, in an attempt that, in hopes that, this will bring everyone together – forget about our egos, forget about our turf, and go to work on behalf of the water customers who are paying all these bills. And to make sure that we don't have to suffer with this natural resource anyway, in fear and worry that our customers, residents or business will not have the water that they deserve and they need."

Ms. Nelda Holder, representing the League of Women Voters of Asheville-Buncombe County, said that the Asheville and Henderson County Leagues are continuing to monitor the situation regarding the Water Authority and the agreement that governs it. The asked City

Council to keep in mind the goal of regional cooperation and offered the Leagues' assistance in the future for facilitating citizen information or facilitating inter-governmental communication or cooperation with this matter.

The motion made by Councilman Worley and seconded by Councilwoman Field carried unanimously.

VI. OTHER BUSINESS:

A. RESOLUTION NO. 01-129 - RESOLUTION REQUESTING GENERAL ASSEMBLY SUPPORT FOR LOCAL GOVERNMENT REVENUES

Vice-Mayor Cloninger asked that the City of Asheville adopt a resolution requesting the N. C. General Assembly provide for the continuation of business inventory and intangibles tax reimbursements to local governments, or to provide a more secure revenue source with growth potential as a substitute for the aforementioned reimbursement.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-129. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 438

B. CLAIMS

The following claims were received by the City of Asheville during the period of July 20-26, 2001: Ronald Harbin (Streets), Kent Kelly (Water), Ron Livitan (Water), Blanche Waugh (Water), Adam Penny (Parks & Recreation), Janis Schamidgall (Water), Cynthia Broaddrick (Water) and David Plaha (Water).

The following claims were received by the City during the period of July 27-August 2, 2001: BellSouth (Water), Henson's Inc. (Sanitation), Kelly Sprouse (Streets), Sharon Baird (Parks & Recreation) and Robert Walters (Police).

The following claims were received by the City during the period of August 3-9, 2001: Marie Parks (Water), George Jaynes (Water), Duane Seager (Fire), Natoya Federick (Streets), Sharlene Franklin (Streets) and James Gibson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Public Comment

Councilwoman Bellamy, and the entire Council, stressed that City Council encourages public comment - not only at public hearings, but for all matters that come before City Council.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:18 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – August 21, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Acceptance of Street Maintenance of Piney Mountain Road and Arnold Road

Summary: The consideration of a resolution accepting Piney Mountain Road and Arnold Road for public maintenance.

As part of the annexation process, staff identifies streets in proposed annexation areas that should be maintained by the City after annexation. As part of the 2001 annexation process, two streets were identified to be maintained by the City following annexation.

The first street identified is Piney Mountain Road. Piney Mountain Road is currently a N. C. Dept. of Transportation (NC DOT) maintained roadway approximately 0.73 miles in length known as State Route 2243. It begins at Chunn's Cove Road and ends at the Piney Mountain Condominium Complex. Only a portion of this road was in the City prior to this annexation. Following annexation, all of the roadway will be in the City limits. Staff is requesting that the City maintain the entire length of Piney Mountain Road.

The second street identified is Arnold Road. Arnold Road is located near the Veterans Administration Hospital off Tunnel Road. The length of the road is approximately 0.37 miles and is currently maintained by the NC DOT as State Route 2000 and 2001. Arnold Road is a dead-end street that begins at Tunnel Road.

Staff recommends that City Council adopt a resolution accepting Piney Mountain Road and Arnold Road for public maintenance.

Upon inquiry of Councilman Peterson, City Engineer Cathy Ball said that the City typically takes over streets as a result of annexations and that the City receives Powell Bill money from the state to maintain roads.

Parking Study Update

Summary: The review of an updated status report used to track the progress of the Parking Study Implementation.

The City's Comprehensive Parking Study was adopted by the City Council in December 1998. The Parking Study Implementation Team was formed and the LX Team Charter was signed in June 1999. The study made about 60 recommendations for potential changes that would improve parking issues within the City. In addition, a few other recommendations have been made by other groups including the Asheville Downtown Association and the Implementation Team itself. A total of 67 recommendations have been incorporated into a single status report spreadsheet. This spreadsheet is used to track the progress on evaluating and implementing the recommendations. Beginning in July 1999, updates are being provided to the City Council twice each year; once in July and once in January.

A few issues have been completed in the past 7 months or are nearing completion. Item A18 in the status report spreadsheet identifies some painting needs in the Civic Center garage. This painting was completed in June 2001. Items C4 and C6 address improvements to the pedestrian environment downtown. The recent completion of Pritchard Park improves walkability in this area of downtown, which is near several parking garages. City crews are currently constructing curb extensions and crosswalks on Broadway and Biltmore, improving the pedestrian environment in this area. Item D4 addresses the optimization of the downtown traffic signals. The consultant's new timing plans are in place in the core of downtown and have been evaluated and adjusted as needed. The final report from the consultant will be received soon. The N. C. Dept. of Transportation (NCDOT) has implemented some signal timing changes in the Haywood Street, Montford Avenue, and Flint Street area. The NCDOT is in the process of implementing signal timing changes at three intersections near Biltmore and Southside.

The revenue control equipment installed in the parking garages in January 2001 is now fully operational. A $1.00 fee is now being collected during all garage exits when the booths are not staffed. Parking Services personnel report that with the new equipment, they are able to easily and accurately determine how many vehicles are in each parking garage. This allows them to maintain nearly 100% occupancy at busy times, making it easier for drivers to find parking and increasing revenue.

The parking fees adopted by Council in June 2000 for Fiscal Year 2000-01 continue to have positive affects on parking availability. One of the primary goals of these changes was to encourage use of the parking garages to maximize their use and provide more availability at on-street parking spaces. The Wall Street parking garage has historically been the most popular and it now reaches capacity on a regular basis. The Rankin Avenue parking garage rarely filled before, but during June and July of this year, it frequently reached capacity during the peak period around lunchtime, resulting in spillover to the Civic Center garage. Business owners and citizens report that drivers are now often able to find a spot on the street near their destination. A brief look at the revenues from the parking garages has indicated increased use as well. With the addition of the $1.00 fee for garage exits when the booths are not manned, revenue at the parking garages has shown a 3% growth from Fiscal Year 1999-2000 to Fiscal Year 2000-2001. This increase occurred despite the fact that the first hour is free and the hourly rate was dropped from $0.60 to $0.50.

The spreadsheet outlines the continuing work being done by employees from several departments to implement many of the remaining recommendations.

Staff recommends that Council review the status report spreadsheet and direct staff to continue implementing the Parking Study.

At the suggestion of Councilwoman Field, it was the consensus of City Council to have the Traffic Engineer make a presentation at the next formal meeting so the citizens can have the benefit of the update as well.

FAA Grant Agreement

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $5,381,370.

Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $5,381,370, consists of the following projects: rehabilitate airfield electrical vault; expand general aviation apron; construct by-pass taxiway, Runway 34; and expand terminal building, Phase I.

Staff recommends adoption of the resolution and authorize the Mayor to execute the grant agreement for Project No. 3-37-0005-25.

Donation of Real Property from Troy E. Muse

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Thompson Street from Troy E. Muse for the City of Asheville greenway system.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Quality Forward has worked with the owners of real property along the Swannanoa River at Thompson Street to obtain easements for the proposed Swannanoa River Greenway. Troy E. Muse has offered to donate a portion of property he owns (approximately 0.35 acre) between Thompson Street and the Swannanoa River (a portion of PIN 9648.20-81-3179) for the greenway system.

A Phase I Environmental Site Assessment has been completed by T. & E. Technology. The property has been surveyed by W. K. Dickson. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property adjoining the Swannanoa River from Troy E. Muse.

Parking Facilities After-Hours and Weekend Security Patrol Services

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Sentry Alert Security, Inc., for parking facilities after-hours and weekend security patrol services.

With the installation of automated parking deck gate equipment last fiscal year, Council authorized the implementation of a $1.00 fee for parking in the City's decks after-hours and all day on weekends (whenever Parking Services Staff were not manning the decks). The revenues from the $1.00 fee are to be used to provide security enhancements for the decks during those periods. (The after-hours revenues have averaged approximately $10,000.00 per month since their initiation last March.) The first security enhancement implemented was a contracted roving security patrol of the decks, surface lots and surrounding on-street parking area. Sentry Alert Security, Inc., began providing the patrol service in the spring of this year. Their service has been highly satisfactory and a number of favorable comments have been received from the public. The patrols have not only increased the public's sense of security and safety; but, have also aided customers who find themselves trapped in the deck by malfunctioning gate equipment or without funds to pay the $1.00 fee or who find their car has a dead battery or flat tire. If future revenues prove adequate, additional security enhancements, such as monitored security cameras, blue-light emergency phones, etc. will be considered for implementation.

The proposed contract with Sentry Alert Security, Inc., is effective for Fiscal Year 2002 and provides hourly rates for patrol services and a maximum compensation of $60,000.00 for the year. Funding is included in the Parking Services Fund Fiscal Year 2002 Budget for contracted security patrol service.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a contract with Sentry Alert Security, Inc.

Local Law Enforcement Grant

Summary: The consideration of a resolution authorizing the City Manager to accept a federal grant from the U. S. Department of Justice, Local Law Enforcement Block Grant Program and the associated budget amendment.

The City of Asheville is eligible to receive a federal grant through the U. S. Department of Justice, Local Law Enforcement Block Grant Program. The grant is in the amount of $141,904. A local match of $15,767 is required. The source of the local match will be the City General Fund.

Under conditions of the grant, funds are being used to reduce crime and improve public safety.

Staff recommends Council adopt the resolution and budget amendment.

Budget Amendment for French Broad River Corridor Connector

Summary: The consideration of a budget amendment, in the amount of $203,040, for an appropriation from the N. C. Department of Transportation in the Transportation Enhancement Program for the Transportation Equity Act for the 21st Century (TEA21).

The City of Asheville applied for grant funds in June 2000 to the N. C. Department of Transportation. The grant was recently awarded in the amount of $203,040 and designated to pay for the cost associated with constructing walkways and sidewalks connecting the series of parks along the French Broad River on Amboy Road. A 20% match, or $50,760, is required and already funded by the Public Works Department.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $203,040 to create the budget for the French Broad River Corridor Connector.

Budget Amendment regarding Donation for Urban Trail Station 10 Grove's Vision

Summary: The consideration of a budget amendment, in the amount of $6,600, for the Urban Trail's Station 10 Grove's Vision.

The City of Asheville and the Urban Trail Committee develops funding through private donations to support the development of the Trail. Donations in the amount of $6,600 were recently received to complete the construction of Station 10 Grove's Arcade.

The Parks and Recreation Department recommends City Council to approve the budget amendment to increase the budget for the Urban Trail's Station 10 Grove's Vision.

Budget Amendment regarding Donation for Urban Trail's Thematic Markers

Summary: The consideration of a budget amendment, in the amount of $7,251, for the Urban Trail's Thematic Markers.

The City of Asheville and the Urban Trail Committee develops funding through private donations to support the development of the Trail. Donations in the amount of $7,251 are being received to complete the construction of the Urban Trail's Thematic Markers.

The Parks and Recreation Department recommends City Council to approve the budget amendment to increase the budget for the Urban Trail's Thematic Markers.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PUBLIC ART MASTER PLAN

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution approving the Public Art Master Plan.

In September, 1999, Asheville City Council established a Public Art Board for the City of Asheville. This seven-member board has been working over the past two years to develop a comprehensive planning tool to assist in the acquisition, retention and maintenance of a public art program in Asheville. A sub-committee was formed in 2000 to assist Board members in developing the overall outline for the plan. In addition, funds were secured through the N. C. Arts Council to match City funds to complete the final master plan that is being presented to City Council. This plan addresses a number of ways to implement the public art program, both for permanent and temporary art. The plan outlines the public process for solicitation of artists and artwork for various projects, as well as allowing for methods of deaccessioning art that will be owned by the City of Asheville. The Public Art Master Plan will serve as the foundation for the City of Asheville in regard to a vibrant and exciting Public Art Program for years to come.

Mr. Kenn Kotara, Chair of the Public Art Board, briefly reviewed with Council the Master Plan. He said it is considered a five-year vision for the integration of viable public art in the City. The Plan will be reviewed annually by the Public Art Board. In addition, the Board and designated staff shall conduct a condition survey of the City of Asheville Public Art Collection every three years.

In order to ensure that public artworks reflect the character, aspirations, and attributes of Asheville's residents, the Public Art Board will seek extensive and various community input. Asheville's individual residents and/or neighborhood associations, civic leadership, business and corporate community, special interest groups and community leaders will be extremely important in the public art process. By the time a new work is unveiled, Asheville citizens will have seen the initial designs and had an opportunity to talk with and question the artist and the various committees involved.

Currently, three working committees of the Board are designated to address the role of public art in Asheville: Planning/Permanent, Temporary/Rotating, and Collections/Management. The Planning/Permanent and the Temporary/Rotating committees will recommend specific art projects and determine appropriate installation sites. The Collections/Management committee will assist in the management, acquisition, maintenance, conservation, deaccessioning and interpretation of the works designated as part of the Public Art Collection.

Public Art Projects in Asheville will consists of two types:

Permanent/Long Term Public Art projects will involve artists in the design, construction, and installation of permanent works of art that will either be site specific, integrated, or respective of the sites they inhabit.

Gateway Projects: Artworks will enhance the character and distinction of an area by either marking or defining boundaries and/or entrances into the city, unique/significant districts, individual neighborhoods, and into the mountains.

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Streetscape Projects: Exceptional design in physical amenities such as street furnishings, seating, trash receptacles, lighting, signage, paving patterns, and plantings creating more aesthetically pleasing and pedestrian friendly features and places.

Neighborhood Projects: Public artworks will locate shared experiences, celebrate community diversity, record community histories, identify unique flavor and authenticity, and create neighborhood distinction.

Parks, Greenways and Community Center Projects: Art that offers tactile experiences, invites interaction and participation, and establishes resting places or focal points, or responds to natural elements or landscape features of the site.

Community-wide Projects: Public Art can promote Asheville's history, present and future, make beautiful places, ease circulation and way finding, celebrate cultural diversity and expression, foster community pride, and most importantly create memorable places and experiences. Memorable places and experiences provide recollection, further city identity, and orient both residents and visitors to a sense of place.

Building Projects: Public art integrated into the initial capital and development project design phasing and where artists will be collaborative members of the building design teams.

Infrastructure Projects: Infrastructure elements, such as storm sewers, water distribution mains and freeway overpasses can be designed so elements such as these become pleasing public symbols of community pride.

Temporary and Rotating Art will accommodate rotating art that involves artists in the creation of works that are non-permanent in intent and application and allow for flexibility and highly creative opportunities to showcase artwork.

Community Art Projects: Public Art Projects created specifically for the purpose of education, community participation and involvement.

Existing Site Projects: Projects, which install works for a defined period of time in existing locations with the basic premise being improving and exciting the appearance of their sites.

Invited Rotating Art: Projects that present new or existing work for short periods of time in locations including both indoor and outdoor areas that are selected based on visibility and their ability to adequately display art.

Artists participating in Asheville's Public Art Process shall be selected either through an open competition, where they are asked to submit evidence of their past work; a limited competition where a limited number of artists shall be invited by the Public Art Board to submit credentials and or proposals for a specific project: an invitational competition where a very small number of artists are invited to submit credentials and/or proposals for a specific project; direct selection where the Public Art Board may elect to make a direct selection in which they contract a specific artist for a particular project; or a mixed process including any combination of the above approaches.

The Public Art Board is responsible for making decisions as to the management, acquisition, maintenance, conservation, deaccessioning, and interpretation of the works designated as part of the Public Art Collection. Acquisition is the inclusion of an artwork in the Public Art Collection of the City of Asheville through commission, purchase, loan, or gift. Acquisition of an artwork implies a permanent, ongoing commitment, unless designated as a loan for a specified length of time. When artworks owned by the City of Asheville are viewed as no longer useful to the purposes of the public and/or the City, deaccessioning is the process of permanently removing an artwork from the collection. Standards applied to deaccessioning are just as stringent as those applied to acquiring works of art.

Asheville's Parks and Recreation Director will be directly responsible for the acquisition, maintenance and recommended funding of public art as part of the annual operating budget to the City Manager. The funding will be based on the one percent (1%) amount appropriated to the general Capital Project Reserve Fund beginning July 1, of each fiscal year. Appropriations from the Public Arts account to fund artwork will be made on a dollar-for-dollar matching basis. Matching non-City funds from private or non-profit organizations must be deposited with the City prior to the commitment of a new art project. Any additional funds secured through grants, foundations or other sources to the Public Art Program shall be held in a dedicated account for the program or project.

The Parks and Recreation Department and the Public Art Board recommend City Council's approval of the Public Art Master Plan.

Councilwoman Field was pleased that this Master Plan recognizes what we have, maintains what we have, and will deal appropriately with new art.

Mayor Sitnick thanked the members of the Public Art Board for their hard work in developing this Plan. She also said that Asheville is quickly being recognizes for it's uniqueness with regard to public art.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 01-130 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH RGE ASSOCIATES FOR THE CONSTRUCTION OF A PASSENGER WAITING ROOM AT THE ASHEVILLE TRANSIT CENTER ON COXE AVENUE

Transit Services Director Bruce Black said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement with RGE Associates for the construction of a 40 passenger waiting room at the Asheville Transit Center on Coxe Avenue.

City Council instructed staff to proceed with the design and biding of the forty-passenger waiting room for the Asheville Transit Center. The design was completed and the project bid. Bids were opened August 10, 2001, and the lowest bidder was RGE Associates in the amount of $102,397.50. The project consists of adding a room to the existing ticket building for the purpose of providing transit passengers with shelter from inclement weather and temperatures. The bid is within the financial resources currently available to the Transit Services Department.

The Transit Services Department recommends City Council authorize the City Manger to enter into a contract with RGE Associates for the construction of the forty-passenger waiting room.

Upon inquiry of Mayor Sitnick, Mr. Black said that there is a 91-day contract for construction and the project should be complete between November 15-30, 2001. At the request of Mayor Sitnick to try to get this waiting area constructed before cold weather sets in, Councilman Worley moved to amend the rules and proceed with formal action at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved to adopt Resolution No. 01-130. This motion was seconded by Councilwoman Field and carried unanimously.

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OTHER BUSINESS

Mayor Sitnick announced that she conducted seven interviews for a vacancy on the Housing Authority and has chose Ms. Carol Goins to fill the unexpired term of Mr. Marshall Logan.

After discussion, it was the consensus of Council to (1) cancel the September 11, 2001, formal meeting; (2) cancel the October 16, 2001, worksession; (3) reschedule the October 9, 2001, formal meeting to October 10, 2001; and (4) reschedule the November 6, 2001, worksession to November 7, 2001.

City Attorney advised City Council that he may bring forward, at the next formal meeting, a request from the owners of the Kress Building regarding the location of a transformer on City-owned property.

It was the consensus of City Council, at the request of Vice-Mayor Cloninger, to add a resolution at the next formal meeting to urge the N. C. Dept. of Environment and Natural Resources to restore the awarded grant funds to the City of Asheville so they may complete the westernmost fuel station for alternatively fueled vehicles.

Upon inquiry of Vice-Mayor Cloninger, Planning & Development Director Scott Shuford advised City Council that his staff is working to amend the telecommunications tower ordinance to require companies to turn off their blinking lights on their cell towers.

Mayor Sitnick asked City Council to consider an anti-litter event. The event held four years ago was successful due to the cooperated effort of Buncombe County, Quality Forward and the Chamber of Commerce. The Public Works Department and the City's Enforcement Division have done an excellent job, along with Carolina Power & Light and BellSouth. She was disappointed that, due to the N. C. Department of Transportation's limitations, the City could not get them to cooperate on a co-partnership to clean up on state roads that come through the City. She suggest the anti-litter event could be seen on the education channel or at a formal meeting, or adoption of a resolution encouraging participating organizations, and new ones, to keep the heat on anti-litter efforts.

Mayor Sitnick reiterated that she has asked City staff to look into the issue of public restrooms downtown.

Mayor Sitnick suggested the Transit Services Director bring City Council information on the possibility of using rubber-wheeled trolleys in the downtown area.

Mayor Sitnick asked City Council to consider the possibility of putting a little more money in the budget for the Film Board in the next fiscal year.

Mayor Sitnick announced that she is will be sending out a letter week to ask the community to consider sponsorship of bus shelters, benches and/or the installation of them. Advertisement of that sponsorship or a plaque can be installed on the shelters or benches.

Mayor Sitnick reminded City Council about the green building roundtable on October 26, 2001.

Mayor Sitnick asked City Council for any issues, accomplishments, projects, etc. that they would like included in her final State of the City Address, which will incorporate items from her entire four year administration.

At 3:58 p.m. Councilman Hay moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session - G.S. 143-318.11(a)(4); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Carolina Power & Light Company, Morris Communications, Outdoor Communications, Inc., Maple Cove, Inc., and the City of Asheville - G.S. 143-318.11(a)(3); and (3) To consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee - G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 4:31 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 4:31 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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Councilman Ellis pointed out that there is a parking lot at the medical complex on Sweeten Creek Road that is entirely pervious. Progress is being made in this area and we need to try to encourage developers to proceed with that type of construction.

Councilman Peterson pointed out that this is an example of the need for the City to expand its extraterritorial jurisdiction (ETJ) because when the Pinnacles were developed, it was in the County and they didn't have to meet City standards. Part of the rationale for expanding the ETJ is that development just outside the City does have an impact within the City.

Mr. John Grear, 15 Elmwood Lane, presented City Council with an engineering report dated March 28, 2002, regarding his property and the proposed development located at the rear of his residence. It was the engineer's opinion that "the development will have adverse effects" to his property and the adjoining property owners. Mr. Grear was concerned that his house (and adjoining houses) will be the collection point of all the water runoff from this project. If Council approves this, he asked that a condition be placed that the construction must meet or exceed all the City's rules and regulations.

Mr. George Ribaud, 7 Elmwood Lane, voiced concern over water runoff and the danger of a fire occurring in the woods where the proposed house will be built.

Mr. Roy Birchfield, President of the Ballantree Homeowners Association, said that a concern they had when they first heard about this project was would the construction be single- or multi-family. They have now been assured that any more development would have to come back through the same process. He urged City Council to make sure that the developer follows these plans.

Mr. Leo Wentzel, property owner, explained that he has met with the City Engineer and he understands the erosion control problem in the area. He said that he intends to do everything he can to prevent erosion from running off his property and will cooperate with the City Engineer.

Mayor Worley closed the public hearing at 6:02 p.m.

When Councilman Mumpower asked about if the Planning staff has reviewed the engineering report Mr. Grear presented, Planning & Development Director Scott Shuford responded that the letter is evident of the possibility of some civil action that could be pursued outside the standards that the City imposes. If the construction is not installed correctly, not only would the property owner be liable to face the enforcement of our ordinances, but also they might suffer civil damages of the neighboring property owners.

Councilman Mumpower moved to approve the modification from the subdivision standards to allow the length of the flagpole portion of a flag lot to exceed the maximum permitted length of 250 feet and to allow a single-family home to be constructed further than 500 feet from a fire hydrant for property on Ballantree Drive with the condition that the developer work with the Engineering Department to ensure compliance with the City's erosion control and stormwater ordinances. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

He then reviewed with Council the specifics of how each area qualifies for annexation:

Leicester Highway – Contains 64 acres, northwest. The area is contiguous and urbanized. It meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Sherwood Heights – Contains 61 acres, north – The area is contiguous and urbanized. It meets two tests – population density and subdivision test, and subdivision test.

Huntington Chase – Contains 63 acres, east - The area is continuous and urbanized. It meets two tests – population density and subdivision test, and subdivision test. This area also contains two non-urbanized areas.

Bell Road – Contains 21 acres, east – The area is contiguous and is urbanized. It meets the subdivision test.

Forest Lake – Contains 53 acres, south – The area is contiguous and meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Mill Stone – Contains 7 acres, south – The area is contiguous and meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Kensington-Windsor – Contains 67 acres, south – The area is contiguous and meets the population density test.

Mr. Benson then explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will not require expansion of the Police Department. He explained how each area would be served by an expansion of a particular district. At the current population, the number of sworn positions reflects a police/citizen ratio of one officer per 410 residents. A ratio of one officer per 300-400 residents is typical for North Carolina cities and towns. The police/citizen ratio following annexation is estimated at one officer to 417 residents. Because of the relatively small size of the annexation areas and close proximity to the existing municipal boundaries, no additional capital or operating expenses is anticipated in adding these areas to the existing patrol districts.

Fire protection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of the Fire and Rescue Department. The N.C. Gen. Statutes require the City to compensate rural fire departments for lost revenue by either contracting with the rural fire departments for fire protection, (usually the case). City services supplement the rural fire departments under contract to bring fire protection to City standards. The Fire and Rescue Department participates with surrounding fire departments in accordance with mutual aid agreements. The City currently has an insurance rating of 3, on a scale of 1-10, with 1 being the highest level.

Solid waste collection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Sanitation Division. New customers would receive the automated collection service. Compensation would be offered to private solid waste hauler to offset economic loss as required by the statutes. Therefore, there will be costs to the City associated with the purchase of new rollout containers and potential "economic loss" payments to affected contractors.

Councilman Ellis pointed out that there is a parking lot at the medical complex on Sweeten Creek Road that is entirely pervious. Progress is being made in this area and we need to try to encourage developers to proceed with that type of construction.

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Councilman Mumpower moved to approve the modification from the subdivision standards to allow the length of the flagpole portion of a flag lot to exceed the maximum permitted length of 250 feet and to allow a single-family home to be constructed further than 500 feet from a fire hydrant for property on Ballantree Drive with the condition that the developer work with the Engineering Department to ensure compliance with the City's erosion control and stormwater ordinances. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE FOLLOWING SEVEN AREAS PROPOSED FOR ANNEXATION WHICH ARE GENERALLY KNOWN AS (1) LEICESTER HIGHWAY AREA; (2) SHERWOOD HEIGHTS AREA; (3) HUNTINGTON-CHASE AREA; (4) PORTION OF BELL ROAD; (5) FOREST LAKE AREA; (6) MILL STONE AREA; AND (7) KENSINGTON-WINDSOR AREA

Urban Planner Paul Benson said that the Annexation Services Plan is being submitted for Council's approval for the following areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area; portion of Bell Road, Forest Lake area, Mill Stone area and Kensington-Windsor area.

City Council approval of this document is the second step in the annexation process that began on April 9, 2002, when Council adopted the resolutions of intent to annex these seven areas.

Upon review and approval by City Council, the Plan will be made available for public review. The follow steps will complete the annexation process.

Approval of Annexation Services Plan	April 23, 2002
Public information meeting	June 3, 2002
Public hearings	June 11, 2002
Adoption of annexation ordinances	June 25, 2002
Effective date of annexations	June 30, 2003

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major water and sewer lines, and any proposed extensions; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of N. C. Gen. Stat. sec. 160A-48 (basically contiguity and urbanization).

3) A statement setting forth the plans of the municipality for extending to the annexation area each major municipal service performed within the municipality. Specifically, (a) police protection, fire protection, solid waste collection and street maintenance on the date of annexation; and (b) extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such service to individuals lots or subdivisions.

4) The method under which the municipality plans to finance extension of services into the area to be annexed.

5) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed.

6) A statement showing how the proposed annexation will affect the City's finances and services, including City revenue change estimates.

He then reviewed with Council the specifics of how each area qualifies for annexation:

Leicester Highway – Contains 64 acres, northwest. The area is contiguous and urbanized. It meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Sherwood Heights – Contains 61 acres, north – The area is contiguous and urbanized. It meets two tests – population density and subdivision test, and subdivision test.

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Mill Stone – Contains 7 acres, south – The area is contiguous and meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Kensington-Windsor – Contains 67 acres, south – The area is contiguous and meets the population density test.

Mr. Benson then explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will not require expansion of the Police Department. He explained how each area would be served by an expansion of a particular district. At the current population, the number of sworn positions reflects a police/citizen ratio of one officer per 410 residents. A ratio of one officer per 300-400 residents is typical for North Carolina cities and towns. The police/citizen ratio following annexation is estimated at one officer to 417 residents. Because of the relatively small size of the annexation areas and close proximity to the existing municipal boundaries, no additional capital or operating expenses is anticipated in adding these areas to the existing patrol districts.

Fire protection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of the Fire and Rescue Department. The N.C. Gen. Statutes require the City to compensate rural fire departments for lost revenue by either contracting with the rural fire departments for fire protection, (usually the case). City services supplement the rural fire departments under contract to bring fire protection to City standards. The Fire and Rescue Department participates with surrounding fire departments in accordance with mutual aid agreements. The City currently has an insurance rating of 3, on a scale of 1-10, with 1 being the highest level.

Solid waste collection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Sanitation Division. New customers would receive the automated collection service. Compensation would be offered to private solid waste hauler to offset economic loss as required by the statutes. Therefore, there will be costs to the City associated with the purchase of new rollout containers and potential "economic loss" payments to affected contractors.

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Street maintenance services: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Street Maintenance Division. Existing personnel and equipment are planned to serve the proposed additions to the City maintenance system; therefore, no specific personnel and equipment additions will be made. Streets are resurfaced on a scheduled rotation established by classification, construction type, use, condition and inspections. The following are private and state maintained streets planned for inclusion on the scheduled rotation: Leicester Highway: Eliada Home Road and Old County Home Road; Sherwood Heights: Robinhood Road, Brookwood Road, and Brookwood Court; Huntington Chase: Huntington Chase Drive; Bell Road: Bell Road; Forest Lake: Forest Lake Drive, Sawmill Road, Meadow Lake Road, Simpson Hollow Road, Kingbird Lane, Glen Woods Court, and Goldfinch Lane; Mill Stone: Mill Stone Drive; and Kensington-Windsor: Windsor Drive, New Castle Court and Saint Charles Court. In order for privately owned streets to be considered by maintenance by the City, there is certain criterion that must be met. Some immediate maintenance issues include trimming of overgrown vegetation adjacent to streets in Sherwood Heights area; and need for some patching in the Forest Lake area.

Water distribution: On the effective date of annexation, all residents, businesses and property owners within the proposed seven annexation areas that are adjacent to existing water facilities will receive service on a basis substantially equal to all current portions of the City. The following four areas require no water line improvements: Sherwood Heights area, Forest Lake area, Mill Stone area and Kensington-Windsor area. The following three areas have water line improvements which are planned for completion by June 30, 2005: Leicester Highway: There is a need to upgrade the existing 2-inch water line to bring fire protection coverage to the same level as other parts of the City. The City will install approximately 2,600 linear feet of new 6-inch water line, fire hydrants and related appurtenances. Huntington Chase: There is a need to upgrade the existing 2-inch water line to bring fire protection coverage to the same level as other parts of the City. The City will install approximately 560 linear feet of new 6-inch water line, fire hydrants and related appurtenances. Bell Road: There is a need to upgrade the existing 2-inch water line to bring fire protection coverage to the same level as other parts of the City. The City will install approximately 1,300 linear feet of new 6-inch water line, fire hydrants and related appurtenances.

Sewer collection: The following five areas require no sanitary sewer system improvements: Leicester Highway area, Sherwood Heights area, Bell Road area, Forest Lake area and Kensington-Windsor area. The following two areas have sanitary sewer system improvements which are planned for completion by June 30, 2005: Huntington-Chase: The City will install approximately 560 linear feet of 8-inch sanitary sewer line and related appurtenances to enhance the level of service to this area. Mill Stone area: The City will install approximately 270 linear feet of 8-inch sanitary sewer line and related appurtenances to enhance the level of service to this area.

Administrative and other municipal services: The City provides a full range of services. Basically key professional and department directors specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and reaction and various other municipal activities and functions. The City is active in minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities.

Financial Impact:

Revenue: Total ad valorem property tax revenue - $375,547; Total state utility tax revenue - $51,300; Total local option sales tax - $144,058; Total Powell Bill allocation - $37,393; and Total fees, permits, licenses and charges for services - $47,149. Total revenue - $655,447.

Annual recurring expenditures: Fire (rural fire department contracts expected to be in place for at least 5 years) - $64,564; Solid waste (tonnage fee) - $9,632; and Street lighting (electrical charge to CP&L) - $6,644. Total recurring expenditures - $80,840.

Annual capital expenditures: Water line improvements - $310,000; Sewer line improvements - $101,000; Solid waste (economic loss compensation for private solid waste haulers) - $25,920; Rollout containers - $12,040; Street signs - $1,599; Street repair - $2,500; and Street lighting - $2,307. Total one-time annual capital expenditure - $455,366.

Mr. Benson explained the impact on insurance rates to property owners and commercial properties.

City Attorney Oast noted that if this Plan is found to be deficient after the public information meeting or after the City Council public hearing, it could be amended during Council deliberation of adoption of the ordinances.

Mr. Benson responded to various questions/comments from Council, some being, but are not limited to: does the City automatically take in all the streets in the annexation areas; are people required to tap into water or sewer after annexation; how much does it cost to tap into an existing water line; how long do we contract with the rural fire departments; how does the City handle street lights when subdivisions have more decorative street lights installed; are there different size roll-out containers; do we anticipate growth and more development around these proposed areas that will require building another fire station in the future; what is the status of multi-family apartments having recycling pick-up; how does the street scheduled maintenance rotation work; does the City feel that the police/citizen ratio is sufficient to protect our citizens; where does the City rank in crime throughout the state; what is the average response call for a Priority 1 police call; what constitutes Priority 1 police calls; and describe fire insurance rates.

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that the City is legally bound to provide services to the annexation areas on the effective date of annexation, except water and sewer line improvements which can be completed within a two year period after the effective date of an annexation.

Councilman Dunn briefed Council on a problem in Hollybrook where elderly people cannot roll down the trash containers for pick-up. He felt that if the City annexes an area, they should have the equipment to take care of the needs of that area. He understood the need for efficiency, but he felt that we are sacrificing services. Public Works Director Mark Combs explained the circumstances in Hollybrook and said that he is working with the homeowners association on that concern. He also noted that the City does have a set-out system in place for people who are physically not able to get their trash out to the curb.

Councilman Mumpower said that he wouldn't feel comfortable going forward with further annexations if the City is not providing good service to the current residents. However, Council does have assurance by staff that they are trying to provide good service. He invited City residents to contact Council to report if they see patterns of inadequate service.

At 7:25 p.m., Mayor Worley announced a short break.

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Mr. Fred English, resident in Haw Creek, felt that the City should maintain what they have before trying to annex more people. He pointed out that there is only one short section of sidewalk in the whole Haw Creek valley.

Mr. Dennis Seeney, Forest Lake Subdivision resident, spoke against the annexation and said that even though he will be saving approximately $180-200 a year on fire insurance, it doesn't equal the amount of $1,000 of additional property taxes. He felt that he has adequate law enforcement protection already from the Sheriff's Department and their response time would be pretty much the same as the Asheville Police Department's response time. He wondered if the City would start maintenance of the common area that the association currently pays for.

In reply to Mr. Seeney, Mr. Benson said that the Forest Lake common area would be private property, however, if they would like to dedicate the land to the City, our Parks and Recreation Department may take over the maintenance.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 02-75 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE LEICESTER HIGHWAY AREA

Councilman Ellis moved for the adoption of Resolution No. 02-75. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 145

RESOLUTION NO. 02-76 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE SHERWOOD HEIGHTS AREA

Councilman Peterson moved for the adoption of Resolution No. 02-76. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 146

RESOLUTION NO. 02-77 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE HUNTINGTON CHASE AREA

Councilman Ellis moved for the adoption of Resolution No. 02-77. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 147

RESOLUTION NO. 02-78 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS A PORTION OF BELL ROAD

Councilwoman Jones moved for the adoption of Resolution No. 02-78. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 148

RESOLUTION NO. 02-79 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE FOREST LAKE AREA

Councilwoman Jones moved for the adoption of Resolution No. 02-79. This motion was seconded by Councilman Ellis and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 149

RESOLUTION NO. 02-80 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE MILL STONE AREA

Councilman Peterson moved for the adoption of Resolution No. 02-80. This motion was seconded by Councilman Ellis and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 150

RESOLUTION NO. 02-81 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE KENSINGTON-WINDSOR AREA

Councilman Ellis moved for the adoption of Resolution No. 02-81. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 151

Councilman Dunn said that he is not against annexation and he would have voted in favor had he felt like the City was not stretched as far as we are. He was not convinced this was the right time to annex.

B. RESOLUTION NO. 02-82 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE SCHOOL BOARD

Vice Mayor Bellamy said that on April 16, 2002, City Council interviewed Allison Jordan, Marsha Bate, Roxie Wynn, Pegi O'Hagan and Keith Thomson for a vacancy on the Asheville School Board.

After each Council member spoke about the excellent credentials of all candidates, Councilman Ellis nominated Allison Jordan, Councilman Dunn nominated Allison Jordan, Councilwoman Jones nominated Marsha Bate, Mayor Worley nominated Allison Jordan, Councilman Mumpower nominated Marsha Bate, Councilman Peterson nominated Marsha Bate, and Vice-Mayor Bellamy nominated Roxie Wynn. There being a tie between Allison Jordan and Marsha Bate, Vice-Mayor Bellamy changed her vote in support of Allison Jordan.

Therefore, Allison Jordan was appointed as a member of the Asheville School Board to fill the unexpired term of Mr. Mark Gordon. Said term will begin immediately and expire on April 1, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 152

VI. OTHER BUSINESS:

Salvation Army Boys & Girls Club

Vice-Mayor Bellamy presented the City with several hand-made thank you cards and pictures from the Salvation Army Boys & Girls Club thanking firefighters and police officers.

Southeastern Airport Managers' Association

Mayor Worley said that he was presented with a resolution from the Southeastern Airport Managers' Association thanking the City of Asheville and the Asheville Regional Airport Authority for their generosity in assisting the 2002 Annual Conference held in Asheville.

Consolidation of Services

There was a brief discussion on the issue of consolidation with Buncombe County, in particular parks and recreation services. City Manager Westbrook said that as a result of a list of items Councilman Dunn had given him with regard to a proposal from Buncombe County, he prepared a memo to City Council noting that staff is analyzing the proposal and he would report back to Council within the next month on those items. Councilman Peterson felt that a subcommittee of Council working with a subcommittee of County Commissioners might be a better approach than having City staff working with County staff on consolidation proposals.

With regard to the consolidation of after-school programs, City Manager Westbrook said that at the budget worksession on May 13, 2002, Parks & Recreation Director Irby Brinson will explain his proposal.

Claims

The following claims were received by the City of Asheville during the period of April 5-11, 2002: Tim Vorst (Fire), Joy Reid (Water) and Michael H. Carter (Transit Services).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Veterans Memorial Request

Mr. Tuck Gudger, North Asheville resident, presented City Council with a petition containing approximately 650 names which read: "There is not a Veterans' Memorial in downtown Asheville commemorating those who have served, are serving and will serve in the military forces of the United States of America, especially during times of armed conflict, and there has long been a need for an appropriate veteran's memorial. The last open space in the city for a Veterans' Memorial is in the Pack Square/City/County Plaza area which area is being configured for better public use. We petition for a reservation of space in the Pack Square/City/County Plaza area for erection of a monument commemorating all veterans and, to the extent feasible, for erection of such monument." He asked that Council adopt a resolution supporting a veterans' memorial to be included in the projected plans for the renovation of the City/County Plaza. He also asked that the City contribute $50,000 towards the $100,000 total project cost. The other $50,000 is being requested from the Buncombe County Commissioners. He said that the City could maybe allocate the $50,000 over 3 years since the project may not be completed until that time.

Mr. Bill Griffin also spoke in support of the veterans' memorial and passed out to Council a sketch on what they would like the memorial to look like.

Mr. Richard Griffin supported the veterans memorial and stressed they need a place in Asheville that is appropriate and accessible for large crowds.

Mayor Worley asked the City Manager to place this item on Council's worksession agenda within 30 days and asked that Pack Square Conservancy Inc. (group contracted with the City) be invited to the worksession for a briefing on the project.

Comments by Walter Plaue

Mr. Walter Plaue invited City Council to attend the Memorial Day Services at 10:00 a.m. on Monday, May 27, 2002, at the City/County Plaza. He hoped this celebration would be the first of many.

Comments by Fred English

Mr. Fred English, Haw Creek resident, felt that the $15,000 appropriation to the Asheville Youth Sports Program voted on by Council at their worksession on April 9, 2002, was a conflict of interest for Vice-Mayor Bellamy and she should not have voted on that issue.

Closed Session

At 8:42 p.m., Councilwoman Jones moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Henderson County, Cane Creek Water and Sewer District, Asheville-Buncombe-Henderson Water Authority, James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. Williams, Paul E. Fruits, B. Joy MacFadyen Bulluck, Buncombe County, and City of Asheville – G. S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 10:10 p.m. Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 30, 2002
North Asheville Community Center
37 East Larchmont Road

7:00 p.m. - Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

The following topics were raised by residents and addressed by City Council and City staff: request to withhold any decision regarding the renovation of the Civic Center until a plan can be produced for the alternate use of the Civic Center at no cost to the City; determination needs to be made if Dunwood Road is a private or City-maintained street; large potholes on Dunwood Road; Dunwood Road is in such disrepair that trash trucks cannot collect garbage; annexation policies in the past with regard to street maintenance; Black Oak Drive, which was annexed several years ago, is in bad disrepair and residents requested the City take over maintenance of that private road; street assessment process unfair to property owners on Black Oak Drive who have a lot of street frontage; request to have Black Oak Drive's potholes repaired and snow removal service even if it is a private road, request for a pedestrian signal at the corner of Larchmont Road and Merrimon Avenue; request for sidewalk between Burger King and Swannanoa Cleaners on Merrimon Avenue; request for speed bumps on Fenner Avenue; request for sidewalks on Fenner Avenue; need for more speed enforcement on Fenner Avenue; request for "Children at Play" or "Slow" signs on Fenner Avenue near the bottom of the hill or near the corner of Lookout and Fenner; need Police Department to enforce parking violations on Fenner Avenue; Civic Center renovation should not include a sport activities complex because that should be built by the river or closer to the Airport in order to have adequate parking; City should make a determination on what to do at the Civic Center soon because the price tag is getting higher every year; library at the North Asheville Community Center is small and perhaps should be expanded over the air rights of the parking lot; no speeding enforcement on Merrimon Avenue or Kimberly Avenue; need to look at City departments, e.g., Civic Center and Transit Services, for prioritization; need for the City to do a better job of communicating with the community; request for community to give input to the City's 2025 Comprehensive Plan; request for County Commissioners' meetings to be viewed on the City's Government Channel; and request for more greenways.

After discussion, Council requested City staff prepare a report regarding streets that are in the City of Asheville but not maintained by the City. Said report is to contain a list of streets; the cost of bringing the streets up to City standards; and a financial plan with potential funding options, e.g. how much the City would pay and where those funds would come from, and how much the property owners would pay. Due to the current budget concerns, the City Manager requested this information be provided to Council between September 2002 – March 2003. Councilman Mumpower requested a worksession before late fall as he just wanted to explore possibilities without dollars being attached.

Mayor Worley adjourned the meeting at 8:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 7, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Resolution setting a Public Hearing on May 28, 2002, for the Voluntary Annexation of Reynolds Mountain Subdivision, Phase I

Budget Amendment for Mobile Safety House Grant from Federal Emergency Management Agency

Summary: The consideration of a budget amendment, in the amount of $52,277, to receive grant money from the Federal Emergency Management Agency (FEMA) for a mobile safety house and associated equipment.

The City of Asheville Fire and Rescue Department requested $52,277 from FEMA for the purchase of a mobile safety house and associated equipment. Staff was successful in obtaining those funds and was awarded Federal grant EMW-2001-FG-06774. The grant provides 70% of the total project, with the remainder from Fire Department's operating budget.

The safety house is primarily designed to educate adults about fire safety and home safety. Part of the mobile house is also to educate the public about residential fire sprinkler systems.

City staff recommends City Council approve the budget amendment to receive grant money from FEMA.

Contract to Audit City Accounts

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2001-2002.

N.C. General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2000-2001. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the Fiscal Year 2001-2002 audit. The base fee has been proposed at $54,000 (this is the same fee as last year and $700 less than two years ago). Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution, which authorizes the Mayor to execute a contract with Crisp Hughes Evans LLP for auditing services for Fiscal Year 2001-2002.

Budget Amendment for Master Street Tree Plan, Phase III

Summary: The consideration of a budget amendment, in the amount of $10,000, from a grant from the North Carolina Department of Environment and Natural Resources for implementation of the Master Street Tree Plan, Phase III.

The City of Asheville applied for funds in August 2001 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of $10,000 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the east area of Asheville.

The Parks and Recreation Department has completed the first two phases of the MSTP, and the Public Works Department will complete the remaining phases. Once complete, the MSTP will be an inventory of all the street trees on City right-of-ways located within the City limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the east area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of $10,000 to establish a budget for the next phase of the MSTP.

Youth Employment Program

Summary: The consideration of accepting a proposal by Community Solutions for Youth Employment to fund and manage the Youth Employment Program for the Summer of 2002, and approval of a budget amendment, in the amount of $37,400, to fund the program.

Community Solutions for Youth Employment (CSYE), part of a multi-agency support system for high risk youth ages 14 – 21 years of age, was informed of the City's inability to continue its youth employment program for 2002 due to budget constraints caused by State revenue shortfalls. CSYE is a program of Eliada Homes, Inc. CSYE, in cooperation with the Parks and Recreation Department, immediately began work to determine the best way to continue funding the youth employment program.

CSYE is proposing to fund summer jobs for 26 youth for eight weeks at 30 hours per week. In addition, CSYE agrees with the department that employment for these youth is only one part of the overall assistance that they need and therefore has agreed to manage the program for the Department at no additional cost. This management will include: recruitment of applicants, application activities, recruitment of employers in addition to the City of Asheville, interviewing activities, hiring, pre-employment training and orientation, job retention activities, mid-summer training, and volunteer placement for any additional youth needing experience but not included in the employment process. CSYE staff will provide weekly onsite contact with each youth employee to monitor their work and to supply support. CSYE will conduct an evaluation of the program. A special event at the end of the eight weeks is planned to celebrate the successful conclusion of the program.

The City of Asheville will accept a grant from the Community Solutions for Youth Employment for $37,400 to fund the cost of the program. The City of Asheville will use these funds to pay the wages and social security for each youth and provide pre-employment drug screening. Cost to the City will be the staff and time necessary to process payroll and to administer the drug screening program.

Traditionally, youth employed through this program have worked in a number of different City Departments including Parks and Recreation, Fire, Public Works and Human Resources.

The Parks and Recreation Department recommends that the City accept the proposal and grant funds from CSYE for the 2002 summer youth employment program and approve the budget amendment to fund the program.

Upon inquiry of Vice-Mayor Bellamy, Superintendent of Recreation Butch Kisiah explained the recruitment procedure.

Provisions for Possession & Consumption of Malt Beverages and/or Unfortified Wine at Goombay Festival, Greek Festival, Asheville Mountain Sports Festival, Asheville Downtown Association's events and the Bele Chere Festival

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: 2002 Goombay Festival, 2002 Mountain Sports Festival, 2002 Greek Festival, Asheville Downtown Association's 2002 events and Bele Chere 2002.

The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 23-25, 2002. The 2002 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Mountain Sports Festival is a unique combination of competitions and demonstrations throughout Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Mountain Sports Festival has requested permission to allow possession and consumption of beer and wine during these events.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the Downtown area. This year the request is being made for July 26-27, 2002. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

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Vice-Mayor Bellamy asked that these be voted on separately at the next formal meeting.

- **Grant from U.S. Dept. of Justice for Three New Police Officer Positions**

Summary: The consideration of a resolution authorizing the City Manager to apply for a federal grant from the U.S. Department of Justice to fund three new police officer positions.

The City is eligible to receive a $225,000 grant form the U. S. Department of Justice, Office of Community Oriented Services, to fund three new police officer positions for a period of three years. It is intended to assign three police officers to provide additional police services to the City's public housing communities. In consideration thereof, the Housing Authority of the City of Asheville has agreed to provide $107,736 for the required local cash match. No City funds are required for the match.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with the U.S. Department of Justice to fund three new police officer positions.

Police Chief Will Annarino answered various questions from Council regarding these three positions.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

I-26 CONNECTOR UPDATE

Metropolitan Planning Organization Coordinator Dan Baechtold said that this is a presentation to City Council on the traffic projections to be used in the design of the I-26 Connector Project.

Mr. Baechtold said that Stantec Consulting, traffic consultant from Raleigh, recently completed an update to the traffic model for the Asheville urban area. The traffic model is a computer simulation of traffic patterns that predicts traffic volumes on major streets and highways over the next 25 years. This traffic data will be used as the basis for designing the I-26 Connector project in Asheville. Stantec had a contract with the City of Asheville in the amount of $145,300 to produce this product. Eighty Percent (80%) of this cost was paid for with federal funds. The City of Asheville provided the local match of twenty percent (20%) in the amount of $29,060.

He said the traffic model presentation would also be given to the Community Coordinating Committee, which is the citizen's group that has been working with the NCDOT on the design of the connector project. That presentation will take place on the morning of May 7th. The following day, on May 8th, the presentation will be given to the Transportation Advisory Committee for the Asheville Area MPO (TAC). The TAC serves as the body that provides local input to the NCDOT. The TAC will be asked, after their public hearing on May 16, 2002, to give their input to the NCDOT.

Mr. Drew Joyner, with the N. C. Dept. of Transportation (NC DOT) Project Development and Environmental Analysis Department, explained that for the past 1-1/2 years they have (1) added I-26/I-40/I-240 interchange; (2) updated the I-26 Connector website; (3) added two new alternatives – beginning functional design and completing field studies for environmental impacts; (4) worked with NC DOT staff to provide visualization of project alternatives; and (5) updated the Asheville Urban Area Traffic Model.

The traffic data was one of the factors used to determine the number of lanes that will be built through West Asheville. He explained the results of the traffic model stating that the NC

Vice-Mayor Bellamy moved to reappoint Jim McCulley, Kim Moore and Christiana Tugman to each serve a three year term respectively, terms to expire December 31, 2004, or until their successors have been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

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E. RESOLUTION NO. 02-38 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Asheville Transit Commission.

The term of Claudia Nix, Ron Lambe, Althea Goode and Willie McDaniel, as members on the Asheville Transit Commission, expired on December 31, 2001.

On January 22, 2002, City Council interviewed Mickey Mahaffee and on February 12, 2002, City Council interviewed Richard Fosmoen.

Mickey Mahaffey received 5 votes and Richard Fosmoen received 2 votes.

Vice-Mayor Bellamy moved to reappoint Claudia Nix, Ron Lambe and Althea Goode to each serve an additional two year term, terms to expire December 31, 2003, or until their successor have been appointed; and to appoint Mickey Mahaffey to serve a two year term, term to begin immediately and expire December 31, 2003, or until his successor has been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 8-21, 2002: Perry Christopher (Parks & Recreation), Asheville Smoke (Civic Center), Jean Arrington (Water), Kent Cook (Streets) and Scott Bralley (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English, City resident, spoke about several matters concerning the Asheville Smoke, the Asheville Altitude, affordable housing, 2002 revaluation, and the City's budget as a result of the State's budget cuts.

B. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttell, representing the N.C. AIDS Policy Center, spoke about his dissatisfaction about the services provided by local AIDS service organizations.

Chris Goodwin received 0 votes; Lauren Malinoff received 3 votes; Dee Knight received 0 votes; Richard Fort received 3 votes; Robert Smith received 0 votes, Ned Guttman received 1 vote, Steven Sizemore received 4 votes; Beverly Robinson received 4 votes; Tom Muncy received 6 votes; and James Mills received 0 votes. Because of a tie between Beverly Robinson and Steven Sizemore, another vote was taken: Beverly Robinson received 5 votes and Steven Sizemore received 2 votes.

Vice-Mayor Bellamy moved to appoint Tom Muncy and Beverly Robinson, as Regular members, to each serve a three year term respectively, terms to begin immediately and expire on January 21, 2005; and to appoint Steven Sizemore, as an Alternate member, to serve a three year term, term to begin immediately and expire January 21, 2005. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote with Councilman Peterson voting "no".

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C. RESOLUTION NO. 02-36 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Bellamy said that this is the consideration of appointing members to the A-B Community Relations Council.

The terms of Bernadette Thompson and Cassandra Ingram, as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2001.

On January 22, 2002, City Council interviewed Rod Whiteside, Shirley Dillingham and Leslie Hennessee. On February 5, 2002, City Council interviewed Dan Comer.

Mayor Worley noted that he had received an e-mail from Rod Whiteside which stated he did not wish to be considered for the A-B Community Relations Council appointment.

Shirley Dillingham received 2 votes; Leslie Hennessee received 6 votes and Dan Comer received 6 votes.

Vice-Mayor Bellamy moved to appoint Leslie Hennessee and Dan Comer to each serve a three year term respectively, terms to begin immediately and expire on December 31, 2004, or until their successor have been appointed. This motion was seconded by Councilwoman Jones and carried unanimously.

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D. RESOLUTION NO. 02-37 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Asheville-Buncombe Fair Housing Commission.

The terms of Christiana Tugman, Kim Moore and Jim McCulley, as members on the Asheville-Buncombe Fair Housing Commission, expired on December 31, 2001.

On February 12, 2002, City Council interviewed David Clegg.

City Council noted how impressed they were with Mr. Clegg.

Vice-Mayor Bellamy said that she people have brought to her attention problems with the Humane Society not enforcing the ordinance and their inability of responding in a timely manner. Police Chief Annarino said that the City's contract with the Humane Society is in the amount of $170,000 and expires on July 1 of this year. He noted that both parties are currently evaluating the contract. They do have a new director who is working on those issues. She has instituted training and certification for her officers, is working to enforce compliance and has supported the increasing of fees. This will help them bring in revenue to help offset some of their costs.

The following residents spoke in support of increasing the penalties for animal control violations:

Mr. Bob Brummond, Haw Creek resident
Mr. Walter Plaue, City resident
Mr. Robert Maddox, City resident
Mr. Fred English, Haw Creek resident
Mr. Lynwood Crump, Shiloh resident
Mr. Bernard Lancaster, Haw Creek resident
Mr. Thomas Penland, Haw Creek resident
Mr. Chris Pelly, President of the Community Association of Haw Creek

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2901. This motion was seconded by Vice-Mayor Bellamy.

Councilman Mumpower understands that there is a clear need for this increase of fees, however, felt that this is an extreme percentage of increase. He would prefer to support of a sequential increase in fees. He felt that our fees are higher than the healthier models in the survey, specifically speaking to Lee County, Salisbury and Cary. He was also concerned that we are changing the fees before we clarify our ordinance. He felt the enforcement part is as least as important as the fees, if not more. He felt this should be a more reasonable fee structure, for example $50 first offense and $25 increments from there on.

The motion made by Councilman Dunn and seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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At 6:55 p.m., Mayor Worley announced a short break.

B. RESOLUTION NO. 02-35 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Board of Adjustment.

The terms of Lauren Malinoff (Regular), Dennis Hodgson (Regular) and Joseph Brady (Alternate) on the Board of Adjustment expired on January 21, 2001.

On February 5, 2002, City Council interviewed Chris Goodwin, Lauren Malinoff, Dee Knight, Richard Fort, Robert Smith, Ned Guttman and Steven Sizemore. On February 12, 2002, City Council interviewed Beverly Robinson, Tom Muncy and James Mills.

The current penalty for animal control violations is $10.00 for the first offense; $20.00 for the second offense within 12 months of the first; and succeeding offenses within 12 months of a prior offense result in increased penalties in $10.00 increments per offense. Penalties of these amounts have proven ineffective in promoting voluntary compliance with animal control regulations. In addition, collection of penalties is a problem because of the costs of collecting delinquent penalties exceeds the value of the revenue.

It is proposed that the penalties be increased as follows:

- First offense --$50.00
- Second offense within 12 months ----------------$100 00
- Third offense within 12 months--------------------$150.00
- Succeeding offenses within 12 months result in increased penalties in $50.00 increments per offense. (For example the fourth offense within 12 months would carry a $200.00 penalty; the fifth would carry a $250.00 penalty, and so on.) The maximum penalty is set at $500.00.
- Unpaid penalties would be declared delinquent after the 30th day from the issuance of the citation and thereafter for each additional 30-day period of delinquency.
- Delinquency fee-------$50.00. (This is similar to the parking penalty delinquency schedule which provides for a $25 fee for each 30 day delinquency period.)

The following is a survey of seven cities' and counties' which have animal control penalties (none provide for a delinquency fee for non-payment):

- Chapel Hill: $50 per offense; if payment is not received a criminal summons is issued, to $500.
- Buncombe County: Each offense not to exceed $500 at the discretion of the Animal Control Officer.
- Lee County: 1st offense $25; 2nd $50; 3rd $250 and/or confiscation of animal.
- High Point: $50 per offense.
- Salisbury: 1st offense $25; 2nd $50; 3rd $75; 4th $250. Loose dog is $50.
- Sanford: 1st offense $50; 2nd $100; 3rd $250 and/or confiscation of animal.
- Cary: 1st offense $20; 2nd $50; 3rd $75; 4th $100; 5th $250 and confiscation of animal.

Public education of the penalty structure is an important component of the implementation plan. Asheville's Government Access Channel, the "City Works" section of the Asheville Citizen-Times, internet postings and other methods will be used to inform the public. The effective date of the ordinance will allow a 60-day window of opportunity for staff to carry out public education activities.

Spay and neuter alternatives to penalties will be considered on a case-by-case basis.

The contract for animal control services the City has with the Asheville Humane Society specifies that all civil penalties and license fees collected will be retained by the Humane Society to off-set expenses associated with enforcing the annual license fee, sterilization of animals adopted from the shelter, and public education. For 2001, approximately $1,700 in penalties and $10,000 in license fees were collected.

City staff recommends Council adopt the ordinance.

Councilman Peterson asked if the City considered confiscation of animal as the last resort as some cities and counties do. Police Chief Annarino said that administratively and realistically they don't get to that point. Confiscation of animals generally means a violation of some type of criminal offense.

the future. His concern has to do with the no payment loans where the loans are for 20 or 30 years and there is no principle being returned and no opportunity to revolve that money over and over again within the community. He does understand how incentives and subsidies are needed. Perhaps Community Development Block Grant (CDBG) funds could be used more effectively as a subsidy. He also suggested we look at our total funds available for affordable housing and see which fund sources are best for which aspects of affordable housing.

Councilwoman Jones said that CDBG funds and the Housing Trust fund are not enough to fix affordable housing problems in Asheville. We need to find more creative solutions and be open to land use planning if we are going to make a difference in affordable housing. Council needs to remember that while we are growing this Fund and using it wisely, let's not forget we are putting people in homes.

Councilman Dunn said that the Housing & Community Development Committee is already talking about some of the issues mentioned at this meeting.

Councilman Ellis asked if all of the new units pay property taxes. Ms. Caplan responded that the units owned and maintained by WNC Housing for special needs people will not be on the tax rolls – all the other units will be.

Mr. Walter Plaue, City resident, said that he was a member of the focus group that addressed the first year concerns. They agreed that (1) no more than 30% of the loan funds in any year should be deferred; (2) no more than 30% of the loan funds in any year should be at 0% interest; and (3) there should be a creation of a balanced citizens advisory committee for the 2002-03 year to be appointed by the City Council by the Spring of 2002. He agreed that this is not simply the matter of the best dollar, but that there needs to be a consideration of the human element. He personally felt that the City should look to expand the Fund into the ETJ areas. Granted those properties may not pay City taxes, but already one of the recommendations today is for a project that is not going to pay City taxes. By going into the ETJ we can find land that is less expensive and that is a key element in giving the people better units to live in.

Mr. Fred English, City resident, felt that the City should not be putting any of the Trust Fund into historic properties.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 02-34. This motion was seconded by Councilwoman Jones and carried unanimously.

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Vice-Mayor Bellamy said that there are other ways to address the issues of affordable housing and some is looking at our policies and how we interpret those policies. We need to think about what people want in their existing neighborhoods – something that blends in with the character of the neighborhood. We need to look at more collaboration with non-profits and for-profits and look at how we can work together. She supported inclusionary housing, which the City needs legislative authority.

B. ORDINANCE NO. 2901 - ORDINANCE RESTRUCTURING AND INCREASING PENALTIES FOR ANIMAL CONTROL VIOLATIONS

Police Chief Will Annarino said that this is the consideration of an ordinance to restructure and increase penalties for animal control violations.

2. Mountain Housing Opportunities – $80,000 for construction of a 4-bedroom house for sale and rehabilitation of two dilapidated houses, one for sale and one as a rental duplex; on Jefferson Street, Clingman Avenue, and Rector Street.
3. Tim & Wendy Vorst – $40,000 for a duplex with a 1-bedroom and a 3-bedroom apartment to rent on Brookshire Street.
4. Tim & Wendy Vorst – $120,000 for a 6-plex of 1-bedroom apartments to rent on Hendersonville Road.
5. Carolina Custom Exteriors – $180,000 for a 3-bedroom house for sale, and two duplexes and a 4-plex to rent on Galax Street. The proposal includes an offer to buy the City-owned site on Galax Street.

Proposed loan terms are as follows:

WNC Housing:	2% interest payable annually; first year's interest and all principal repayment deferred for 30 years.
Mountain Housing:	Rental duplex: 2% interest with all payments deferred for 20 years; Single-family homes: x% interest with all payments deferred for 30 years, where x = the rate of appreciation of the properties.
Tim & Wendy Vorst:	2% for 30 years, amortizing, on both projects.
CC Exteriors:	2% construction loan only on the single-family house; 2% for 15 years amortizing on the rental units.

City staff recommends approval of the five loans from the City's Housing Trust Fund.

Councilman Dunn felt that the Housing & Community Development Committee (of which he is a member) should carefully review using the Housing Trust Fund monies to restore historic sites. He asked that if a focus group is again formed, he felt it should be more balanced by having an equal number of developers, non-profits and for-profits.

Upon inquiry of Councilman Dunn, Ms. Caplan said that since property in the extraterritorial jurisdiction does not provide tax revenue, City Council did not wish Housing Trust Fund monies to be expended outside the City limits.

Councilwoman Jones, member of the Housing & Community Development Committee, felt this would be a good time to ask the County to be a part of the Housing Trust Fund. She felt these five recommendations represent a balance of rehab and new construction; rental and sale; different types of dwellings as far as duplexes and single-family homes; is a mixture of private and non-profit; and are different parts of the City. She stressed that part of what we must do as policy and decision makers is be good stewards of hard earned tax money. However, the "bang-for-the-buck" is only one criterion in the bottom line and will not always be for the best decisions. When we talk about balance, we need to bring in other criteria as well.

Councilman Mumpower felt that accountability is a good criterion, but also defends getting the most benefit out of the monies that we have to spend.

Upon inquiry of Councilman Ellis, Ms. Caplan said that the City would gain 26 affordable housing units from the combined $520,000 loans this year.

Mayor Worley gave a brief history of the Housing Trust Fund and said that City Council has never adopted policies to apply to this Fund. He suggested the Housing & Community Development Committee look at adopting some policies on how the Trust Fund is administered in

Mayor Worley closed the public hearing at 5:33 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2900. This motion was seconded by Councilman Dunn and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. AMENDMENT TO CITY COUNCIL POLICY ON RULES FOR BOARDS AND COMMISSIONS REGARDING U.S. CITIZENSHIP AS A QUALIFICATION FOR APPOINTMENT

Mayor Worley said that this issue has been referred to the City's Board and Commission Committee and will not be discussed at this meeting.

V. NEW BUSINESS:

A. RESOLUTION NO. 02-34 - RESOLUTION APPROVING FIVE LOANS FROM THE CITY'S HOUSING TRUST FUND

Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to award five loans from the City's Housing Trust Fund.

Ms. Caplan explained the 2nd Year Housing Trust Fund Program. She pointed out the concerns of Year 1 and explained the focus group, which was formed to address those concerns. She explained why repayments should be deferred: (1) funding structure depends on target income group; (2) making housing affordable at 80% median income requires incentives; and (3) making housing affordable at less than 50% median income requires subsidy. She explained the growth of the Fund through repayments vs. level of subsidy and then gave examples of finding the right loan structure.

Ms. Caplan said that available funds in the City Housing Trust fund stand at $512,000. This comprises $400,000 in new Fiscal Year 2002 funds and approximately $112,000 in loan repayments. Applications for these funds were invited by letter and advertisement on December 7, 2001.

Eight applications were received by the January 18 deadline, requesting loans totaling $840,000. They were reviewed by a five-person committee of City staff and outside experts, using criteria developed by a broad-based focus group last fall. The review committee reported to the Housing and Community Development Committee, which has recommended the five highest ranked applications for a total of $520,000 in loans, producing 26 affordable housing units. They are:

1. WNC Housing, Inc. – $100,000 for "Independence Cottages", five 1-bedroom houses for rent to very low income individuals with severe and persistent mental illness; on Clemmons Street and Spinet Street.

ORDINANCE NO. 2900 - ORDINANCE TO REZONE TWO LOTS LOCATED AT THE CORNER OF HENDERSONVILLE ROAD AND MILLS GAP ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:23 p.m.

Urban Planner Jeff Tacy said that this is consideration of an ordinance to rezone two lots located at the corner of Hendersonville Road and Mills Gap Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on February 15 and 22, 2002.

The Planning and Development Department has initiated this rezoning request (.88 acre) (PIN Nos. 9655.09-25-0433 and 1468) in an effort maintain the commercial character of the Hendersonville Road corridor. The Highway Business District is established to address the needs of commercial development along major thoroughfares. The district permits a wide range of residential, recreational, institutional, public/semi-public, office/business and other land uses. The majority of the properties in the vicinity that front on Hendersonville Road are zoned Highway Business. There are no industrial uses fronting on Hendersonville Road in the immediate area. Based on the purpose of the HB District and the development patterns along Hendersonville Road, HB zoning would be more appropriate than Commercial Industrial. HB zoning would prevent the location of incompatible uses in the area and promote the location of uses similar to those in existence. Next month, the Planning and Development Department will request the same rezoning for the property on the southeast corner of Hendersonville Road and Mills Gap Road. This will eliminate nearly all of the Commercial Industrial zoning fronting on Hendersonville Road at the Mills Gap Road intersection.

It should be noted that the current owner of the subject property has submitted a letter of agreement for the rezoning request.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the northeast corner of Hendersonville Road and Mills Gap Road from Commercial Industrial to Highway Business. The Planning and Development staff recommends approval of the requested rezoning.

Councilman Peterson said that at their recent retreat City staff advised Council that the City needs to preserve property that is zoned industrial to encourage more industrial development in the City. This rezoning request is doing just the opposite. He wondered if by changing the zoning on this property, are we making it easier for the properties behind it to be more justified in changing to a more commercial use vs. a more industrial use. He admitted that it's easy for the City to say they need to preserve the industrial zones, but hard to enforce if property owners can get better use out of their property if zoned commercial.

Mr. Tacy said that these properties are not good from a planning or land use type perspective to be preserved as industrial. He pointed out that there are a lot of uses permitted in the industrial district that would not fit into the long-range plan for the Hendersonville Road corridor.

Planning & Development Director Scott Shuford said that at this particular location it is very unlikely that the property would be developed for anything industrial. In fact, with very rare exceptions, when property is placed in commercial industrial zoning classifications, the end result is that the commercial aspect usually gets developed. He advised Council that in the near future Planning staff will be bringing forward to Council an amendment that will allow more industrial development to occur in our commercial zoning classifications.

Mayor Worley said that this public hearing was opened on October 23, 2001, and continued several times.

On February 19, 2002, a letter was received from Ms. Diane Smoak, representing the petitioner, as follows: "We are requesting that our rezoning hearing for 1153 Sweeten Creek Road be rescheduled for the May meeting. We have been trying to work with the citizens of the Shiloh community to rezone this property and apologize for the inconvenience to the council but feel a mutually agreeable plan for the property would be good for the community as well as the owner of the property. Thank you in advance for working with us."

Councilman Ellis moved to continue the public hearing to May 28, 2002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 2270 HENDERSONVILLE ROAD KNOWN AS ARDEN SQUARE SHOPPING CENTER

ORDINANCE NO. 2899 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 2270 HENDERSONVILLE ROAD KNOWN AS ARDEN SQUARE SHOPPING CENTER.

Mayor Worley opened the public hearing at 5:17 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to consider the voluntary annexation for property located at 2270 Hendersonville Road, site of the Arden Square Shopping Center. This public hearing was advertised on February 15, 2002.

Mr. Winston W. Pulliam, sole owner of Arden Square LLC, has submitted an annexation petition for property located at 2270 Hendersonville Road.

This property is not contiguous to the City, but is located within the Arden annexation area, for which the annexation ordinance has been adopted with an effective date of June 30, 2002. The location of the property is further described as being on the east side of Hendersonville Road, south of Royal Pines Drive. The annexation area includes one lot, PIN No. 9654-09-15-9196, and consists of 2.2 acres.

City staff recommends City Council adopt the ordinance annexing 2270 Hendersonville Road.

Mayor Worley closed the public hearing at 5:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2899. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 421

C. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED AT THE CORNER OF HENDERSONVILLE ROAD AND MILLS GAP ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

K. RESOLUTION NO. 02-33 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE PROPOSED SALE OF REAL PROPERTY AT 9-13 BILTMORE AVENUE, ASHEVILLE, N.C., AND SETTING A PUBLIC HEARING ON MARCH 12, 2002

Summary: The consideration of a resolution setting a public hearing and directing the City Clerk to publish a notice regarding proposed sale of real property at 9 -13 Biltmore Avenue, Asheville, N.C.

The property at 9 -13 Biltmore Avenue is located about 125 feet south of Pack Square. It is improved with a store front building with three bays dating from the 1920s. The land area comprises 14,469 square feet and the total combined building area is approximately 6,529 square feet. The lot extends to the east side of South Lexington Avenue, about 125 feet south of the intersection with Patton Avenue, and is improved with marked parking spaces on an asphalt surface. The lot is rectangular in shape and sloped to street level access. The appraised value of the property is $530,000.

Asheville Area Arts Council has submitted a proposal to purchase the property minus the air rights over the rear parking lot in the amount of $462,500. The bid from the Arts Council includes the proposal to cooperate with the eventual purchaser of the air rights over the parking lot to allow construction a new building containing parking, office, retail and/or residential units on South Lexington Avenue. The new building would be constructed above the first level by the purchaser of the air rights. The calculated value of the air rights retained by the City to be sold separately is $67,500. The bid from the Arts Council reflects the appraised value minus the air rights. The City has a bid in hand from a redeveloper for the air rights. The bid from the Arts Council includes an offer of $339,000 cash and a request that the City finance $123,500 of the purchase price. If the bid of the Arts Council is accepted, Community Development staff recommends evidence of funding or financing be required within 60 days of acceptance.

Approval of the resolution will schedule a public hearing on March 12, 2002, and initiate the sale of the property through a private sale as provided in N. C. Gen. Stat. sec. 160A-457(4).

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 76

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Ellis and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

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RESOLUTION BOOK NO. 27 – PAGE 73

H. **RESOLUTION NO. 02-31 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GLAZER ARCHITECTURE P.A. FOR RENOVATIONS AND ADDITIONS TO FIRE STATION 3 LOCATED AT 50 OREGON AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to sign the contract with Glazer Architecture, P.A., in the amount of $18,600, for basic renovations and minor additions at Fire Station #3 located at 50 Oregon Avenue.

Fire Station 3 was constructed in 1976 and no major building renovations have been undertaken during the life of the building. Presently, a pumping fire engine and a ladder truck are housed within the station. The renovations include re-roofing the building, renovating the kitchen, new finishes in the dayroom, kitchen, and dorms, new HVAC for all areas except the apparatus bays, electrical and plumbing renovations as required by Code. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #3.

RESOLUTION BOOK NO. 27 – PAGE 74

I. **RESOLUTION NO. 02-32 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 146 ON LINCOLN STREET IN THE EAST END/VALLEY STREET COMMUNITY**

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 146 in the East End/Valley Street Community for the amount of $3,200.

Disposal Parcel 146 is a substandard lot located on the north side of Lincoln Street comprising 3,659± square feet. The lot is irregular in shape and mostly flat about street level then sloping up sharply to the rear. The bid in the amount of $3,200 from Damon Rouse includes the proposal to combine the property with adjoining property currently owned by Mr. Rouse on Jordan Street.

Although the new tax appraisal is $5,600, this property was available for several years at the previous tax value of $2,000 and then at $4,900 with no offers having been received. A letter of opinion from Ben Mansell CRS, GRI with RE/MAX Advantage Realty, indicates that due to the limited utility of the property to any buyer except an adjoining owner, the market value of the property would be approximately $3,000.

Approval of the resolution will establish the minimum price in the amount of $3,200 and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 75

Summary: The consideration of a motion approving the 2002 festival and special events scheduled co-sponsorship by the City of Asheville.

In March of 1995, the Asheville City Council adopted a festival policy. A segment of that policy requires that City Council approve the list of festivals requesting co-sponsorship with Asheville Parks & Recreation on an annual basis. In 2001, the City co-sponsored 37 events produced by 25 organizers. For 2002, the request is for 65 events produced by 35 organizers.

The criteria for inclusion as a co-sponsored event are laid out in the Outdoor Special Event Guide which are:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The Parks and Recreation Department recommends accepting the list of events as the only events eligible for co-sponsorship for 2002. All further requests for 2002 will be denied, and organizers will be encouraged to apply for 2003.

Councilman Mumpower pointed out the fact that the numbers have increased dramatically and City staff has been instructed to review the policy on the criteria for co-sponsorship.

G. RESOLUTION NO. 02-30 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GLAZER ARCHITECTURE P.A. FOR RENOVATIONS AND ADDITIONS TO FIRE STATION 8 LOCATED AT 902 TUNNEL ROAD

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Glazer Architecture, P.A., in the amount of $33,000, for renovations and additions at Fire Station #8 located at 902 Tunnel Road.

Fire Station #8 was constructed in 1966 and no major building renovations have been undertaken during the life of the building. The additional growth of east Asheville required the building to house a pumping fire engine and ladder truck today. However the building was only designed for one fire company. The renovations include women's locker area, storage area, enlarged dayroom and kitchen. A new public entry, bay for a quick response vehicle, and officer office are in the scope of work. Site work to improve the traffic flow is included in the contract. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #8.

The Public Works Department staff recommends City Council adopt the resolution to construct ADA and sidewalk amenities along the Urban Trail.

RESOLUTION BOOK NO. 27 – PAGE 71

E. RESOLUTION NO. 02-29 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GREEN LIGHT ELECTRIC INC. FOR PREVENTIVE MAINTENANCE OF TRAFFIC CONTROL SIGNALS

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc., for preventative maintenance of traffic control devices in the amount of $79,775.

In April 2001, the Public Works and Engineering staff undertook the project of reengineering the Division of Traffic Operations, given the fact that two signals technicians resigned and the impending retirement of the traffic signal supervisor. Staff goals were to evaluate the existing level of service and determine if reengineering options were available, with the possibility of contracting out some of the existing services. Other goals were to improve overall signal services, assure system reliability, and maintain direct accountability for fundamental system functions.

City staff has determined that preventative maintenance activities could, and should be, contracted to the private sector.

It was further determined that a minimum staff level of two signal technicians, whose pay scale and classification would more closely emulate the N. C. Dept. of Transportation technicians with similar responsibilities, would be maintained to insure emergency response and guarantee that timely repairs were enacted. Their primary responsibility, beyond emergency response, is to maintain and update signal system data and functions of coordination and timing.

Bids were solicited to determine actual costs for a comprehensive preventative signal maintenance program by the private sector. The City received three bids for the work. Bids were received from the following vendors:

Green Light Electric	$119,800
ALS of North Carolina	$199,800
MB Haynes Electric	$249,945

City staff negotiated with the successful bidder to further reduce the contract amount for the required work to $79,775 per year for the next 5 years, with annual options for renewal, calculating a 3% increase per year.

The overall cost savings from the reengineering idea, along with the improved services mentioned above, is approximately $40,000 per year.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

RESOLUTION BOOK NO. 27 – PAGE 72

F. MOTION APPROVING THE 2002 FESTIVAL AND SPECIAL EVENTS CO-SPONSORED BY THE CITY OF ASHEVILLE

state and local laws. In addition, the Manager will continue to report to City Council on a quarterly basis in writing regarding the contracts of the City.

The above changes would take some of the items off the Council's agenda, which sometimes tend to lengthen it with routine matters. In addition, it would follow the tradition of allowing Council approval of formally bid construction projects and large service contracts, while allowing the City Manager to execute the remaining contracts.

The City Manager requests that Council adopt the ordinance granting authority to approve, award and execute construction contracts, purchase contracts and service contracts as outlined.

RESOLUTION BOOK NO. 27 – PAGE 69

D. RESOLUTION NO. 02-28 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PRECISION CONTRACTING CO. TO CONSTRUCT ADA AND SIDEWALK AMENITIES ALONG THE URBAN TRAIL

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Precision Contracting Co. Inc. to construct ADA and sidewalk amenities located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to perform ADA and sidewalk construction services along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-129, formal bids for ADA and sidewalk construction services were solicited and four responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Specialties Construction Inc.	Non-Compliance	Yes	Yes	$111,827.00
Precision Contracting Inc.	100%	Yes	Yes	$133,410.00
Candler Concrete Works Inc.	0%	Yes	Yes	$137,328.54
Jerry Payne Const. Co. Inc.	0%	Yes	Yes	$191,300.00

These amenities will include: The installation of seven additional handicap accessible ADA ramps. Sidewalk replacement on Haywood Street adjacent to the downtown library, which will include new handicap accessible parking spaces to accommodate side-unloading vehicles, tree grates, and streetscape amenities such as benches and trash cans. The installation of thematic, directional markers will assist downtown visitors in finding their way along the Urban Trail.

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget. Under the provisions of a TEA 21 Transportation Improvement Project (project number E-4138), completion of this contract would qualify the City of Asheville for a reimbursement of $106,728.00.

The ordinance is drawn to be as narrow as possible. It does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council adopt the franchise ordinance.

The required second reading of this ordinance will occur on March 5, 2002.

ORDINANCE BOOK NO. 19 – PAGE [illegible] 416

C. RESOLUTION NO. 02-27 - RESOLUTION ESTABLISHING A NEW POLICY AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS AND AWARD BIDS

Summary: The current contract approval authority for the City Manager is relatively low compared to formal bid limits set in the North Carolina General Statutes and normal practices across the state, thus requiring many routine, budgeted, contracts to require approval of Council. This change, if approved, would increase the City Manager's authority consistent with state law and general practices across North Carolina.

Currently the City Manager is authorized to sign contracts up to $30,000.00. All contracts for construction and services above $30,000.00 require approval of City Council. In many cases contracts are approved by Council on the consent agenda and, therefore, require several additional weeks before the awarding of the contract can be accomplished. This slows down the process and, in several recent cases, you have noticed where staff has asked you to take special action at worksessions in order to be able to move projects forward at a more rapid pace.

Just recently the General Assembly amended General Statute §143-129 regarding the procedures for letting of public contracts. The General Assembly increased the amount of the contract needed to trigger the formal bidding requirements as outlined in the statute. The recent changes require that cities receive formal bids on construction or repair contracts that could amount to more than $100,000.00. In addition, the formal bid requirement for purchases of apparatuses, supplies, material or equipment has been raised from $30,000.00 to $50,000.00. (Note: Informal bids are still required for purchases from $5,000.00 to $49,999.99.)

In order to align local responsibilities with newly changed state law, it is recommended that the City Manager be given authority to approve contracts in the following manner:

A. Construction or repair contracts up to $100,000.00 could be approved and signed by the City Manager without City Council approval while construction contracts over $100,000.00 must be approved by City Council before the City Manager is authorized to sign the contract.

B. Purchase contracts for apparatuses, supplies, materials or equipment below $50,000.00 could be approved and signed by the City Manager without Council approval.

C. Service contracts up to $50,000.00 can be approved and signed by the City Manager without Council approval while service contracts $50,000.00 and over need City Council approval before the City Manager can sign the contract. Currently, the City Manager can sign a service contract under $30,000.00 without City Council approval. (NOTE: THERE IS NO REQUIREMENT TO BID A SERVICE CONTRACT AND THERE ARE NO MONETARY THRESHOLDS.)

All of the above recommendations are made with the understanding that there must be sufficient funding in the budget and that all contracts will be approved in accordance with federal,

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE RETREAT HELD ON FEBRUARY 8, 2002; THE REGULAR MEETING HELD ON FEBRUARY 12, 2002, AND THE WORKSESSION HELD ON FEBRUARY 19, 2002**

B. **ORDINANCE NO. 2898 – FIRST READING OF ORDINANCE GRANTING A FRANCHISE TO TROLLEY LEASING, LLC, TO OPERATE A NARRATED HISTORIC TOUR TROLLEY ON THE STREETS OF THE CITY OF ASHEVILLE**

Summary: This is the consideration of the first reading of a franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

Trolley Leasing, LLC, is a Florida Limited Liability Corporation. They propose to do business in Asheville as Asheville Historic Trolley Tours. The services to be offered will include narrated historic tours of the downtown and nearby historic areas. They intend to stop at a number of local hotels. The tickets will be sold at various locations including hotels and the Asheville Visitors Center.

The tour will follow an established route and could occur up to four times per day. The business plan does not contemplate point-to-point transportation of people on a scheduled basis for a fee, but does include the possibility of charter business.

At the request of City staff, the operator has met twice with the City Traffic Engineer and he has signed off on the proposed route as not unduly interfering with the normal flow of traffic.

The vehicle is a 30-foot rubber-tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

It is recommended that the Council franchise the historical tour aspect of this business. A tour trolley usually runs somewhat slower than prevailing traffic and occasionally stops to embark or discharge passengers from a public street. This creates the possibility of interfering with the flow of traffic on public streets by creating unsafe situations or by blocking a lane of traffic. The franchise, as drafted, would simply require that the City's Traffic Engineer sign off on the proposed routes and be advised of any changes subject to his approval. At this time, the Traffic Engineer has reviewed and approved the routes, but the operator is conferring with the Traffic Engineer on some proposed changes.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day of the week. For charter operations, the hours of operation are not limited to the above, providing that Trolley Leasing meets all local, state and federal laws regarding the operation of a chartered vehicle.

Tuesday – February 26, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. MAYOR WORLEY RECOGNIZED BOY SCOUT TROOP 77

B. ORDINANCE NO. 2897 - ORDINANCE ACCEPTING DONATION FROM THE ASHEVILLE PROFESSIONAL FIREFIGHTERS ASSOCIATION

Mayor Worley recognized Fire Chief Greg Grayson who in turn recognized Asheville Professional Firefighters Association Mike Marshall and thanked the Asheville Professional Firefighters Association for the $17,100 donation to the City to purchase a thermal imaging camera for use in the Fire and Rescue Division. The camera will allow firefighters to see in smoke and dark conditions. Use of the camera improves firefighter effectiveness and safety. The cameras also allow firefighters to locate and rescue fire victims quickly and to search for fire hidden in walls and building voids.

The Asheville Firefighter's Association, IAFF Local 865, recently received the "North Carolina Professional Firefighters and Paramedics of North Carolina Local of the Year" award for the State of North Carolina. This is a prestigious honor for the Association. The Association is comprised of approximately 85% of the Asheville firefighters.

Fire Chief Grayson was also pleased to announce that the Asheville Chapter of Professional Firefighters and Paramedics of North Carolina received the Local of the Year Award for the Year 2001.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2897. This motion was seconded by Councilman Dunn and carried unanimously.

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C. PROCLAMATION PROCLAIMING MARCH 10-16, 2002, AS "GIRL SCOUT WEEK"

Mayor Worley read the proclamation proclaiming March 10-16, 2002, as "Girl Scout Week" and recognizing March 12, 2002, as the 90th Anniversary of Girl Scouts of the USA and recognizing 2002 as the 50th Anniversary of Girl Scouts of Western North Carolina Pisgah Council. He presented the proclamation to Ms. Jennifer Hallmark, Director of Communication/ Marketing for the Girl Scouts of Western North Carolina Pisgah Council.

Asheville Smoke

Discussion occurred with regard to a letter City Council members received from the Asheville Smoke asking for two things, both of which mean providing funding which would require a City Council appropriation. City Manager Westbrook said that based on the information from the State with regard to the budget, a reduction in City services, and infrastructure needs in the City, he did not recommend making an appropriation to those requests.

When Councilman Mumpower suggested the City write off the facility fee for the remainder of their season, City Manager Westbrook said that City Council would have to pass a resolution and then there could be a problem with the basketball team and other vendors who use the facility.

City Manager Westbrook stated that City Council has worked with the Asheville Smoke in the past by taking over some responsibilities. He stressed that we do value the Smoke.

All of Council stressed that the City of Asheville recognizes the importance of hockey, but given the City's financial situation is unable to help them financially. Therefore, it was the consensus of Council to ask staff to look for some non-financial support for the Smoke.

State Budget Cuts

Mayor Worley updated City Council on a meeting he had recently with the Metropolitan Coalition and Governor Easley regarding the State budget. In summary, Governor Easley agreed to work with the Coalition and try to determine if there are other areas of the State budget that can be cut to alleviate pain to cities and towns, and to also look at ways to make our revenues more secure. It will be difficult to get any of our reimbursements back this fiscal year and the State is anticipating a similar problem next year. He did state that our local delegation was sympathetic and very much willing to help to make Asheville's revenues more secure in years to come.

City Manager Westbrook said that the Governor has appointed a Revenue Commission whose charge will be to review the revenue laws passed in the 1930's.

Councilwoman Jones spoke of the need for leadership and mutual support in how we approach this problem on a local level.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:02 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Worksessions Items

Upon inquiry of Councilman Peterson, Mayor Worley said that the proper procedure for a Council member to have an issue placed on a worksession agenda is to let him know at least one week in advance of the worksession and he would advise the City Clerk to place it on the agenda.

U.S. Citizenship on Boards and Commissions

It was the consensus of Council to remove the U.S. citizenship on boards and commissions from City Council's consideration on February 26, 2002, and remand the issue back to the City's Boards and Commissions Committee.

Current Operations at the Civic Center Worksession Item

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that it was his understanding that City staff was to provide City Council with a staff representation with regard to the current operations at the Civic Center – what is and is not working – at the March 5, 2002, worksession. He did not think that City Council wanted him to invite the tenants, but to hear the staff presentation and then if Council wanted different information, then the tenants could be brought in.

Councilman Mumpower felt strongly that the Civic Center Commission members should be invited to the worksession to hear the report, or possibly even share the report with them prior to City Council. City Manager Westbrook said that he would be happy to invite the Commission members, however, the City doesn't normally release information to others before City Council. In addition, due to time restraints, he didn't think that the staff's presentation could be ready any sooner than the Friday before the Tuesday worksession, if then.

Mayor Worley agreed that the Commission members should be present to hear the report in that Council may wish to defer the report to them or to ask them questions.

Public Hearing Procedures

Councilwoman Jones felt City Council should look at its deliberation process. She felt it was important that Council balance open government while not short-changing City Council discussion.

Mayor Worley said that he had once suggested that if a meeting reaches a certain hour (11:00 p.m. or Midnight) that a good breaking point be found and the meeting be recessed until the next day or next couple of days.

Vice-Mayor Bellamy agreed in at if the public knows ahead of time that the meeting will not last past Midnight, they could be better prepared.

Councilman Peterson agreed in that the Mayor can announce at 10:00 p.m. a short break at which time people can sign-in to speak if the meeting is recessed to another day. That way only those who attended the beginning of the meeting would be allowed to speak at the end of the meeting on a different day.

It was the consensus of Council to have Mayor Worley, Vice-Mayor Bellamy and Councilman Peterson work on a proposed policy regarding the length of the meetings.

- Succeeding offenses within 12 months result in increased penalties in $50.00 increments per offense. (For example the fourth offense within 12 months would carry a $200.00 penalty; the fifth would carry a $250.00 penalty, and so on.) The maximum penalty is set at $500.00.
- Unpaid penalties would be declared delinquent after the 30th day from the issuance of the citation and thereafter for each additional 30-day period of delinquency.
- Delinquency fee-------$50.00. (This is similar to the parking penalty delinquency schedule which provides for a $25 fee for each 30 day delinquency period.)

The following is a survey of seven cities' and counties' which have animal control penalties (none provide for a delinquency fee for non-payment):

- Chapel Hill: $50 per offense; if payment is not received a criminal summons is issued, to $500.
- Buncombe County: Each offense not to exceed $500 at the discretion of the Animal Control Officer.
- Lee County: 1st offense $25; 2nd $50; 3rd $250 and/or confiscation of animal.
- High Point: $50 per offense.
- Salisbury: 1st offense $25; 2nd $50; 3rd $75; 4th $250. Loose dog is $50.
- Sanford: 1st offense $50; 2nd $100; 3rd $250 and/or confiscation of animal.
- Cary: 1st offense $20; 2nd $50; 3rd $75; 4th $100; 5th $250 and confiscation of animal.

Public education of the penalty structure is an important component of the implementation plan. Asheville's Government Access Channel, the "City Works" section of the Asheville Citizen-Times, internet postings and other methods will be used to inform the public. The effective date of the ordinance will allow a 60-day window of opportunity for staff to carry out public education activities.

Spay and neuter alternatives to penalties will be considered on a case-by-case basis.

The contract for animal control services the City has with the Asheville Humane Society specifies that all civil penalties and license fees collected will be retained by the Humane Society to off-set expenses associated with enforcing the annual license fee, sterilization of animals adopted from the shelter, and public education. For 2001, approximately $1,700 in penalties and $10,000 in license fees were collected.

City staff recommends Council adopt the ordinance.

There was a lot of discussion with regard to how the spay and neutering alternatives would occur, how the penalties would escalate, the need for dogs to be licensed and benefits associated with that licensing, the cost for a license, how the public (especially renters who do not receive water bills with the licensing insert) is not aware that dogs need to be licensed, penalties are too high, maximum cap should be $500 per offense,

Police Chief Will Annarino stressed that the City wants to violators to pay for this program, not the general taxpayers.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

MISCELLANEOUS MATTERS

of the week. For charter operations, the hours of operation are not limited to the above, providing that Trolley Leasing meets all local, state and federal laws regarding the operation of a chartered vehicle.

The ordinance is drawn to be as narrow as possible. It does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council adopt the franchise ordinance.

Mr. Rich Mills, owner of Trolley Leasing LLC, said that they are currently operating in Everglade City, Florida, and also Madison, Georgia.

Upon inquiry of Councilwoman Field, Mr. Mills said that his trolleys have the state of the art small diesel engine. He did state, however, that they are willing, as this progresses, to look at ways to address the issue of air quality.

Vice-Mayor Bellamy felt that the $1 day franchise fee was too low. Mr. Black responded that this is a one year agreement and that fee will be revised when, and if, the franchise renewal is requested. Mr. Mills said that he would also be willing to discuss the franchise fee at the end of the year. He also noted that in the cities he is currently operating in, they had no franchise fee in that they feel the trolley is a moving billboard advertising the City. He felt that the cities get a lot of intangible benefits from his business.

Upon inquiry of Councilwoman Jones, Mr. Black said that this trolley would also help with the problems of parking in downtown.

City Attorney Oast noted that the franchise, by law, has to be adopted by two votes, which need to happen at two different meetings. He suggested City Council vote on the franchise at the February 26, 2002, formal meeting and then at the March 5, 2002, worksession.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON RESTRUCTURING AND INCREASING PENALTIES FOR ANIMAL CONTROL VIOLATIONS

Police Chief Will Annarino said that this is the consideration of an ordinance to restructure and increase penalties for animal control violations.

The current penalty for animal control violations is $10.00 for the first offense; $20.00 for the second offense within 12 months of the first; and succeeding offenses within 12 months of a prior offense result in increased penalties in $10.00 increments per offense. Penalties of these amounts have proven ineffective in promoting voluntary compliance with animal control regulations. In addition, collection of penalties is a problem because of the costs of collecting delinquent penalties exceeds the value of the revenue.

It is proposed that the penalties be increased as follows:

- First offense ---$50.00
- Second offense within 12 months ----------------$100.00
- Third offense within 12 months-------------------$150.00

Councilman Dunn, member of the Housing & Community Development Committee, did note that WNC Housing requested no interest, however, they did agree to a 2% interest payable annually. He said that the Committee is aware of the deferral issue and also wants to see money being put back into the Fund.

Councilwoman Jones, member of the Housing & Community Development Committee, said that the Housing Trust Fund is only one answer to affordable housing, as is Community Development Block Grant funds. She said the Fund is a great tool and the Committee members are thinking of ways to improve the system.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

TROLLEY FRANCHISE

Transit Services Director Bruce Black said that this is the consideration of a franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

Trolley Leasing, LLC, is a Florida Limited Liability Corporation. They propose to do business in Asheville as Asheville Historic Trolley Tours, with two trolleys. The services to be offered will include narrated historic tours of the downtown and nearby historic areas. They intend to stop at a number of local hotels. The tickets will be sold at various locations including hotels and the Asheville Visitors Center.

The tour will follow an established route and could occur up to four times per day. The business plan does not contemplate point-to-point transportation of people on a scheduled basis for a fee, but does include the possibility of charter business.

At the request of City staff, the operator has met twice with the City Traffic Engineer and he has signed off on the proposed route as not unduly interfering with the normal flow of traffic.

The vehicle is a 30-foot rubber-tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

It is recommended that the Council franchise the historical tour aspect of this business. A tour trolley usually runs somewhat slower than prevailing traffic and occasionally stops to embark or discharge passengers from a public street. This creates the possibility of interfering with the flow of traffic on public streets by creating unsafe situations or by blocking a lane of traffic. The franchise, as drafted, would simply require that the City's Traffic Engineer sign off on the proposed routes and be advised of any changes subject to his approval. At this time, the Traffic Engineer has reviewed and approved the routes, but the operator is conferring with the Traffic Engineer on some proposed changes.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to award five loans from the City's Housing Trust Fund.

Available funds in the City Housing Trust fund stand at $512,000. This comprises $400,000 in new Fiscal Year 2002 funds and approximately $112,000 in loan repayments. Applications for these funds were invited by letter and advertisement on December 7, 2001.

Eight applications were received by the January 18 deadline, requesting loans totaling $840,000. They were reviewed by a five-person committee of City staff and outside experts, using criteria developed by a broad-based focus group last fall. The review committee reported to the Housing and Community Development Committee, which has recommended the five highest ranked applications for a total of $520,000 in loans, producing 26 affordable housing units. They are:

1. WNC Housing, Inc. – $100,000 for "Independence Cottages", five 1-bedroom houses for rent to very low income individuals with severe and persistent mental illness; on Clemmons Street and Spinet Street.
2. Mountain Housing Opportunities – $80,000 for construction of a 4-bedroom house for sale and rehabilitation of two dilapidated houses, one for sale and one as a rental duplex; on Jefferson Street, Clingman Avenue, and Rector Street.
3. Tim & Wendy Vorst – $40,000 for a duplex with a 1-bedroom and a 3-bedroom apartment to rent on Brookshire Street.
4. Tim & Wendy Vorst – $120,000 for a 6-plex of 1-bedroom apartments to rent on Hendersonville Road.
5. Carolina Custom Exteriors – $180,000 for a 3-bedroom house for sale, and two duplexes and a 4-plex to rent on Galax St. The proposal includes an offer to buy the City-owned site on Galax.

Proposed loan terms are as follows:

WNC Housing:	2% interest payable annually; first year's interest and all principal repayment deferred for 30 years.
Mountain Housing:	Rental duplex: 2% interest with all payments deferred for 20 years; S/F homes: x% interest with all payments deferred for 30 years, where x = the rate of appreciation of the properties.
Tim & Wendy Vorst:	2% for 30 years, amortizing, on both projects.
CC Exteriors:	2% construction loan only on the S/F house; 2% for 15 years amortizing on the rental units.

The Housing & Community Development Committee and City staff recommends approval of the five loans from the City's Housing Trust Fund.

Mayor Worley questioned the deferrals and his theory of the Housing Trust Fund was that the Fund would continue and evolve and help more people than having a good portion of our assets tired up for a number of years with the deferrals. Ms. Caplan explained that this issue did come up last year and was sent to a focus group. It was their consensus that only a limited amount would be deferred, stressing that the deferral is necessary for the low and very low income projects. She stressed that financing affects affordability.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled for Tuesday, March 12, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Identifying Artist's Studios & Workshops as Home Occupations in Residential Districts

Chief Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development Ordinance to identify artist's studios and workshops as home occupations in residential districts and to establish standards for these uses.

The Planning and Zoning Commission is recommending adoption of an amendment to the City's zoning standards to identify artist's studios and workshops as home occupations and to establish standards for these uses. Home occupations are currently permitted in all residential districts and although many artists have studios or workshops in their homes, these uses are not specifically identified in the City's zoning code. As a result of the City of Asheville's popularity as an arts center, the number of artist's studios and workshops located in residential areas will continue to increase. Artist's studios and workshops often require more space than traditional home occupations due to the need to store materials and for larger work areas. The proposed amendment addresses this need by allowing artist's studios and workshops to be larger than other home occupations. In order to protect adjacent residential uses from potential adverse impacts of artist's studios and workshops, a larger lot size is required for larger studios and workshops. Larger studios and workshops, when constructed as a separate building, must be setback a greater distance from the property lines. The studios and workshops must also adhere to the other standards for home occupations set forth in the City's zoning ordinance. These standards address:

- The display of goods and products as well as other advertising;
- Prohibition on retail sales from the home;
- Restriction on uses that create odor, noise, glare, etc.; and
- Standards for signs and parking.

Staff worked with a group of artists and craftspeople in developing the standards set forth in the draft ordinance amendment. No comments in opposition to the proposed revisions have been received.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mr. Green responded to Councilman Peterson's questions about the definition of a workshop and also displaying of goods on the premises.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on March 12, 2002.

HOUSING TRUST FUND LOAN RECOMMENDATIONS

Councilman Dunn moved to excuse Vice-Mayor Bellamy from participating in this discussion due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously.

The above changes would take some of the items off the Council's agenda which sometimes tend to lengthen it with routine matters. In addition, it would follow the tradition of allowing Council approval of formally bid construction projects and large service contracts, while allowing the City Manager to execute the remaining contracts.

The City Manager requests that Council adopt the ordinance granting authority to approve, award and execute construction contracts, purchase contracts and service contracts as outlined.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

2002 TAX REVALUATION

Buncombe County Tax Collector Jerome Jones explained the 2002 Buncombe County revaluation. He explained how the City's tax base has grown. He pointed out that revaluation has three key points: (1) values are determined by market forces; (2) computer assisted mass appraisal: possible errors occur in some appraisals); and (3) every taxpayer has the right to appeal. Revaluation is (1) every four years; (2) 1998 last revaluation; (3) 2002 next revaluation; and (4) it's continuous. Revaluation is a process that determines fair market value and analyzes local real estate sale, cost and market trends. Thee approaches used to value include: (1) cost; (2) sales comparison/market; and (3) income. The following are reasons why we have revaluations: (1) North Carolina General Statutes; (2) insure fairness, equity and uniformity; (3) property values change at different rates; (4) sales/assessment ratio; and (5) public service companies. Revaluations are conducted by (1) the county assessor; (2) in-house personnel; and (3) local appraisers who are state certified. Mr. Jones then explained the Elderly/Disabled Exclusion Program. This program excludes the larger of $20,000 or 50% of residence value. Some facts of the program include (1) you must be 65 years of age or older; (2) totally and permanently disabled; (3) gross income of $18,000 or less (spouse); (4) must be a North Carolina resident; and (5) once you enroll, you don't have to enroll again. He said that there are approximately 3,400 people enrolled. Mr. Jones then explained that the value, not the taxes, can be appealed and reviewed the process starting out with the informal appeal, working it's way up to the NC Supreme Court. He did note that virtually all appeals are settled locally.

Mr. Jones then answered and responded to various questions from Council, some being, but are not limited to, historic designations, has there been any property depreciation, does the revaluation have any effect on the tax collection rates, flyer sent out has valuable information in it, many homes are becoming not affordable after revaluations; and how do our property tax rates stack up with the rest of the state.

Upon inquiry of Councilwoman Jones, Mr. Jones said that he would provide the Council with information on how many of the 3,400 people enrolled in the Elderly/Disabled Exclusion Program are City residents.

At the suggestion of Councilman Mumpower, City Manager Westbrook said that the City might be able to put something on it's governmental channel about the County's Elderly/Disabled Exclusion Program.

City Manager Westbrook said that he is working with Mr. Jones regarding the building being designated historical but then luxury apartments being built inside that building – all being taxed at 50% under the historic landmark designation.

City Manager Westbrook said that this is a good example of the cooperation between the City and the County working together.

If the bid of the Arts Council is accepted, Community Development staff recommends evidence of funding or financing be required within 60 days of acceptance.

Approval of the resolution will schedule a public hearing on March 12, 2002, and initiate the sale of the property through a private sale as provided in N. C. Gen. Stat. sec. 160A-457(4).

Community Development staff recommends adoption of the resolution.

Contract Approval Authority

Summary: The current contract approval authority for the City Manager is relatively low compared to formal bid limits set in the North Carolina General Statutes and normal practices across the state, thus requiring many routine, budgeted, contracts to require approval of Council. This change, if approved, would increase the City Manager's authority consistent with state law and general practices across North Carolina.

Currently the City Manager is authorized to sign contracts up to $30,000.00. All contracts for construction and services above $30,000.00 require approval of City Council. In many cases contracts are approved by Council on the consent agenda and, therefore, require several additional weeks before the awarding of the contract can be accomplished. This slows down the process and, in several recent cases, you have noticed where staff has asked you to take special action at worksessions in order to be able to move projects forward at a more rapid pace.

Just recently the General Assembly amended General Statute §143-129 regarding the procedures for letting of public contracts. The General Assembly increased the amount of the contract needed to trigger the formal bidding requirements as outlined in the statute. The recent changes require that cities receive formal bids on construction or repair contracts that could amount to more than $100,000.00. In addition, the formal bid requirement for purchases of apparatuses, supplies, material or equipment has been raised from $30,000.00 to $50,000.00. (Note: Informal bids are still required for purchases from $5,000.00 to $49,999.99.)

In order to align local responsibilities with newly changed state law, it is recommended that the City Manager be given authority to approve contracts in the following manner:

A. Construction or repair contracts up to $100,000.00 could be approved and signed by the City Manager without City Council approval while construction contracts over $100,000.00 must be approved by City Council before the City Manager is authorized to sign the contract.

B. Purchase contracts for apparatuses, supplies, materials or equipment below $50,000.00 could be approved and signed by the City Manager without Council approval.

C. Service contracts up to $50,000.00 can be approved and signed by the City Manager without Council approval while service contracts $50,000.00 and over need City Council approval before the City Manager can sign the contract. Currently, the City Manager can sign a service contract under $30,000.00 without City Council approval. (NOTE: THERE IS NO REQUIREMENT TO BID A SERVICE CONTRACT AND THERE ARE NO MONETARY THRESHOLDS.)

All of the above recommendations are made with the understanding that there must be sufficient funding in the budget and that all contracts will be approved in accordance with federal, state and local laws. In addition, the Manager will continue to report to City Council on a quarterly basis in writing regarding the contracts of the City.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #3.

Clerk to Advertise Offer to Purchase Disposal Parcel 146 on Lincoln Street

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 146 in the East End/Valley Street Community for the amount of $3,200.

Disposal Parcel 146 is a substandard lot located on the north side of Lincoln Street comprising 3,659± square feet. The lot is irregular in shape and mostly flat about street level then sloping up sharply to the rear. The bid in the amount of $3,200 from Damon Rouse includes the proposal to combine the property with adjoining property currently owned by Mr. Rouse on Jordan Street.

Although the new tax appraisal is $5,600, this property was available for several years at the previous tax value of $2,000 and then at $4,900 with no offers having been received. A letter of opinion from Ben Mansell CRS, GRI with RE/MAX Advantage Realty, indicates that due to the limited utility of the property to any buyer except an adjoining owner, the market value of the property would be approximately $3,000.

Approval of the resolution will establish the minimum price in the amount of $3,200 and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Sale of Property at 9-13 Biltmore Avenue

Summary: The consideration of a resolution setting a public hearing and directing the City Clerk to publish a notice regarding proposed sale of real property at 9 -13 Biltmore Avenue, Asheville, N.C.

The property at 9 -13 Biltmore Avenue is located about 125 feet south of Pack Square. It is improved with a store front building with three bays dating from the 1920s. The land area comprises 14,469 square feet and the total combined building area is approximately 6,529 square feet. The lot extends to the east side of South Lexington Avenue, about 125 feet south of the intersection with Patton Avenue, and is improved with marked parking spaces on an asphalt surface. The lot is rectangular in shape and sloped to street level access. The appraised value of the property is $530,000.

Asheville Area Arts Council has submitted a proposal to purchase the property minus the air rights over the rear parking lot in the amount of $462,500. The bid from the Arts Council includes the proposal to cooperate with the eventual purchaser of the air rights over the parking lot to allow construction a new building containing parking, office, retail and/or residential units on South Lexington Avenue. The new building would be constructed above the first level by the purchaser of the air rights. The calculated value of the air rights retained by the City to be sold separately is $67,500. The bid from the Arts Council reflects the appraised value minus the air rights. The City has a bid in hand from a redeveloper for the air rights. The bid from the Arts Council includes an offer of $339,000 cash and a request that the City finance $123,500 of the purchase price.

Councilman Mumpower realized the millions of dollars of secondary impact from the festivals last year, but still expressed concern over the City's tight budget. He suggested maybe half co-sponsorship or to totally postpone co-sponsorship until our budget is on firm ground.

Vice-Mayor Bellamy pointed out that there are some non-profit organizations that supplement their budget based on "walks" or "runs". The County has reduced their funding to non-profits and the City is looking at that as well. She stressed how the non-profits depend on the community and the City to help them raise money. She felt that by not co-sponsoring, especially non-profits, the City will do more harm than good. In addition, there are business entities that clearly benefit from co-sponsorship too. She supported co-sponsorship of each one of the festivals. She also noted that each of the festival organizers paid a $25 application fee, and Council doesn't realize that the festivals pay for a lot of the associated costs, e.g., electricity, etc.

At the suggestion of Councilwoman Jones, it was the consensus of City Council to have staff review the policy adopted back in 1995 and bring it back in early fall for Council review. This way people will be on notice ahead of time that the policy, and possibly the criteria, might change.

Fire Station 8 Renovations

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Glazer Architecture, P.A., in the amount of $33,000, for renovations and additions at Fire Station #8 located at 902 Tunnel Road.

Fire Station #8 was constructed in 1966 and no major building renovations have been undertaken during the life of the building. The additional growth of east Asheville required the building to house a pumping fire engine and ladder truck today. However the building was only designed for one fire company. The renovations include women's locker area, storage area, enlarged dayroom and kitchen. A new public entry, bay for a quick response vehicle, and officer office are in the scope of work. Site work to improve the traffic flow is included in the contract. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #8.

Fire Station 3 Renovations

Summary: The consideration of a resolution authorizing the City Manager to sign the contract with Glazer Architecture, P.A., in the amount of $18,600, for basic renovations and minor additions at Fire Station #3 located at 50 Oregon Avenue.

Fire Station 3 was constructed in 1976 and no major building renovations have been undertaken during the life of the building. Presently, a pumping fire engine and a ladder truck are housed within the station. The renovations include re-roofing the building, renovating the kitchen, new finishes in the dayroom, kitchen, and dorms, new HVAC for all areas except the apparatus bays, electrical and plumbing renovations as required by Code. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

Approval of 2002 Co-Sponsored Events

Summary: The consideration of a motion approving the 2002 festival and special events scheduled co-sponsorship by the City of Asheville.

In March of 1995, the Asheville City Council adopted a festival policy. A segment of that policy requires that City Council approve the list of festivals requesting co-sponsorship with Asheville Parks & Recreation on an annual basis. In 2001, the City co-sponsored 37 events produced by 25 organizers. For 2002, the request is for 65 events produced by 35 organizers.

The criteria for inclusion as a co-sponsored event are laid out in the Outdoor Special Event Guide which are:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The Parks and Recreation Department recommends accepting the list of events as the only events eligible for co-sponsorship for 2002. All further requests for 2002 will be denied, and organizers will be encouraged to apply for 2003.

When Councilman Mumpower expressed concerned about the City co-sponsoring 65 events with regard to the budget situation, Parks & Recreation Director Irby Brinson explained that it would be a total of approximately $95,000, two-thirds being non-direct costs. He explained that other third of that total is for overtime costs for Park Maintenance, Asheville Police Department, and some Public Works services.

Mr. Brinson explained that the policy was adopted in 1995 and it would be difficult to decide who and who not to co-sponsor, especially when the meet the criteria established in the policy. He said staff will do their best to limit co-sponsorship, however, they would need direction from City Council. A possible way to limit co-sponsorship would be to not allow any new festival or possibly look at a lottery system and draw from a hat.

Councilman Ellis felt that festivals are a great way to bring in some tax base to our City and create some jobs. The economic development factor also needs to be considered as hotels, restaurants, etc. benefit as well.

Councilman Dunn felt that the festivals that help people out are the important festivals, and given our budget constraints, the City needs to look for ways to save money.

These amenities will include: The installation of seven additional handicap accessible ADA ramps. Sidewalk replacement on Haywood Street adjacent to the downtown library, which will include new handicap accessible parking spaces to accommodate side-unloading vehicles, tree grates, and streetscape amenities such as benches and trash cans. The installation of thematic, directional markers will assist downtown visitors in finding their way along the Urban Trail.

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget. Under the provisions of a TEA 21 Transportation Improvement Project (project number E-4138), completion of this contract would qualify the City of Asheville for a reimbursement of $106,728.00.

The Public Works Department staff recommends City Council adopt the resolution to construct ADA and sidewalk amenities along the Urban Trail.

Preventive Maintenance Contract for Traffic Signals

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc., for preventative maintenance of traffic control devices in the amount of $79,775.

In April 2001, the Public Works and Engineering staff undertook the project of reengineering the Division of Traffic Operations, given the fact that two signals technicians resigned and the impending retirement of the traffic signal supervisor. Staff goals were to evaluate the existing level of service and determine if reengineering options were available, with the possibility of contracting out some of the existing services. Other goals were to improve overall signal services, assure system reliability, and maintain direct accountability for fundamental system functions.

City staff has determined that preventative maintenance activities could, and should be, contracted to the private sector.

It was further determined that a minimum staff level of two signal technicians, whose pay scale and classification would more closely emulate the N. C. Dept. of Transportation technicians with similar responsibilities, would be maintained to insure emergency response and guarantee that timely repairs were enacted. Their primary responsibility, beyond emergency response, is to maintain and update signal system data and functions of coordination and timing.

Bids were solicited to determine actual costs for a comprehensive preventative signal maintenance program by the private sector. The City received three bids for the work. Bids were received from the following vendors:

Green Light Electric	$119,800
ALS of North Carolina	$199,800
MB Haynes Electric	$249,945

City staff negotiated with the successful bidder to further reduce the contract amount for the required work to $79,775 per year for the next 5 years, with annual options for renewal, calculating a 3% increase per year.

The overall cost savings from the reengineering idea, along with the improved services mentioned above, is approximately $40,000 per year.

Tuesday – February 19, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Donation from Asheville Professional Firefighters Association

Summary: The consideration of a budget amendment to accept a donation of $17,100 from the Asheville Professional Firefighters Association.

The Asheville Professional Firefighters Association has raised money through fundraising efforts. The Association desires to donate money to the City to purchase a thermal imaging camera for use in the Fire and Rescue Division. The camera will allow firefighters to see in smoke and dark conditions. Use of the camera improves firefighter effectiveness and safety. The cameras also allow firefighters to locate and rescue fire victims quickly and to search for fire hidden in walls and building voids.

The Asheville Firefighter's Association, IAFF Local 865, recently received the "North Carolina Professional Firefighters and Paramedics of North Carolina Local of the Year" award for the State of North Carolina. This is a prestigious honor for the Association. The Association is comprised of approximately 85% of the Asheville firefighters.

City staff recommends City Council adopt a budget amendment accepting the donation.

Urban Trail ADA and Sidewalk Improvements Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Precision Contracting Co. Inc. to construct ADA and sidewalk amenities located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to perform ADA and sidewalk construction services along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-129, formal bids for ADA and sidewalk construction services were solicited and four responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Specialties Construction Inc.	Non-Compliance	Yes	Yes	$111,827.00
Precision Contracting Inc.	100%	Yes	Yes	$133,410.00
Candler Concrete Works Inc.	0%	Yes	Yes	$137,328.54
Jerry Payne Const. Co. Inc.	0%	Yes	Yes	$191,300.00

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A. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttell, representing NC AIDS Policy Center, stressed the need for education for HIV and AIDS.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:56 a.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

meeting. He did have several site specific questions, but would wait until the appropriate time to ask those questions.

Councilman Worley explained why the PUD Overlay district with the density bonus was adopted in 1997 as part of the UDO, noting that the UDO was just a recompilation of the existing zoning ordinances. There was a serious concern about recognizing the lack of affordable housing in 1997. He sees this project as a comprehensive plan for the development of this site that utilizes the density bonus. This density is no different than in any of our other zoning districts, in that whether you have a density bonus or not, the density allowed is done that way. You frequently see a concentration on one portion of the lot, where another portion may not be buildable or you want to preserve open space. Again, the application of the density bonus is no different than that theory when you apply just regular zoning density to it. He did have some concerns about the site plan, especially with regard to fire safety and he will discuss those at the appropriate time. He, too, was a little concerned about the height of the building at the front and hoped MHO will come back with a lower building and slightly fewer units on that front building. However, at this stage, he is prepared to vote for application of the PUD.

Upon inquiry of Councilman Dunn, Mayor Worley said that Council may have some influence, but not total control, of the number of units that can be placed on that site.

When Mayor Worley called for a vote on the motion to approve of the PUD Overlay District, said motion failed on a 5-1 vote, with Councilman Dunn voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 1-7, 2002: Claire Payne (Water), Rose Gwaltney (Water), Dave Ariola (Streets), Marilyn Pagett (Water), Koriander (Streets), Rita Lunsford (Water), Glenda Whitten (Streets), Hazel Guthrie (Water) and Stanley Woodruff (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City was served with the following Complaint on January 31, 2002: Kenny McDaniels v. City of Asheville. The nature of the complaint is EEOC charge of racial discrimination.

The City was also served on January 28, 2002, with the following Complaint: Charles D. Williams v. City of Asheville. The nature of the complaint is EEOC charge of racial discrimination.

Both lawsuits will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

with 30 units, the developments MHO has done have been 38, 40 and 48 units and those have been successful tax credit developments.

Councilman Dunn pointed out that not only is height a concern of his, but also the density.

Mr. Dedman said that there are a lot of regulations when you start building on steep land. Some of the older developments, e.g., Buck Cove Townhomes and Pinecliff Condos, could not be built today because of those regulations. He, frankly,, would like to move a little further up the hill with some of the buildings, but didn't know if regulations would allow him to do that. As to other accommodations of the site plan, there wasn't a lot of room for that in the process because the neighbors chose the position of only 20 units. If Council approves the PUD Overlay, he would commit to coming back and sitting with the neighbors and discussing the density on the site plan. Even though this PUD Overlay public hearing is not supposed to be about how many units are on that site, they had to submit a site plan saying how many units were on the site. They couldn't submit the application without it. He did reiterate that if Council wants to discuss 30 or 31 units, he would be willing to discuss that in the next public hearing and would accommodate Council's wishes as to the site plan.

Upon inquiry of Mayor Worley, City Attorney Oast explained Council's ability to change the site plan is limited to a large extent by what the applicant brings to Council. If the applicant brings a site plan that meets the qualifications of the ordinance, Council doesn't have a lot of room to amend it, from a legal standpoint. They can't require adjustments to the site plan, but can strongly encourage them. Again, if the applicant can demonstrate that they have met the requirements, Council may not have a choice but to approve the site plan. He did note that the site plan can change, but it would have to be approved by the Planning & Zoning Commission or by the City Council, if appealed.

Councilman Mumpower said it was Council's job to implement the ordinances in a fair and consistent manner, therefore, he moved to adopt the PUD Overlay District designation for Ross Creek Commons, located at Chunns Cove Road and Old Chunns Cove Road. This motion was seconded by Councilwoman Jones.

Councilman Peterson pointed out how this is a discretionary call for City Council with regard to whether the project is compatible with the surrounding area. Looking at what is immediately around the property, with no development on two sides, apartments and multi-family mostly on the other side and then other multi-family further down the road, his judgment is that it is a close call, but feels it is compatible.

Councilwoman Jones said that during the campaign process a lot of the comments were that City Council was not predictable and were inconsistent. The City does have mechanisms in place to give Council information and she has to rely on staff's expertise. She felt MHO has followed the rules. She felt it's a scary precedent in the other direction for the business and development community if Council sends mixed messages.

Councilman Dunn reiterated his comments with regard to density and how it should be spread over the entire property and not just in one small area. Again, the City has an Housing Trust Fund and the Housing & Community Development Committee will recommend $500,000 in affordable housing projects. He said this Council is committed to affordable housing, so, he didn't think, this vote won't kill affordable housing or economic development.

Councilman Ellis pointed out some of the similarities of the Stone Ridge Condominium Project City Council recently approved, noting that Councilman Dunn was absent from that plans come in for a permit there would be an additional review by all of the different departments that are involved. That gives the City an opportunity to catch any changes, mistakes or omissions.

Councilman Dunn felt like Council needs to look at the spirit of the law and then the letter of the law. He felt that if you have a certain density, that density should apply to the entire property, however, he does understand the upper part is too steep on this site. Even though City staff feels that the extra acreage is a buffer, the truth is that it's too steep to build on. He felt we should be looking at putting apartments in a project that may be spread out a little more. When you have a density of 6 per acre, that means six units per acre – not just crammed into a little area that calculates to 18 units per acre. That fulfills the letter of the law, but doesn't think it is the spirit of the law. He felt if Council votes to approve this and allows a developer to arbitrarily put buildings where they want to when it's zoned to be put on the entire property, that would be starting a dangerous precedent.

Mr. Shuford explained that they encourage developers to do just that - whether or not we had the density bonus provision that encourages clustering. If the units were spread out into the steeper area, they would be just as difficult to serve as Buck Cove Townhomes which is in a very steep environment. Those Townhomes would run into very serious permitting issues today due to the steepness of the road and the design of the facility. In addition, we want to encourage the preservation of open space and in this particular case, roughly 1/3 of the site would be retained for open space. It's good planning to concentrate the units on the flatter part and try to preserve the steeper part and the wildlife habitat up towards the top of the mountain.

Councilman Mumpower confirmed that City Council recently passed the Stone Ridge Condominium development which built their units on the flatter property and left the higher elevations open. When he asked why there is no elevation drawing for this project, Mr. Shuford said that the developers actually have a model that would show how the elevation pieces work but that information has to be presented when Council talks about the actual site design.

Councilman Peterson said that some concern is about a very large building right-up-against Chunns Cove Road. Because of the N. C. Dept. of Transportation right-o-way, he questioned if there will be some setback requirements and if staff took those into consideration with regard to buffering on the property. Mr. Shuford said that at the request of the neighborhood, MHO did try to make some adjustments to the building in front and saved a fairly good stand of taller trees. But that gets into the site design issue. However, the buildings meet the height limit and anything that is built on that site could probably meet that setback and have that height whether it be a single family home, a duplex, or some other form of multi-family.

Upon inquiry of Councilman Dunn about how the height of the buildings are measured, Mr. Shuford said the building height is measured from the ground up. He explained that the first building will be approximately 10-15 feet above the road because of how the land lays. It would require extensive grading to reduce that back to the road level.

Councilman Dunn said he didn't think a decision tonight will kill affordable housing in this community. The Housing & Community Development Committee have just recommended spending $500,000 on affordable housing projects and the City just started, last year, designating $400,000 to the Housing Trust Fund. He didn't feel that 15 units is going to destroy economic development.

Councilwoman Jones asked if some common ground might be achieved by cutting off a few units from the three story buildings. Mr. Dedman said that if they remove the third story units on the front building and make it a two story, that would be a reduction of four units for a total of 31 units. Even though he believed there are tax credit developments that have been successful because they believe that is what is compatible to their neighborhood. Chunns Cove is not against affordable housing. There are affordable units going up in other areas of the City and these 15 units are not going to bring us from last place to first place. This development is clearly not going to be compatible with this neighborhood. There are safety problems, road problems, sewer problems and water problems in this area. The area residents want these problems cleared up before something of this size is allowed in this area. Pinecliff Condos and the Stone Ridge development sewer does not go into Chunns Cove but into the Haw Creek sewer. The TRC did not approve the revised plans and they are not something with one change on them – they go from two access to one and that's a big change. He said that if City Council denies the PUD Overlay, there will still be 20 units of affordable housing. He entered into the record a petition containing 275 names. Said petition read "Petition against proposed 40-unit, 3-story Mountain Housing Opportunities/Blue Ridge Mental Health Joint P.U.D. project/development to be known as 'Ross Creek Commons.' Proposed project to be located at the corner of Chunns Cove Road and Old Chunns Cove Road. Said project is to begin 2002. Please sign your name, address and are you a voter (Y/N)?"

Mr. Dick Washam reiterated that the issue with the Chunns Cove community is not affordable housing – it's the density overlay position of the UDO. He felt the property should be built to the existing zoning and they would support 20 units. The cost of the property has a significant impact on the ability to have affordable housing and that is driving the number of units they would like to have there in order for it to be affordable housing. Either too much was paid for the property or the property is an inappropriate choice for affordable housing. If that is the case, then that is a poor business judgment and why ask the community to stand behind a poor business judgment by a developer.

Mayor Worley closed the public hearing at 11:50 p.m.

City Attorney Oast reiterated that there are certain things that are not relevant to City Council's consideration on the rezoning issue: nature or degree of ability or disability of the potential tenants of the project; as with any rezoning, MHO may not always be the owner or operator of the project and so their policies, practices and track record is not relevant to Council's consideration; the PUD Overlay is in the UDO and the applicant has applied to the law and that is what Council needs to apply; and whether it is a good or bad financial decision, or the price paid for the property is irrelevant to Council's consideration.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that a PUD may contain any type of residential use except manufactured homes. He said there is nothing in the Code that restricts the application of PUDs to mixed use developments.

Mayor Worley clarified that City Council has used the PUD Overlay District before, but just not with density bonuses.

Upon inquiry of Councilman Peterson, Mr. Shuford said that by the time the site is prepared and ready for occupancy that would put a demand on the sewer system, the sewer line improvements will be in place. MSD has issued a sewage allocation letter for the project saying there is sufficient sewage capacity in the treatment facility and the lines leading to that treatment facility to accommodate this use.

Councilwoman Jones questioned the process for review with regard to fire safety. Mr. Shuford explained that this project went to the TRC in May of 2001. Since that time the developer did reduce the density and change some of the site configurations. They did go from a loop access road to a single access road. To do that requires a fire truck turn-around which he believed has been approved. There are also some additional minor adjustments for the Fire Department that the plan will require in order to get the lane configuration. In addition, when the change to allow for changing circumstances and the PUD Overlay is to promote innovative design by providing flexibility. The flexibility and site design is intended to accomplish, among others, to facilitate more affordable housing through clustering of dwellings through increased density. The issue here is whether City Council will assist affordable housing at this site by increasing the density. City Council should follow the philosophy set forth in the UDO and support the PUD Overlay for this property.

Mr. Steve Barden, attorney representing MHO and City resident, said that MHO undertook an exhaustive search for suitable property for affordable housing and this tract was one of the few suitable places in the City. MHO submitted a first-class application and made many concessions to please the Chunns Cove Road homeowners. The City's TRC approved this and the Planning & Development staff recommended approval. They say that it meets the City's smart growth policies, preserves a significant amount of open space and it helps the City meet it's affordable housing goals. He stressed this is an ideal site for a PUD Overlay and it meets all of the UDO's criteria. One of the rights of all of us as property owners is to use our property as we see fit as long as that use complies with laws and land use regulations. The applicant/property owner in this case has complied to the letter of the law. Mr. Bissette stated that none of the other MHO projects had the same density, but that is not true. With regard to the traffic impact, the City's Traffic Engineer determined that it's below the threshold to require a traffic study. The City has certified there are no water, sewer or fire problems. The price of the site has absolutely nothing to do with this issue, but the fact of the matter is that the contract price in this acquisition was completely supported by an appraisal by a qualified professional appraiser in Asheville. Mr. Bissette referred to Mr. Baechtold's letter being outdated. The plan changed but the changes did not reflect the substance of the letter. When the plans were revised the revised plans did not have to go back to the TRC because it involved an actual reduction in the density. In a letter dated today to City Attorney Oast from Mr. Bissette, it reads in part "We are very concerned that the City Council's prior action in approving the $100,000.00 in CDBG funds for this project will make it very difficult for the Council to make an impartial decision on this Appeal. It is our understanding that $100,000.00 in City of Asheville CDBG funds was approved by the Asheville City Council last year for this project and those funds have already been disbursed to the Developers for acquisition of the property." Mr. Barden was confident that City Council will be fair and impartial. He cited a case in that the City of Raleigh Court of Appeals held that there is nothing improper about a council voting on a project it previously participated in planning on. There were comments about the project being higher than the rock pile, but is it not. There was a comment about the sewer line capability, but pointed out that a 80 unit condo complex was approved and that runs into the same main sewer line but only two residents of Chunns Cove residents were present at that hearing. There was a question about fire hydrant pressure, but it's indicated that there is no problem with fire hydrant pressure. There has been no good reason raised why this application should not be approved. He stressed that they have complied with all the requirements and are entitled to a PUD Overlay.

Mr. Dedman admitted to stating that if they did not get approval for 35 units and were only able to build 20 units that there might in fact be more mental health units. The reason is that a tax credit development is very complex and when you get to a certain size of units its not feasible. A 20 unit development is very difficult for a tax credit development. If eight of those 20 are mental health, it's that much worse as far as the flexibility of the funding. With regard to not being flexible about the plan and the number of units, that is not true. He has offered Mr. Bissette and Mr. Washam several times to sit down. They took the position that 20 units is it and anything above 20 units would not be acceptable.

Mr. Bissette cleared up a statement in that he meant to say that if they want to put this number of affordable housing apartments in an area, do it in an area that is zoned for that number. This seems to be framed as a referendum on affordable housing. It's not. Chunns Cove residents say they want, will take and will be great neighbors to 20 affordable housing units say they support affordable housing, but not in their neighborhood or less of it or they want houses and not apartments; there is not much more land available for multi-family development; zoning should have nothing to do with the wealth of a resident or ownership status of resident; this development is over a one million dollar private investment in affordable housing; the more units that can be built, the less rent they have to charge; to allow this development is pro business and pro economic development; if MHO doesn't get funded for Ross Creek, there will be no new affordable housing units built in Asheville next year; for the City's investment of $1 Million the City can receive approximately $3 Million in return; and development will not overtax water, sewer or roadways:

Mr. Robert Todd, Asheville resident
Ms. Willie Vincent, Asheville resident
The Rev. Jim Abbott, Pastor of St. Matthias Episcopal Church and East End/Valley Street resident
Mr. Mathew Ashworth
Ms. Suzanne Walker Wilson, Asheville resident
Ms. Veronika Gunter, Asheville resident (entered into record letter with 11 signatures)
Mr. Barry Summers, Asheville resident
Mr. Alan Ditmore, County resident
Ms. Ann Bamburger, East Asheville resident
Mr. Richard Genz, 355 Sunset Drive
Ms. Pauline Counsel, 415 Chunns Cove Road and Asheville resident
Mr. Tony Sayer, resident on Florida Avenue
Mr. Douglass Keen, 105 Sunny Ridge Drive in Town of Woodfin
Mr. Al Mojonnier, Buncombe County resident
Mr. Bud Walker, 315 Chunns Cove Road
Mr. Brownie Newman, Asheville resident
Ms. Beth Maczka, Asheville resident
Ms. Amanda Ross, Asheville resident
Ms. Robin Merrill, housing attorney for Pisgah Legal Services
Mr. Jim Barrett, Asheville resident
Mr. Greg Walker Wilson, North Asheville resident
Mr. Rich Olejniczak, Asheville resident (entered into record NCHFA Multi-Family Rental Development 2002 Preliminary Application Report)
Ms. Karen Keenan, Executive Director of the Affordable Housing Coalition
Ms. Melendez, Asheville resident
An unidentified lady
Ms. Beth Duttera, Asheville resident
Mr. Howard Shepherd, West Asheville resident
Ms. Noel Nickle, Asheville resident
Ms. Selina Sullivan, Asheville resident
Mr. Bob Smith, Montford resident

Ms. Rebecca Campbell felt both sides of the issue need to sit down and find a way to work together.

Mayor Worley said that Mr. Tom Hartye, General Manager of the Metropolitan Sewerage District, called him earlier that day and said that they have plans to line this section within the next four months and that lining that section will stop the current infiltration. He said that the date of completion of this lining is June and the line is scheduled for a major upgrade in approximately two years.

Mr. David Matney, attorney representing WNC Housing Inc. and Buncombe County resident, said that they do have a legal right-of-way to the roadway. Zoning has the provision for there are no other 3-story buildings in Chunns Cove; keep the zoning only RM-6; the extra 15 units (if a PUD Overlay is granted) will not solve Asheville's affordable housing needs; 20 units will be welcomed into the Chunns Cove neighborhood; City and County should work together to solve affordable housing problems; and more higher paid jobs than $7.00 need to be created:

Mr. Jeff Burleson, adjoining property owner and resident in the City's extraterritorial jurisdiction
Mr. Thomas Custer, resident of Chunns Cove
Mr. James Judd, 26 Rollingwood Road (entered into record four letters)
Mr. Gerald Wagstaff, resident on Honey Drive
Ms. Rhonda Byrd, 156 Chunns Cove Road
Ms. Patty Robertson, 35 Covewood Road in Chunns Cove
Ms. Jean Wall Penland, resident on Rollingwood Road
Mr. Nian Avery, 46 Chunns Cove Road
Ms. Jean Baker, resident of Chunns Cove
Ms. Linda Price, property owner in Chunns Cove
Ms. Beth Pilz, resident on Covewood Road
Ms. Carol Collins, Co-Chair of Highland Gate Neighborhood Association
Ms. Nancy Orbin, resident on Rollingwood Road in Chunns Cove
Ms. Patricia Teague, resident of East Asheville
Mr. Kermit Brown, 398 Chunns Cove Road
Ms. T. Finch, 655 Chunns Cove Road
Mr. Ed Teague, Asheville resident
Ms. Beth Chestnut, resident on Rollingwood Road
Ms. Judy Marshall, 1 Honey Drive
Mr. Wayne Marshall, 1 Honey Drive
Mr. Dick Washam, resident on Honey Drive
Ms. Susan Counsel, 37 Rollingwood Road
Ms. Helen Coman
Mr. Don Sly, Asheville resident
Ms. Madge Murray, 19 Old Chunns Cove Road
Mr. David Herbert, Kenilworth resident
Ms. Carolyn Turminy, 658 Chunns Cove Road
Ms. Karen Hunnicutt, resident in Chunns Cove
Ms. Linda Baker, 33 Rollingwood Road
Ms. Denise Garrison, 5 Rollingwood Road
Mr. Joe Wald, property owner in Chunns Cove
Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods and Haw Creek resident
Mr. Walter Plaue, Carolina Real Estate Investors Association

The following residents urged City Council to approve the PUD Overlay District to allow a 35 unit development for MHO for various reasons, some being, but are not limited to, the project is actually less that the allowed 44-units; the PUD is a new concept that forward thinking cities have used; the PUD gives the City an additional tool to accept higher density if other conditions are met; affordable housing is desperately needed in Asheville; good design of the project; people shouldn't have to fight to live in a section of town; people need a place to live; neighborhoods should be enriched with diversity; this project is an opportunity to advance the cause for affordable housing; affordable housing is important to the City's economic development; MHO has complied with all the City's regulations and should be allowed to build these needed affordable housing units; working people can't afford a decent place to live; Chunns Cove Road neighborhood is changing just by the fact that people move to Asheville; affordable housing will increase the affordability of nearby houses; MHO has had meetings with the neighborhoods and have reduced the number of units as a result of those meetings; some Chunns Cove residents the trust which should exist between the City and its neighborhoods. He felt that every neighborhood in Asheville should be concerned about this. If we are going to have areas where we want affordable housing, let's zone it that way so that people know what's there and what's going to be there. We content that the people who live in the proposed development will be jammed into a crowded environment that is not going to be adequate for what is trying to be done. They would like to see a smaller project with 20 units with more amenities and a safer and comfortable residency for those people who will be living in the development. He realized that cost considerations have no bearing on Council's decision but the people in Chunns Cove are taxpayers and they are disturbed by the magnitude of the monies used to purchase this site. The site was purchased in late 1996 by a local attorney for $59,000. It's valued on the tax books of Buncombe County for $40,000. According to the tax stamps, the developers paid last week $282,000. He can't believe that other sites are not available. On behalf of the citizens of Chunns Cove, he promised that if the developer will reduce the density of this project to the allowed 20 units, the people of Chunns Cove will welcome these new residents into the Cove as friends and neighbors. He said that Mr. Dedman visited the neighborhood about two weeks ago and one of the things he said was that if they don't get this density bonus, they will build 20 units and they will put more mentally disadvantaged people in those 20. He said that the Chunns Cove residents don't care. He said since Mr. Dedman will not voluntarily consider a reduction in density, they respectfully request City Council deny their appeal and require them to comply with the existing RM-6 density requirements. This will be a win-win-win for the City, the Chunns Cove neighborhood and also for affordable housing.

The following residents support affordable housing, however, they urged City Council to deny the PUD Overlay District request for various reasons, some being, but are not limited to, the height elevation of the buildings, once constructed, will be overwhelming since the first building will already start off at 20 feet higher than Chunns Cove Road and then the 38 foot building would be built on top of that; development is out of proportion for the area; the development would denominate the entrance to Chunns Cove and the surrounding neighborhood; the project is not compatible to the neighborhood; density of the project is too high; project doesn't fit into the character of the neighborhood; already existing sanitary sewer, stormwater and traffic problems on Chunns Cove Road; fire safety; buffers and setbacks are insufficient; revised plan was not approved by the Fire Department as reported at the Planning and Zoning Commission meeting; fire safety concerns; turn area in the drive is inadequate in that it a 30-foot fire truck (medium size) has to use both lanes of the road to complete the turn; not a well-designed project; only one close by fire hydrant; speeding on Chunns Cove Road; Chunns Cove Road is dangerous with a blind hill; there have been many traffic accidents on Chunns Cove Road; Chunns Cove Road and Old Chunns Cove Road is a dangerous intersection; existing sewer line is inadequate; existing seepage, overflow and spilling sewage problems; developer knew what the zoning was when they purchased the property; there will be clear-cutting of large trees; there will be bull-dozing of historical artifacts; City to be looking to attract businesses with good paying jobs and then people could affordable homes; other sites are available that would support the density, in particular the 30 acres behind Memorial Stadium; Chunns Cove neighborhood just wants the residents of this development to have a little space and not be overcrowded in the development; property values will be harmed; if the PUD Overlay is granted, other area properties will petition to rezoned to a higher density; since the PUD Overlay process is going to be reviewed, why rush to approve it and then it will be the only one standing that already is greatly at variance with traditional UDO policies and would then be grandfathered in at a later time; several old oak trees need to be protected so they can live through the grading and construction of the site; important historic reminders of Asheville and southern history should stay in their original places and be preserved for future generations; proposed site is too hilly; Chunns Cove Road has no sidewalks; entire development will be on the front half of the lot; there is not enough parking, buffer zones, outdoor recreation space or setbacks provided for the residents of the development; inadequate water flow; with only one access, if an emergency occurs people will be trying to drive out and the emergency vehicles cannot get into the development; the 3-story buildings will block the views;

commercial strip. City Council has set out the rules and they have complied with those rules. She respectfully urged City Council to adopt this zoning designation for the site.

At 7:00 p.m., Mayor Worley announced a short break.

Mr. W. Louis Bissette, attorney representing the Chunns Cove neighborhood and City resident, started out by saying he was disappointed in Mr. Dedman's attacking the Chunns Cove. The Chunns Cove Road neighborhood is made up of good people in a diverse neighborhood with low, medium and high income residents. These are working people, retirees, minorities, single-family parents and others and they share a fierce pride in their homes and community. City Council needs to look at the compatibility of this project to the neighborhood. The neighborhood is asking that Council deny the appeal of the developers for the proposed Ross Creek Commons project. The Planning & Zoning Commission denied the request after a thorough review of the facts and a full hearing. The Commission is a body Council appoints and they should listen to those members. The property located at the corner of Chunns Cove Road and Old Chunns Cove Road is a steep site rising 10 feet above Chunns Cove Road at the entrance to the Chunns Cove community. The property is currently zoned RM-6, Residential Multi-Family Low Density District. He read the description of RM-6 from the UDO. RM-6 is what the people of Chunns Cove counted on at the entrance to their community – a zoning district that would limit the size and density of multi-family development. The RM-6 district allows the developer to build 20 units and the PUD Overlay with its density bonus provisions would permit the developers to put more than twice that many units. He said their plan, which they contend is partially through the process, shows 35 units plus an office. But there is nothing that says if Council passes this PUD Overlay that they can't come back with a plan for 44 units. This is a 3.38 acre site, but really the construction of the project will be on 1.77 acres – less than one-half of that site. That calculates to be 18 units per acre. Very few, if any, of MHO existing projects have this level of density per acre. Furthermore, they disagree with some of the numbers given on the multi-family developments in Chunns Cove. Buck Cove is 20 units on 2.41 aces (8 units per acre) and Pinecliff Condos and Stone Ridge Condos are not in the Chunns Cove area. The Chunns Cove neighborhood strongly supports affordable housing and they support many of the efforts of MHO. This neighborhood, however, opposes the density and scale of this project. It simply does not fit into the character of their neighborhood. They think, in addition to the project being incompatible with the character of the neighborhood, this oversized project will exacerbate existing sanitary sewer, stormwater and traffic problems that already exist in the Cove. He has a police report that lists 23 accidents last year at different spots on Chunns Cove Road. These issues have not been properly addressed by needed traffic, infrastructure or environmental studies. Setback and buffering requirements have been waived and there are none on one side of the project at all. There are serious concerns about fire safety and concerns about the site. Mr. Baechtold's letter that Ms. Brison submitted into the record was dated May of 2001 and was based on a plan that is no longer in existence. That was the original plan that had two access points and had a different configuration of buildings. We contend that the new plan only has one access point and the Fire Department has never seen the revised plan. He didn't think the Tree Commission has seen the revised plan either. After looking at the plat of ownership for this project and it looks like their property line does not come over to Old Chunns Cove Road where this access road exists. So, they're not sure if they actually own the property that their one access road goes on. He felt the PUD Overlay process is unfair – not just to Chunns Cove, but to anyone. The PUD Overlay with its density bonus provisions have never been used by the City to date. It was also his understanding that there have been some issues about this process and there may well be some forthcoming modifications or deletions recommended to City Council. Chunns Cove was the only neighborhood who was forced to suffer through the "rock pile" fiasco when I-240 was built. They request City Council not vote to make it the only neighborhood to suffer through the unfair provisions of the PUD Overlay District. People in a neighborhood have the right to know, with some certainty, what can be constructed in that neighborhood. That's why there is zoning. The residential PUD Overlay process, however, does nothing but bring about uncertainty and destroys plan for the City is known as the 2010 Plan. She then pointed out some case law regarding zoning designations. Again, there is clearly authority in North Carolina for establishing this overlay district. City Council must consider the character of the land, the suitability of the land for the uses permitted, and the comprehensive plan or the existence of circumstances justifying the rezoning application. She asked Council to apply the law set forth in those cases in determining how they have met the rules for this zoning designation and to base their decision on those factors, not on someone's characteristic of the area or on unfounded facts set forth. She reviewed language from the City's 2010 Plan to show that this zoning designation requested will be in compliance with the comprehensive plan. Another policy adopted by the City regarding affordable housing is the Consolidated Housing and Community Development Plan for 2000-2005 adopted on June 9, 2000. In concert with the 2010 Plan and the Consolidated Housing and Community Development Plan, City Council adopted the PUD Overlay District in the UDO. She noted it has been shown how this project is compatible of the uses in the area and also the density in the area with this proposed zoning designation. This proposal fits within the uses in the area, not that this proposal would provide for about 10.4 units per acre, whereas Buck Cove Townhomes are about 9 units per acre and Willow Ridge Apartments are about 10.1 units per acre. There is clearly compliance with uses and with density in order to support this designation. Ms. Meldrum entered into the record a letter from Mr. Dan Baechtold, Urban Planner, dated May 24, 2001, noting that on May 21, 2001, the TRC reviewed the proposed site plan and took action to move forward with conditions. She believed that by the action of the TRC, that clearly shows that the infrastructure supports this zoning designation She referred to letters in the booklet Mr. Dedman entered into the record earlier regarding water commitment; sewer allocation; adequate capacity in the fire hydrants and fire flow; and no problems with crime in the area. She then submitted into the record email correspondence from Michael Moule, the City's Traffic Engineer, regarding the analysis of the traffic in the area that it was well below the threshold of requiring an Traffic Impact Analysis. Mr. Moule also detailed that he "pulled the crash reports for Chunns Cove Road. According to our data, since 1994, there have been no crashes at the intersection of Chunns Cove Road and Old Chunns Cove Road." He did point out, however, that there have been some minor fender-benders in the vicinity. Another reason the zoning designation should be approved is because it meets the purposes of the PUD. She detailed how it encourages more open space; it retains natural features, especially on steep slopes, and to encourage developments that will be compatible with environmentally sensitive areas; facilitates more affordable housing; facilitates energy costs through clustering of dwellings; effective use of transportation system; and encourages pedestrian circulation. The project meets the location standards of the PUD in that it shall be located on a street which is capable of accommodating the projected traffic needs of the proposed development. It must meet the infrastructure standards and the infrastructure in this area supports the density proposed. There may be other issues raised, such as an environmental impact statement and also concern about whether or not there may be some history to the site related to the underground railroad. Because federal funding is involved there is approval for the project from the N.C. Dept. of Cultural Resources in a letter dated September 28, 2001, saying they have conducted a search of their maps and files and determine that this structure is not located in or adjacent to any district which is listed in or eligible for listing in the National Register of Historic Places. In addition the structure, meaning also the property, is neither listed in, nor eligible for listing in, the National Register as an individual property. "We therefore have no comment." Also a notice to the public of no significant impact to the environment was published in the Asheville Citizen-Times on October 9, 2001, pursuant to requirements of the United States Dept. of Housing and Urban Development to release federal funds under the Title 1 of the Housing & Community Development Act. Clearly there has been a determination that there is no historic designation for the property and no need for an environmental impact study under federal regulations. In summary, the UDO, the comprehensive land use plan and the Consolidated Housing Plan has set forth Council's policies. In carrying out those policies, a provision in the UDO, the PUD has been adopted to allow for an affordable housing density bonus to carry out Council's policies. We have presented evidence that this is the right location, the right size, has access to I-240 and Tunnel Road, to a major

Council approves the PUD Overlay, then the exact details of the site plan will be discussed in detail. If Council does not approve the PUD Overlay, then they will build 20 apartments on the site. Fifteen families or individuals will live somewhere else, most likely further away from convenient shopping, transportation, jobs and services. He showed slides to illustrate the location of the site, noting that the site is less than 2/10 of a mile from I-240, 1/4 of a mile from Tunnel Road and 1.5 miles from downtown. He then entered into the record a booklet entitled "The Story of Ross Creek Commons" dated February 8, 2002, which included (among other things) a timeline of communication with the neighbors. He agreed that people should care about and be involved their neighborhoods. But issues of "Not in My Back Yard" (NIMBY) are issues of concern all across our nation, many which reference inadequate infrastructure. Infrastructure is a significant reason MHO has chosen this site. Water and sewer lines are ample and right at the site, grading costs will be well below any other site they have been able to find and develop, and the land is located on a good road and a good intersection. All regulations have been met. Concerns have been raised about the height of the buildings and they will address that concern fully if the PUD Overlay is approved. But as a side note, the buildings are below the height of the City's regulations not only for multi-family development but for single-family development. Even though neighbors stress that building height is the main difference between other developments in the community and this proposed development, he showed slides to dispute that issue. Therefore, the question is density and density is people. He read various letters from residents that support the phrase "we support affordable housing, but ...." Some excerpts were (1) "if they just build 20 units and not ask for any affordable housing density bonus, they well welcome us with open arms;" (2) "hope you will look elsewhere for another piece of property;" (3) "affordable housing belongs in areas where similar housing exists just as commercial buildings belong in settings that foster other commercial enterprises;" (4) "the proposed development will house people with substance abuse and mental illness problems. Similar MHO developments may be accepted by other communities, but I do not believe it will be accepted here – certainly not by me or many of my neighbors in Buck Cove Townhouses;" (5) "children will have to spill over onto a very congested part of Chunns Cove Road and into the properties of those who are and have been established. This is a real cruelty to the people would be living under these conditions. There is plenty of land to be had to allow more space and probably cost less. Perhaps the deserted theatre at Innsbruck Mall with the space around it could be bought, along with the Heilig Meyers space." He said that after the Planning & Zoning Commission meeting of 2-1/2 hours of discussion about traffic, sewer, buffers, density and building height, a neighborhood representative asked "I just want to know one thing – why type of people will live there." The City Attorney ruled her out of order in that the question was not relevant to the rezoning issue. Mr. Dedman said their families are typically in the income range of $15-30,000. These families can afford the rent, they just can't afford Asheville's market rent which is very high. MHO does not build public housing and they do not admit residents who have had a violent history or history of sexual offense. Because of neighborhood concerns expressed, MHO will commit to having a paid person on site to keep watch and alert other professionals if a problem arises. This goes beyond what is available to any other home or property in the neighborhood. He summarized by saying that City Council unanimously approved the zoning map of six units per acre on their site and they also unanimously approved the affordable housing density bonus. MHO try to help the families who live in their apartments and homes to fulfill their highest aspirations. He asked City Council to help not just 20 families but 15 additional families to achieve their highest aspirations.

Ms. Patsy Brison-Meldrum, attorney representing MHO and extra-territorial jurisdiction resident, addressed the legal issues. She discussed the authority for a PUD Overlay District, clearly pointing out that it is authorized under North Carolina law. She then said that State law also sets out the purposes that should be considered in determining whether to adopt a zoning designation. She cited from a few cases which note that you do not have to consider all of the purposes or to adopt a zoning designation that complies with all of these purposes. One purpose is that zoning regulations shall be made in accordance with a comprehensive plan. That institutions and technical graduate programs; (7) Problems with the planning, zoning, and permitting process; (8) Lack of cooperation between City and County governments; (9) Need to revitalize the riverfront; (9) High underemployment; (10) Lack of available buildings for manufacturing and distribution; and (11) City's economic development role needs to be more clearly defined.

Mr. Shuford then provided Council with the project description and discussed some of the surrounding land uses in an effort to demonstrate compatibility of this project with the overall development pattern of this part of the City. He said that Ross Creek Commons is a 35 unit multi-family complex to be located at the corner of Chunns Cove and Old Chunns Cove Roads on a 3.38 acre parcel. The project site is located about ¼ mile from the intersection of Chunns Cove Road and I-240. The property is currently zoned RM-6; prior to the UDO, the property was zoned R-2 which also allowed six residential units per acre. Surrounding zoning is almost all RM-6 although there is some RS-2 on the steep, western side of the property. It is in the proximity of nonresidential and other multi-family development – Churches; Buck Cove Townhomes; CentrePark Business Park; multi-family projects farther south and north on Chunns Cove Road (Willow Springs, 24 Old Chunns Cove Road). He described the building height, massing, scale and location (building elevations; meet maximum height limits of zoning ordinance; similar design; Laurelwood).

He said that staff feels that the project is physically compatible with the surrounding neighborhood due to (1) the amount of existing multi-family development immediately proximate to and in close vicinity to the subject property; (2) the relationship of the subject property to streets and highways; (3) the natural and topographic circumstances of the subject property; and (4) the surrounding area and the proximity of nonresidential development.

The next questions that must be answered are: whether there is adequate public services to serve this development; and whether other existing or potential development in the area will be substantially and negatively impacted if these services are used to support this proposed development. Water service has been reviewed by the Water Authority and they have no capacity concerns. Sewer service has been reviewed by the Metropolitan Sewerage District (MSD) and they have no capacity concerns. Streets have been reviewed by the City's Traffic Engineer and he has no capacity concerns. Public Safety (Fire, Police and Emergency Medical Services) have been reviewed by City staff and there are no response time concerns.

He hoped he had sufficiently demonstrated to Council the extent of our affordable housing problem, the importance of resolving that problem to the City's economic development program, the overall compatibility of the proposed development with surrounding properties, and the adequacy of public services necessary to support the development. Based on this analysis, staff recommends your approval of the PUD Overlay zoning.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities (MHO) and City resident, asked City Council to approve the City's only land use provision that supports affordable housing for their site in Chunns Cove. On 3.38 acres they want to put 35 attractive apartments. Twenty-seven of those apartments will be affordable to families in the $15-30,000 income range. Eight of the apartments will be for individuals who have receive care from the Blue Ridge Center and are able to live independently. One additional unit, in addition to the 35 residences, will be a community meeting space. If the PUD Overlay designation is approved, they could have asked for 40 apartments with a double density bonus allowed in the UDO. With other provisions of the PUD, they could have requested up to 44 units. In fact, the did initially request 44 units and last year the City's Technical Review Committee (TRC) unanimously reviewed their proposal on all technical issues. However, after hearing concerns from neighborhood residents about the number of units and the scale of their buildings, they reduced their plan to 35 units (and one community space) and reduced the side of the buildings. If no taller than those allowed under the current zoning of the subject property and under the surrounding residential zoning, including the single family zoned areas. The development will be clustered towards the front of the property (the least steep part of the property along Chunns Cove Road), leaving over 40,000 sq. ft. of undeveloped open space to the west side of the property. A small playground will also be provided on site. Overall the site will have over 56,000 sq. ft. of open space; open space would constitute 38% of the total site. The site will be landscaped in accordance with the City Code for this type and impact of development.

Staff has received considerable public comment on this project. Neighboring property owners are primarily concerned about increased density, traffic impacts, and water and sewer capacity. Most of these issues were addressed through the Technical Review Committee (TRC) review process. A traffic impact analysis was not required for this project because the traffic generated from the site would be below the threshold for such an analysis. The site was redesigned with a single entrance off of Old Chunns Cove Road. The applicant is working with the Transit Services Department to work out the provision of public transit via Mountain Mobility. A Letter of Commitment for water availability has been issued and MSD has issued a Wastewater Allocation, which will require the applicant to complete some minor manhole improvements.

Staff recommends approval of the PUD Master Plan and Zoning Overlay, subject to the following conditions: (1) Provide details for the playground equipment; and (2) Provide pedestrian connections between the apartments and the large area of common open space.

Planning & Development Director Scott Shuford said that this proposed zoning change comes before Council with a recommendation of denial (3-3) from the Planning and Zoning Commission. This is the first Planned Unit Development request that has included the affordable housing density bonus. This public hearing was advertised on February 1 and 8, 2002.

He said his first presentation involves the zoning change to the PUD Overlay classification. If Council approves that change, then there will be a separate presentation that deals with the applicant's master plan. He said he would not get into details about site design in this first presentation but that his comments will be limited to general compatibility and infrastructure sufficiency issues associated with the proposed zoning overlay.

As noted at the Council retreat, the PUD zoning tool is relatively cumbersome and has been largely replaced by conditional use zoning. However, the PUD regulations contain an extremely important provision that supports key community goals: density bonuses for affordable housing and for environmental protection. Also as pointed out at the retreat, Asheville has a major affordable housing problem. One of the most important incentives local government can provide for affordable housing is to allow increases in density that reduce the per-unit cost of providing housing. He then reviewed graphs and charts demonstrating the affordable housing problem in Asheville.

He said that if we are to provide affordable housing to the extent that we must provide it to meet the obvious community-wide affordable housing and economic development needs, it will have to occur in multi-family developments. In our land-short situation, we cannot expect single-family development to come close to meeting the need for affordable housing. He showed a map of what land is available for multi-family housing. He said that approximately 2,200 is available and vacant for multi-family development.

Mr. Shuford then reviewed with Council the Sustainable Economic Development Strategic Plan priorities. (1) Shortage of diverse and affordable housing within the City, including rental units; (2) Lack of developable sites; (3) Tight labor supply with a shortage of skilled workers; (4) Lack of local agreement about the type business and industry the City should try to attract; (5) The water supply is inadequate and high cost; (6) Lack of prestigious research

City Attorney Oast also said that an issue was raised regarding a possible conflict of interest with regard to Councilman Ellis' position as a member on the Board of Directors of the Blue Ridge Area Authority. He has investigated that contention and does not feel there is a disqualifying conflict, therefore, Councilman Ellis must vote in this matter.

City Attorney Oast said that in connection with the rezoning, the main question is whether the PUD Overlay designation is appropriate for this particular property. The PUD Overlay does not change the underlying zoning of the property. What it does is permit increases in density if the developer meets certain standards set out in the Unified Development Ordinance (UDO). Relevant issues on this question are whether the PUD Overlay designation, with the increased density that PUDs allow, is appropriate here. Consideration should be given to such usual rezoning considerations as to whether and to what extent the PUD designation advances the City's policy objectives, as set forth in its various plans (comprehensive plan, land use plan, smart growth policy, etc.), compatibility with surrounding land uses, adequacy of infrastructure, and other general health, safety and welfare considerations. Even though some specific information regarding the Ross Creek Commons master plan will necessarily come before Council with Council's consideration of the rezoning element, it is important to remember that the plan can change and, as with any rezoning, any information regarding its specific proposed use should be considered as an example of what could go on the property, not necessarily what will. Once the PUD Overlay is established, any of the density bonuses allowed under Section 7-9-1 may be obtained if the applicable standards are met.

With regard to the master plan approval, it would be appropriate to get into more specific issues such as the placement of buildings on the site, the number of units in each building and the total number of units, the availability of parking, landscaping and preservation of natural landscape or topographic features on the site, setbacks, pedestrian and traffic circulation within the project etc. City Council may be as specific as it wishes in asking questions about the proposed use of the property. He stressed that City Council must not take into consideration the possibility that one or more of the units may be occupied by persons with mental disabilities or any other kind of disability

Mayor Worley opened the public hearing at 5:46 p.m.

Summary: WNC Housing and Mountain Housing Opportunities, Inc., have applied for a Master Plan approval and Planned Unit Development zoning overlay designation for Ross Creek Commons, a 35 unit affordable housing development. The proposed site for the development is a 3.38 acre parcel located at the corner of Chunns Cove Road and Old Chunns Cove Road, near Buck Cove Terrace. The parcel is currently zoned RM-6 Residential Multi-Family Low Density District, 6 units per acre. The PUD zoning overlay district provides a density incentive bonus for affordable housing and conserving open space that would allow the site to be developed at a density of up to 13 units per acre. The actual development density, as proposed, would be 10 units per acre. While this density is higher than that allowed under much of the surrounding property, it is not inconsistent with multi-family development in other areas of the Chunns Cove community, including the adjacent Buck Cove Townhomes, which have a density of 9 units per acre on much steeper property. It should also be noted that the subject property is located at the entrance to the Chunns Cove community, quite near an interstate interchange, and across the street from a church use. Such locational characteristics lend support to this site as a suitable place to allow density bonuses for affordable housing and open space conservation since traffic and site activity impacts would already be at a center of activity for the Chunns Cove community and will not be directed toward the interior of the community.

The proposed project is comprised of 4 buildings with a total of 36 units, one of which will be used as a community gathering space. Two buildings will be three stories, with twelve units each. The other two buildings will be two stories high, with six units in each. The buildings will be

Staff has received no comments in opposition to the proposed revisions.

At their January 2, 2002, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Vice-Mayor Bellamy asked that staff look at the possibility of flexible development standards for developments other than residential or subdivisions. Mr. Green responded that staff continually looks for ways to increase the flexibility of our ordinances.

Upon inquiry of Councilman Dunn, Mr. Green said that any staff decision on this matter can be appealed to the Board of Adjustment.

Mayor Worley closed the public hearing at 5:36 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2896. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE ~~5[illegible]~~ 412

C. PUBLIC HEARING ON THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT DESIGNATION AND MASTER PLAN REVIEW FOR ROSS CREEK COMMONS LOCATED AT CHUNNS COVE ROAD AND OLD CHUNNS COVE ROAD

Due to a conflict of interest, Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Dunn and carried unanimously.

City Attorney Oast said that this matter involves two steps: (1) adoption of the Planned Unit Development (PUD) Overlay zoning classification (involves consideration of the usual issues in rezoning: appropriateness of the classification for the location, consistency with the City's master plan, compatibility with surrounding land uses, etc.); and (2) adoption of the master plan for the PUD (involves determination as to whether the master plan meets specific criteria set out in the ordinance). He said it may be helpful to think of the first step in the PUD process as establishing a zoning classification and applying it to a particular property, and the second step as adopting the regulations that apply within that newly-established zone.

He said that a valid protest petition has been filed by the property owners surrounding the property that is the subject of the application. This protest petition relates to the rezoning element only. The effect of the protest petition is that an affirmative vote of 3/4 of all the members of City Council is required in order to rezone the property. This means that six votes of the City Council will be required to approve the rezoning request. And since Vice-Mayor Bellamy has a conflict her absence does not lower the number of votes required. This, a 6-0 vote will be required in order to approve the rezoning element of the PUD application. He noted that attorneys for the applicants have objected to this ruling. He did note that the protest petition does not affect the master plan; if the rezoning is approved, the vote required to approve the master plan will be a simple majority. He said that the attorneys for the applicants have objected to this ruling as well. If the rezoning element fails to pass, the project is denied and there is no necessity for consideration for voting on the master plan. Letters from Mr. Steven L. Barden, III, and Mr. W. Louis Bissette, Jr., were entered into the record.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING FLEXIBLE DEVELOPMENT STANDARDS

ORDINANCE NO. 2896 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY FRONT SETBACKS AS A CATEGORY FOR MODIFICATION USING FLEXIBLE DEVELOPMENT STANDARDS AND TO CLARIFY THE PROVISIONS REGARDING VARIANCES AND FLEXIBLE DEVELOPMENT STANDARDS

Mayor Worley opened the public hearing at 5:18 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify front setbacks as a category for modification using flexible development standards and to clarify the provisions regarding variances and flexible development standards. This public hearing was advertised on February 1 and 8, 2002.

Flexible development standards allow City staff to make administrative exceptions to certain parts of the UDO under specific circumstances. We have identified a new dimensional category for the application of flexible development standards - front setbacks.

To a great extent, front setbacks determine the character of most subdivisions. Front setbacks are generally measured from the right-of-way and, in Asheville, street pavement and right-of-way widths have not been consistent. Consequently, subdivisions in the same zoning classification may have front setbacks that measure different distances from the edge of pavement due to this variety. Additionally, in our mountainous terrain, some lots in a subdivision are differently situated than other lots due to topography. These circumstances, among others, warrant some flexibility in establishing the front setbacks for both entire subdivisions and for individual lots within subdivisions.

Currently staff is authorized to grant modifications in the following rules using the flexibility standards: lot size, lot width, setbacks and off-street parking requirements. If a project is required to be reviewed by a design review board, the design review board can waive requirements for the following, if the building design is approved: building size, building height, setbacks and landscaping.

The ordinance provides for the application of flexible development standards in order to make minor adjustments to front setbacks in entire subdivisions or portions of subdivisions. The front setback may be reduced by up to 10 feet in an entire subdivision as part of the plat approval process. A minimum 10 foot setback is required. The front setback in up to 10% of the lots in a subdivision may be reduced by up to 10 feet, except in the RS-2 zoning district where the front setback may be reduced up to 20 feet. The minimum front setback of 10 feet is required.

He said the following conditions must exist that warrant approval of the reduced front setback: (1) protection of significant existing vegetation; (2) accommodation of trails and greenways; (3) provision of a more usable lot arrangement due to topographical constraints; and (4) maintenance of consistent appearance within the subdivision.

Staff believes that this ordinance will provide the needed flexibility to evaluate and approve reasonable adjustments to front setbacks in a number of cases where such flexibility is needed. Property owners/developers can request and receive minor modifications under the flexible development standards without the need to present a variance request to the Board of Adjustment. The Board of Adjustment is in agreement with this amendment. The ordinance amendment also clarifies the relationship between flexible development standards and variances.

Staff has received no comments in opposition to the proposed revisions.

At their January 2, 2002, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Vice-Mayor Bellamy asked that staff look at the possibility of flexible development standards for developments other than residential or subdivisions. Mr. Green responded that staff continually looks for ways to increase the flexibility of our ordinances.

Upon inquiry of Councilman Dunn, Mr. Green said that any staff decision on this matter can be appealed to the Board of Adjustment.

Mayor Worley closed the public hearing at 5:36 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2896. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 412

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Due to a conflict of interest, Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Dunn and carried unanimously.

City Attorney Oast said that this matter involves two steps: (1) adoption of the Planned Unit Development (PUD) Overlay zoning classification (involves consideration of the usual issues in rezoning: appropriateness of the classification for the location, consistency with the City's master plan, compatibility with surrounding land uses, etc.); and (2) adoption of the master plan for the PUD (involves determination as to whether the master plan meets specific criteria set out in the ordinance). He said it may be helpful to think of the first step in the PUD process as establishing a zoning classification and applying it to a particular property, and the second step as adopting the regulations that apply within that newly-established zone.

He said that a valid protest petition has been filed by the property owners surrounding the property that is the subject of the application. This protest petition relates to the rezoning element only. The effect of the protest petition is that an affirmative vote of 3/4 of all the members of City Council is required in order to rezone the property. This means that six votes of the City Council will be required to approve the rezoning request. And since Vice-Mayor Bellamy has a conflict her absence does not lower the number of votes required. This, a 6-0 vote will be required in order to approve the rezoning element of the PUD application. He noted that attorneys for the applicants have objected to this ruling. He did note that the protest petition does not affect the master plan; if the rezoning is approved, the vote required to approve the master plan will be a simple majority. He said that the attorneys for the applicants have objected to this ruling as well. If the rezoning element fails to pass, the project is denied and there is no necessity for consideration for voting on the master plan. Letters from Mr. Steven L. Barden, III, and Mr. W. Louis Bissette, Jr., were entered into the record.

CORRECTION

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 73

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(PAGES: INDEX – 519)

CITY OF ASHEVILLE

CITY COUNCIL

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Tuesday – August 28, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 14, 2001, AND THE WORKSESSION HELD ON AUGUST 21, 2001

B. RESOLUTION NO. 01-131 - RESOLUTION ACCEPTING THE STREET MAINTENANCE OF PINEY MOUNTAIN ROAD AND ARNOLD ROAD

Summary: The consideration of a resolution accepting Piney Mountain Road and Arnold Road for public maintenance.

As part of the annexation process, staff identifies streets in proposed annexation areas that should be maintained by the City after annexation. As part of the 2001 annexation process, two streets were identified to be maintained by the City following annexation.

The first street identified is Piney Mountain Road. Piney Mountain Road is currently a N. C. Dept. of Transportation (NC DOT) maintained roadway approximately 0.73 miles in length known as State Route 2243. It begins at Chunn's Cove Road and ends at the Piney Mountain Condominium Complex. Only a portion of this road was in the City prior to this annexation. Following annexation, all of the roadway will be in the City limits. Staff is requesting that the City maintain the entire length of Piney Mountain Road.

The second street identified is Arnold Road. Arnold Road is located near the Veterans Administration Hospital off Tunnel Road. The length of the road is approximately 0.37 miles and is currently maintained by the NC DOT as State Route 2000 and 2001. Arnold Road is a dead-end street that begins at Tunnel Road.

Staff recommends that City Council adopt a resolution accepting Piney Mountain Road and Arnold Road for public maintenance.

RESOLUTION BOOK NO. 26 – PAGE 441

C. RESOLUTION NO. 01-132 - RESOLUTION APPROVING A GRANT FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $5,381,370.

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The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $5,381,370, consists of the following projects: rehabilitate airfield electrical vault; expand general aviation apron; construct by-pass taxiway, Runway 34; and expand terminal building, Phase I.

Staff recommends adoption of the resolution and authorize the Mayor to execute the grant agreement for Project No. 3-37-0005-25.

RESOLUTION BOOK NO. 26 – PAGE 442

D. RESOLUTION NO. 01-133 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION AND CONVEYANCE OF REAL PROPERTY ON THOMPSON STREET FROM TROY E. MUSE

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Thompson Street from Troy E. Muse for the City of Asheville greenway system.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Quality Forward has worked with the owners of real property along the Swannanoa River at Thompson Street to obtain easements for the proposed Swannanoa River Greenway. Troy E. Muse has offered to donate a portion of property he owns (approximately 0.35 acre) between Thompson Street and the Swannanoa River (a portion of PIN 9648.20-81-3179) for the greenway system.

A Phase I Environmental Site Assessment has been completed by T. & E. Technology. The property has been surveyed by W. K. Dickson. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property adjoining the Swannanoa River from Troy E. Muse.

RESOLUTION BOOK NO. 26 – PAGE 443

E. RESOLUTION NO. 01-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SENTRY ALERT SECURITY INC. FOR PARKING FACILITIES AFTER-HOURS AND WEEKEND SECURITY PATROL SERVICES

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Sentry Alert Security, Inc., for parking facilities after-hours and weekend security patrol services.

With the installation of automated parking deck gate equipment last fiscal year, Council authorized the implementation of a $1.00 fee for parking in the City's decks after-hours and all day on weekends (whenever Parking Services Staff were not manning the decks). The revenues from the $1.00 fee are to be used to provide security enhancements for the decks during those periods. (The after-hours revenues have averaged approximately $10,000.00 per month since their initiation last March.) The first security enhancement implemented was a contracted roving security patrol of the decks, surface lots and surrounding on-street parking area. Sentry Alert Security, Inc., began providing the patrol service in the spring of this year. Their service has been highly satisfactory and a number of favorable comments have been received from the public. The patrols have not only increased the public's sense of security and safety; but, have also aided customers who find themselves trapped in the deck by malfunctioning gate equipment or without funds to pay the $1.00 fee or who find their car has a dead battery or flat tire. If future revenues prove adequate, additional security enhancements, such as monitored security cameras, blue-light emergency phones, etc. will be considered for implementation.

The proposed contract with Sentry Alert Security, Inc., is effective for Fiscal Year 2002 and provides hourly rates for patrol services and a maximum compensation of $60,000.00 for the year. Funding is included in the Parking Services Fund Fiscal Year 2002 Budget for contracted security patrol service.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a contract with Sentry Alert Security, Inc.

RESOLUTION BOOK NO. 26 – PAGE 444

F. RESOLUTION NO. 01-135 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO RECEIVE A GRANT FROM THE U.S. DEPT. OF JUSTICE, LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to accept a federal grant from the U. S. Department of Justice, Local Law Enforcement Block Grant Program and the associated budget amendment.

The City of Asheville is eligible to receive a federal grant through the U. S. Department of Justice, Local Law Enforcement Block Grant Program. The grant is in the amount of $141,904. A local match of $15,767 is required. The source of the local match will be the City General Fund.

Under conditions of the grant, funds are being used to reduce crime and improve public safety.

Staff recommends Council adopt the resolution and budget amendment.

RESOLUTION BOOK NO. 26 – PAGE 445

G. ORDINANCE NO. 2837 - BUDGET AMENDMENT, IN THE AMOUNT OF $157,671, FOR A GRANT FROM THE U.S. DEPT. OF JUSTICE, LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 19 - PAGE 242

H. ORDINANCE NO. 2838 - BUDGET AMENDMENT TO CREATE THE BUDGET FOR THE FRENCH BROAD RIVER CORRIDOR CONNECTORS

Summary: The consideration of a budget amendment, in the amount of $203,040, for an appropriation from the N. C. Department of Transportation in the Transportation Enhancement Program for the Transportation Equity Act for the 21st Century (TEA21).

The City of Asheville applied for grant funds in June 2000 to the N. C. Department of Transportation. The grant was recently awarded in the amount of $203,040 and designated to pay for the cost associated with constructing walkways and sidewalks connecting the series of parks along the French Broad River on Amboy Road. A 20% match, or $50,760, is required and already funded by the Public Works Department.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $203,040 to create the budget for the French Broad River Corridor Connector.

ORDINANCE BOOK NO. 19 – PAGE 244

I. ORDINANCE NO. 2839 - BUDGET AMENDMENT FOR THE URBAN TRAIL STATION 10 GROVE'S VISION

Summary: The consideration of a budget amendment, in the amount of $6,600, for the Urban Trail's Station 10 Grove's Vision.

The City of Asheville and the Urban Trail Committee develops funding through private donations to support the development of the Trail. Donations in the amount of $6,600 were recently received to complete the construction of Station 10 Grove's Arcade.

The Parks and Recreation Department recommends City Council to approve the budget amendment to increase the budget for the Urban Trail's Station 10 Grove's Vision.

ORDINANCE BOOK NO. 19 – PAGE 246

J. ORDINANCE NO. 2840 - BUDGET AMENDMENT FOR THE URBAN TRAIL'S THEMATIC MARKERS

Summary: The consideration of a budget amendment, in the amount of $7,251, for the Urban Trail's Thematic Markers.

The City of Asheville and the Urban Trail Committee develops funding through private donations to support the development of the Trail. Donations in the amount of $7,251 are being received to complete the construction of the Urban Trail's Thematic Markers.

The Parks and Recreation Department recommends City Council to approve the budget amendment to increase the budget for the Urban Trail's Thematic Markers.

ORDINANCE BOOK NO. 19 - PAGE 248

K. RESOLUTION NO. 01-136 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO (1) CANCEL THE SEPTEMBER 11, 2001, FORMAL MEETING; (2) CANCEL THE OCTOBER 16, 2001, WORKSESSION; (3) RESCHEDULE THE OCTOBER 9, 2001, MEETING UNTIL OCTOBER 10, 2001; AND (4) RESCHEDULE THE NOVEMBER 6, 2001, MEETING UNTIL NOVEMBER 7, 2001

RESOLUTION BOOK NO. 26 – PAGE 446

L. RESOLUTION NO. 01-137 - RESOLUTION CONFIRMING THE APPOINTMENT OF CAROL GOINS TO THE HOUSING AUTHORITY BOARD OF DIRECTORS

Summary: The consideration of endorsing the Mayor's appointment to the Housing Authority of the City of Asheville.

Marshall Logan has resigned as a member of the Housing Authority Board of Directors, thus leaving an unexpired term until June 11, 2003.

s action will endorse the appointment by Mayor Sitnick appointing Ms. Carol Goins to serve the unexpired term of Mr. Logan, term to expire on June 11, 2003, or until her successor has been appointed.

Staff recommends City Council endorse the Mayor's appointment to the Housing Authority Board of Directors.

RESOLUTION BOOK NO. 26 – PAGE 447

M. RESOLUTION NO. 01-138 - RESOLUTION REQUESTING THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO RECONSIDER FUNDING THE COMPRESSED NATURAL GAS FUELING GRANT

Summary: In December, 2000 the City of Asheville and its partners submitted a mobile source emissions grant application to the North Carolina Department of Environment and Natural Resources (NC DENR) to construct a compressed natural gas fuel station. Such a fuel station located in Asheville would complete the infrastructure to allow zero emissions vehicles to travel the length of this fair state. The City of Asheville and its partners desire to proactively promote vehicle pollution by installing the infrastructure to support zero emission vehicles. On April 10, 2001, the City of Asheville received a favorable response from NC DENR pending a state budgetary decision. WHEREAS, on July 27, 2001, the City of Asheville received a letter from NC DENR which stated that no funds were available to fund the grant. This resolution urges the General Legislature's honorable members to restore the awarded grant funds to the City of Asheville so that they may complete the western-most fuel station for alternatively fueled vehicles.

RESOLUTION BOOK NO. 26 – PAGE 448

M. RESOLUTION NO. 01-139 - RESOLUTION AUTHORIZING UTILITY ENCROACHMENT AGREEMENT FOR PROPERTY AT LEXINGTON AND PATTON AVENUES

Summary: The consideration of a resolution authorizing a utility encroachment agreement on City property at Lexington and Patton Avenues.

The developer of the old Kress building on the northwest corner of the intersection of Patton Avenue and Lexington Avenue has been advised by CP&L that a transformer in the immediate vicinity of the building is needed in order to supply it with adequate power meeting current standards.

The developer has explored on-site options for the transformer but these are undesirable from a practical standpoint and prohibitively expensive. CP&L and the developer have identified the property across College Street as a place where a transformer could be located. Such a location would not only serve the Kress Building, but would also serve other anticipated development in the area. The City owns the small lot on the east side of the lot next to Lexington Avenue, and the developer and CP&L are requesting an easement to allow the location of a transformer, as shown in the drawing attached as Exhibit A to the resolution.

The City acquired this property by gift in 1986 from Helen Zageir. Although it is currently used as a planting strip, there are no restrictions on its use, and

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information in the file suggests that it should be held for future development. City staff have reviewed the proposal and determined that a transformer can be located in the strip without impairing the function of the property or any City services. Moreover, due to its size, it is unlikely that the lot could be feasibly developed with a building. The City will work with CP&L and the developer to install and maintain some landscaping on the property.

The City Code, Sec. 16-75, provides that Council may approve or deny the project; a public hearing is permitted but no required. The encroachment agreement would be subject to the usual provisions for encroachment agreements in the City Code, and appropriate legal documentation would be required. Council may also attach conditions to the encroachment agreement.

If Council wishes to allow the use of this property for the siting of a transformer and pad, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 26 – PAGE 449

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ANNOUNCEMENT

Transit Center Addition

Mayor Sitnick was pleased to announce that on August 21, 2001, City Council approved a resolution authorizing the construction of a new Transit Center passenger waiting room. The addition is 560 square feet, will seat 40 passengers, 2 wheelchairs and will have standing room for an additional ten people. The addition will be fully enclosed with heat. She said that the City will do its best to have this addition complete by cold weather.

Award Presented to City Manager

Mayor Sitnick recognized City Manager Jim Westbrook who received this year's ICMA's In-Service Training Award. This Award is presented to the administrator who has developed an implemented highly effective in-service training programs for local government employees. This Award was established in memory of Clarence E. Ridley, a pioneer in the field of local government management.

AGENDA CHANGE

At the suggestion of Vice-Mayor Cloninger, it was the consensus of City Council to move consideration of approving the Public Art Master Plan before the public hearings.

RESOLUTION NO. 01-140 - RESOLUTION ADOPTING THE PUBLIC ART BOARD MASTER PLAN

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution approving the Public Art Master Plan.

Mr. Brinson said that in September, 1999, Asheville City Council established a Public Art Board for the City of Asheville. This seven-member board has been working over the past two years to develop a comprehensive planning tool to assist in the acquisition, retention and maintenance of a public art program in Asheville. A sub-committee was formed in 2000 to assist Board members in developing the overall outline for the plan. In addition, funds were secured through the N. C. Arts Council to match City funds to complete the final master plan that is being presented to City Council. This plan addresses a number of ways to implement the public art program, both for permanent and temporary art.

Mr. Kenn Kotara, Chair of the Public Art Board, explained briefly the plan which he presented in detail at City Council's August 21, 2001, worksession. He outlined the public process for solicitation of artists and artwork for various projects, as well as allowing for methods of deaccessioning art that will be owned by the City of Asheville. The Public Art Master Plan will serve as the foundation for the City of Asheville in regard to a vibrant and exciting Public Art Program for years to come.

The Parks and Recreation Department and the Public Art Board recommend City Council's approval of the Public Art Master Plan.

Mayor Sitnick said that we need to recognize art as a major player in economic development.

Councilwoman Field noted that a few years ago an economic impact study was done of the impact of crafts in western North Carolina. It turned out that crafts had a larger economic impact than tobacco and all agriculture in all western North Carolina.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook said that the cultural arts superintendent vacancy is on hold until the State decides on the reimbursements. Mr. Brinson noted that this person will be the liaison directly to the Public Art Board, the Urban Trail Committee and Festivals.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 01-140. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 451

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARINGS TO INITIALLY ZONE (1) ONE LOT IN THE EXTRATERRITORIAL JURISDICTION AREA KNOWN AS US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA AND (2) TWO LOTS IN THE EXTRATERRITORIAL JURISDICTION AREA KNOWN AS FAIRVIEW ROAD/US 74

ORDINANCE NO. 2841 - ORDINANCE TO INITIALLY ZONE ONE LOT IN THE EXTRATERRITORIAL JURISDICTION AREA KNOWN AS US 19-23/SARDIS ROAD/SAND HILL ROAD/BREVARD ROAD AREA

ORDINANCE NO. 2842 - ORDINANCE TO INITIALLY ZONE TWO LOTS IN THE EXTRATERRITORIAL JURISDICTION AREA KNOWN AS FAIRVIEW ROAD/US 74

Mayor Sitnick said that these lots were deferred from the August 14, 2001, City Council public hearings and only the three lots deferred will be considered at this meeting.

At 5:35 p.m., Mayor Sitnick said that this public hearing was opened on August 14, 2001, and continued until this date only to consider the one lot in the extraterritorial jurisdiction area (ETJ) known as US 19-23/Sardis Road/Sand Hill Road/Brevard Road area.

Urban Planner Paul Benson said that the single property in the US 19/23 area, owned by the BASF Corporation, PIN 9617-15-63-8026 (1,604.09 acres) contains Enka Lake and the now vacant Enka Lake Clubhouse and recreational facilities. The Planning and Zoning Commission has recommended Community Business II zoning along the frontage of the property on Sand Hill Road to a depth of 400' with the remainder of the property being zoned RM-16.

On August 14, 2001, City staff concurred with the recommendation of the Planning & Zoning Commission, with the exception of an approximately 5 acre area containing the clubhouse and recreational facilities for which the staff recommended Community Business I.

After the discussion on August 14, 2001, City staff has obtained information from the Daniel Boone Council of Boy Scouts of America regarding their proposed use. At this time, City staff is now recommending the majority of the property be zoned RM-16, with the approximately 5 acre tract containing the clubhouse and recreation facilities be zoned Community Business I, and Community Business II zoning along the frontage of the property on Sand Hill Road to a depth of 400'.

The Planning and Development staff recommends adoption of the ordinance establishing the initial zoning for PIN No. 9617-15-63-8026 to be RM-16, CB I and CB II.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that this is not spot zoning.

Mayor Sitnick closed the public hearing at 5:38 p.m.

Mayor Sitnick said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2841. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 250

At 5:39 p.m., Mayor Sitnick said that this public hearing was opened on August 14, 2001, and continued until this date only to consider two lots in the extraterritorial jurisdiction area (ETJ) known as Fairview Road/US 74 area.

Urban Planner Paul Benson said that the Fairview Road parcels consist of two properties owned by Kitzi Bocook. The first lot, PIN No. 9667-10-26-7774, (1.05 acres) has been recommended by the Planning and Zoning Commission and the City staff for RS-4 zoning. Using topography maps and pictures, Mr. Benson said that this property is currently vacant and wooded. He explained in detail how the lot has a very steep average slope of 43%, rising from Gashes Creek, which separates the entire property from Highway 74. The owner has requested commercial zoning.

Mr. Benson explained that generally this type of slope within the existing zoning jurisdiction of the City would be zoned RS-2, in order to protect steep slopes. That is the primary motivation for our recommendation. Even though there is water and sewer available and it is on a five-lane highway with adequate capacity, because of the extreme steep slope on this property and on the adjacent properties, and the gateway preservation aspect of the ETJ extension, the recommendation to RS-4 remains. He said that in order to get a commercial development on this property, you would basically have to fill the creek area and grade a notch into the hill and he felt that was something the ETJ extension was designed to prevent.

Upon inquiry of Councilman Peterson, Mr. Benson said that the only road to service this property is from Charlotte Highway.

Councilwoman Field said that as steep as the property is, could you get four units per acre on it based on our hillside ordinance. Mr. Benson responded that this lot is entirely below the 2220 feet hillside ordinance criteria, but as to four units per acre, the developer would have to be creative because it would not be easy to do on this site.

With regard to the second lot, PIN No. 9667-10-46-2592 (15.02 acres) has been recommended for a split zoning with approximately 2.5 acres adjacent to Fairview Road being zoned Community Business 1, and the balance of the property (approximately 12-1/2 acres) being zoned RS-4. Additional research since the August 14, 2001, reveals that the property is vacant and wooded. Using topography maps, he explained in detail how the CB 1 portion has a moderate to steep slope of 14%, with the remainder being steeper, with an average slope of approximately 23%. The owner has requested that the RS-4 portion of the property be zoned for high-density multi-family development.

Mr. Benson said even though the site has water and sewer access along Fairview Road, slope is a concern. Because of the Blue Ridge Parkway viewshed issue, staff looked at parts of the site visible from the new visitor's center and identified the property that can be seen from those points. He noted that a substantial amount of the property, which is a ridge with a peak, is visible and in the winter a lot more of the ridge will be visible. For these reasons, staff is recommending zoning of PIN No. 9667-10-46-2592 to Community Business I for the portion adjacent to Fairview Road with RS-4 low density residential on the remaining portion of the property.

The Planning and Development staff recommends adoption of the ordinance establishing the initial to RS-4 and Community Business I District.

Mr. Benson said that Ms. Bocook has some plans for the property for development of her property and she has met with staff on several occasions. However, staff is not comfortable with the requested density of 17 units per acre that she is seeking for the upper portion of her property.

Planning & Development Director Scott Shuford said that the City is not necessarily opposed to some form of multi-family on this ridge, but as you can see, it is a sensitive site that demands a good site plan to make it work from the prospective of all parties involved. Unfortunately we've been unable to reach an agreement with Ms. Bocook because she feels a site specific type plan is not in her best interest in terms of marketing her property. So, we have not been able to come to any agreement, even though we have spent time with her over the past two weeks.

Mr. Benson then answered various questions/comments from Council, some being, but are not limited to: how does the hillside ordinance apply to this property; what is the elevation of the proposed visitor's center; what other mountain in that area is similar to the elevation of the Bocook's property; what is the density of the condominiums on Town Mountain Road; is the Bocook property visible only from the visitor's center or the actual parkway; and has the Blue Ridge Parkway been working with Buncombe County for viewshed protections.

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Ms. Sheila Gasperson, Land Resource Specialist representing the Blue Ridge Parkway, spoke about some of the viewshed analysis they have been doing. The Bocook's property is in full view of the Blue Ridge Parkway Headquarters and is a forested ridge, running parallel to the Parkway at eye level from the Visitor Center site and lower parking lot where visitors park and prepare for hikes on the Mountains-to-Sea Trail. The property is a dominant foreground ridge and less than 1/4 mile away from the proposed visitor center site. Landscape architects say that textures and individual plant species can be identified by the naked eye usually out to about 1/2 mile away. In October of 2000 an Asheville Scenic Quality Assessment Team drove the parkway and views were rated. The Bocook's view scored 11 of 18 points rating the scene high in vividness, intactness and duration. Ms. Bocook has plans that show for an intensely developed apartment complex on that site. If allowed to be constructed, the results will be a nearly completely denuded site. The Blue Ridge Parkway understands Ms. Bocook's desire for a zoning classification that allows her to market her land for maximum profit, however, they disagree with this kind of use on a steep hillside. They believe the best use for this site is one that keeps the original forest cover intact in order to minimize slope destabilization and prevent landslides and erosion. A single family residence, carefully sited with gravel roads, is the best choice considering the environmental limits. Visitors come to western North Carolina to bask in nature's glory and to gaze upwards to the mountains that loom over the valley floor – not to see new construction. The Blue Ridge Parkway originally asked the Planning & Zoning Commission to zone the Bocook property RS-2. However, after several discussions with Planning staff, the Parkway now supports the Planning staff's recommendation to zone the 10.55 acres on the upper slope and ridgeline RS-4 and to zone the 3.33 acres on the lower slope along US 74 Community Business I. They asked City Council to direct the Planning staff to provide the Blue Ridge Parkway the opportunity to review and comment on all proposed development plans for the Bocook land.

Mr. Brett Bocook, son of Ms. Kitzi Bocook, developer working on this project, and real estate attorney, said that he has invested a substantial amount of money in soft costs into marketing this property and he felt it was unfair to pit a state funded agency against a small family and single mother. He said that while they have been dealing with an illness in his family, the Parkway has used their time to attempt to justify the inherent inverse condemnation that is occurring on their property. His grandfather purchased this property in the 1920s before the Parkway existed. They have been working for the past five years to market the property to either sell it and/or develop it to meet financial obligations. Because of a cloud on the title that occurred from the highway construction, they have been obstructed to market this land. He felt there is an unbalanced fight against their own property rights. He said the issue with the viewshed did not occur until approximately six months ago when his mother went to the Parkway, under good faith negotiations, and met with Parkway representatives to explain that there was a potential view issue with the Parkway and suggested to the Parkway that they might want to purchase the property in order to preserve the integrity of that view. That was not meant to be used against them. They were trying to give the Parkway the opportunity to purchase the property and now they are using that against them and are attempting to put political pressure on City Council to down-zone their property. After the Planning & Zoning Commission hearing was closed, he said a letter dated July 5, 2001, from the Parkway was taken into account in the Commission's decision-making process. He stressed that they did not have an opportunity to respond to that letter. That is cause for this complete turn around by the Planning staff to support the down-zoning of this property. They were originally recommended to have RM-16 on a large portion of their property and now being told it should only be used for RS-4. This is the only site in the area that is actually being developed for multi-family over the last three years. He asked City Council to take into account their desire to work with the Parkway and their attempt to sell the Parkway the property at market value. There is no reason why the Parkway should be able to essentially take the property without justifying the compensation to the landowner. He also asked Council to take into consideration that there is tremendous devaluation of property (70%) in proportion to the amount of units that are proposed on the property. He felt it was critical that they get multi-family zoning on this property. He said their initial plan was 18 units per acre but they would be willing to compromise on 12 units per acre.

Ms. Kitzi Bocook, property owner, said that she is requesting Highway Business District for PIN No. 9667.10-26-7774 (1-1/2 acres). She showed Council various renderings for possible use on that property. She said if this lot is zoned residential, it will effectively have no value whatsoever.

With regard to the larger lot (PIN No. 9667.10-46-2592), Ms. Bocook said they are willing to compromise from their original 18 units per acre to 12 units per acre on average. As a result of prior meetings with Mr. Shuford, she felt they agreed that this property meets a lot of the criteria for higher density - either housing or offices. The RM-16 designation was what was originally recommended as a viable use for that property. She explained that there is sparse single family residences down the road because it's mainly multiple housing or mixed housing. She reiterated that she approached the Parkway about purchasing her land about a year ago. She explained about the costly illness in her family and that she needed to get full value out of her land. She said she was not in a position to donate the land, but she did indicate that she would consider reducing the price somewhat and making personally contribution (approximately $50,000) to the cause. She even explained that she would divide her property and sell it for less if she had to. The Parkway was unable to purchase the land because it was not contiguous to the Parkway property. According to case law, she said that one person should not be required to bear the entire financial burden of the public interest. She feels that she will be losing $200,000 in value with the current staff recommendation. She argued that the process used, from RM-16 to then RM-8 and then subsequent to the Parkway viewshed issue to RS-4, was not right.

Upon inquiry of Councilman Hay, Mr. Bocook said that in all fairness, they are not getting what they want and the Parkway should not get what they want. Again, he said they planned an 18-unit complex on the site, however, they would compromise to 12-units per acre. Councilman Hay explained that the City does not have that zoning designation – either RM-16 or RM-8.

City Attorney Oast cautioned City Council that they need to make a decision on what is the best land use designation and what zone is most appropriate for the property. There will be opportunities at a later time for approval of site specific development plans or a conditional use permit.

Councilwoman Bellamy suggested an RM-8 designation and still preserve some of the mountainside and viewshed.

Mr. Bocook said they would be willing to compromise with RM-8, which would preserve the value. There would still be a substantial cut, but they could at least market the property and/or develop it with a conditional use permit. However, as a real estate person, they will not be able to get the value out of the property if someone has to buy it contingent upon rezoning at a later time.

There was discussion about the hillside ordinance regulations and how they would be applied to this property.

Mr. Shuford said that one of the staff's proposals that the Planning & Zoning Commission didn't accept was to go up to the 2220 line with RM-16 and then an RS-4 above. Again, staff's position has been that they understand the Bocook's circumstances, but they feel this is one of those cases where a lower density zoning would be appropriate until they have a more fully articulated development plan that would address some of the issues raised at this meeting.

Upon inquiry of Councilman Worley, Mr. Shuford said that staff's initial recommendation for the property was RS-4. After hearing comments at the first Planning & Zoning public hearing, staff re-examined several parcels, including this one, and then came back with a recommendation of RM-16 south of the 2220 line and an RS-4 above it – reflecting the fact that it's a fairly steep sight. At the next Planning & Zoning Commission hearing, the Commissioners heard that recommendation and heard from Ms. Bocook about the possibility of some commercial development near the road, and came up with the compromise of CBI and RS-4.

Councilman Worley asked if the property was zoned RS-4, does it still lend itself to a planned unit development (PUD) project that could increase that density. Mr. Shuford said that either a conditional use zoning or a PUD zoning would come closer to allowing a lot of these issues to be addressed. That has been discussed with the Bocooks but they feel that limits their ability to market the property. They want a straight zoning of the property. However, given the sensitivity of this particular site, both from the slope and view issues, it's difficult for staff to make that recommendation to City Council. That's not to say that an extremely well designed high density multi-family project couldn't perhaps work, at least over a portion of the site. He explained how the PUD would allow the Bocook's to recoup the full RS-4 zoning, plus the opportunity with a quality design, to increase that. He said the PUD does supercede the hillside development regulations.

Mayor Sitnick closed the public hearing at 7:10 p.m.

After discussion, Vice-Mayor Cloninger moved to adopt Ordinance No. 2842 which is the recommendation of the Planning staff and rezone PIN No. 9667-10-26-7774 (1.05 acres) RS-4 and split zone PIN No. 9667-10-46-2592 (15.02 acres) with approximately 2.5 acres adjacent to Fairview Road being zoned Community Business 1 and the balance of the property (approximately 12-1/2 acres) being zoned RS-4. This motion was seconded by Councilman Peterson.

Councilman Worley moved to amend the motion (with regard to the 15.02 acre lot) to rezone approximately 2.5 acres adjacent to Fairview Road Community Business I, from the Community Business I zone up to the 2220 contour line RM-16, and above the 2220 contour line RS-4. This motion was seconded by Councilwoman Bellamy. Said amendment to the motion was defeated on a 3-4 vote, with Mayor Sitnick, Vice-Mayor Cloninger, Councilman Hay and Councilman Peterson voting "no".

Councilman Worley moved to amend the motion (with regard to the 15.02 acre lot) to rezone approximately 2.5 acres adjacent to Fairview Road Community Business I, from the Community Business I zone up to the 2220 contour line RM-8, and above the 2220 contour line RS-4. This motion was seconded by Councilwoman Bellamy. Said amendment to the motion passed on a 5-2 vote, with Vice-Mayor Cloninger and Councilman Peterson voting "no".

The main motion, as amended, carried on a 4-3 vote, with Vice-Mayor Cloninger, Councilwoman Field and Councilman Peterson voting "no".

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At 7:38 p.m., Mayor Sitnick announced a ten minute break.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE REQUIREMENT FOR CITY COUNCIL TO SET PUBLIC HEARINGS

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ORDINANCE NO. 2843 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO DELETE THE REQUIREMENT FOR CITY COUNCIL TO SET PUBLIC HEARINGS

Mayor Sitnick opened the public hearing at 7:50 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to delete the requirement for City Council to set date for public hearings. This public hearing was advertised on August 17 and 24, 2001.

The proposed ordinance amendment would delete the requirement for City Council to set the date for public hearings for review of development proposals, including Level 3 site plan projects, Planned Unit Developments, and conditional uses. Under the current ordinance, City Council must take action at a formal Council meeting to approve (set) the date for a public hearing after that date has been scheduled by the City Clerk. The requirement for Council to officially set the date for the public hearing prolongs the review process by at least two (2) weeks. A public hearing before City Council would still be required under the proposed wording amendment, but the Council would not have to take official action to approve the date scheduled for the public hearing. The change in procedure proposed by the ordinance amendment would result in a more efficient process for all involved -- the applicants, the City Council, the City staff, and the general public. The proposed ordinance amendment would help streamline the development review process by removing an unnecessary step. No individual or organization involved in the development review process will be adversely impacted by the simplification of the development review process proposed in the draft ordinance amendment. Staff will keep you informed of these projects and requests by providing you with a memorandum detailing the project or request and providing location and development intensity specifics at least two weeks prior to your consideration of the case.

At their July 11, 2001, meeting, the Asheville Planning and Zoning Commission voted 7-0 to recommend approval of the wording amendment eliminating the requirement that City Council formally set the public hearing date for review of certain development projects. The Planning and Development staff recommends approval of the wording amendment.

Upon inquiry of Councilwoman Bellamy, Mr. Green said that all advertising is the same -- the only difference is the deletion from the Consent Agenda of the actual setting of the public hearing date.

Councilman Peterson could not support this amendment because announcing it on the Consent Agenda does help give the public notice about what is coming up in two weeks. He understands that the legal advertising process will not change, but not many people follow the legal ads. He doesn't think this slows things down so much that it would create a problem.

Councilman Worley suggested the public hearings be included in our CityWorks ad in order to get enough notice out.

Councilman Hay suggested including an informal note at the bottom of the agendas what public hearings will be taking place at the next formal meeting.

Mayor Sitnick wanted to make sure that the public is made aware of the public hearings far enough in advance of the actual date in order to arrange their schedules. She said that if this process does not work, that City Council should be willing to reconsider the amendment.

Mayor Sitnick closed the public hearing at 8:07 p.m.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2843. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Peterson voting "no".

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C. PUBLIC HEARING RELATIVE TO REZONING 350 SHORT MICHIGAN AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

ORDINANCE NO. 2844 - ORDINANCE REZONING 350 SHORT MICHIGAN AVENUE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 8:08 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone property located at 350 Short Michigan Avenue from RM-16 Residential Multi-Family High Density District to Neighborhood Business District. This public hearing was advertised on August 17 and 24, 2001.

The City has received a rezoning petition requesting the rezoning of property located at 350 Short Michigan Avenue (PIN 9638.19-60-0368) from RM-16 Residential Multi-Family High Density District to Neighborhood Business District. The 0.48 acre tract is located on Short Michigan Avenue approximately 100 feet from Amboy Road. It is bounded to the south by River District zoning and all other sides by RM-16 zoning. The location of the lot at the entrance to the residential neighborhood provides a good opportunity for the use(s) on the lot to serve as a transition from the high intensity uses permitted in the River District to the surrounding residential uses. The Neighborhood Business District, which reserves areas for low-intensity businesses accessible to pedestrians from the surrounding neighborhood, is designed to be located in or adjacent to residential neighborhoods. Structure size standards and limitations on permitted uses in the Neighborhood Business District are designed to minimize conflict with adjacent residential uses.

Staff has received no comments in opposition to the requested rezoning.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the rezoning of the property located at 350 Short Michigan Avenue from RM-16 to NB. The Planning and Development staff recommends approval of the requested rezoning.

When Councilwoman Field expressed concern that a multi-family zone is being rezoned, Mr. Green said that Neighborhood Business does have an incentive for providing residential development.

Mayor Sitnick closed the public hearing at 8:11 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2844. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

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D. PUBLIC HEARING RELATIVE TO REZONING 100-120 COXE AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2845 - ORDINANCE REZONING 100-120 COXE AVENUE FROM REGIONAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT

At the request of Vice-Mayor Cloninger, Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick opened the public hearing at 8:12 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone property located at 100 and 120 Coxe Avenue (plus a vacant lot to the south) from RB Regional Business District to Central Business District. This public hearing was advertised on August 17 and 24, 2001.

The City has received a rezoning petition requesting the rezoning of property located at 100 and 120 Coxe Avenue, and a vacant lot to the south (PIN Nos. 9648.06-3540, 3620, 3750 and 3851), from Regional Business District to Central Business District. The parcels, which have a total size of 1.18 acres, are located on the east side of Coxe Avenue just south of Hilliard Avenue. The property at 100 Coxe Avenue is known as the Sawyer Motor Building. Central Business District zoning abuts the property to the north; it is bounded by Regional Business District zoning on all other sides. The requested CBD zoning would permit development of the area in a more intense manner, similar to the historic development pattern of the area. Although the rezoning will result in a finger of CBD zoning extending south of Hilliard Avenue, this unusual zoning pattern will be corrected by the proposed extension of the CBD to the southslope area. The proposed extension of the CBD is scheduled to be brought to Council by November after a public meeting and consideration by the Downtown Commission and Planning and Zoning Commission.

Staff has received no comments in opposition to the requested rezoning.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the rezoning of the property located at 100 and 120 Coxe Avenue, plus the vacant lot to the south be rezoned from RB to CBD. The Planning and Development staff recommends approval of the requested rezoning.

Mayor Sitnick closed the public hearing at 8:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2845. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 259

IV. UNFINISHED BUSINESS:

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V. NEW BUSINESS:

A. PARKING STUDY UPDATE

Traffic Engineer Michael Moule and Finance Bill Schaefer gave a detailed status report on the progress of the Parking Study implementation. They reviewed the implementation methodology; Finance Department issues; parking deck initiatives; Civic Center, Wall Street and Rankin Avenue garage uses; off-street initiatives; net income; new directional signs to parking; new color-coordinated banners; new parking opportunities and designs; pedestrian and bicycle issues; and transportation issues.

Council made suggestions to staff, some being, but are not limited to: adding instructions on how to use the new parking meters in the next printing of the Parking Guide; lighted sign outside of decks when they are full; request on Eagle Street for an additional loading zone; and need to contact the N. C. Dept. of Transportation to paint and clean up the McDowell Street Tunnel.

It was the consensus of City Council to instruct staff to continue implementing the Parking Study.

B. RESOLUTION NO. 01-141 - RESOLUTION AMENDING CITY COUNCIL RULES AND PROCEDURES TO ALLOW PUBLIC HEARINGS TO BE SET ADMINISTRATIVELY

City Attorney Oast said that this is the consideration of a resolution amending the rules of procedure for City Council.

The a proposed amendment to Rule 27 of Council's Rules of Procedure, to specify that the requirement that public hearings be set by special order of Council does not apply to zoning items for which a public hearing is required by law. This amendment is necessary to conform Council's rules to the amendment to the UDO that Council will have considered previously. Reference to that Staff Report is hereby made for a more complete description of the action being proposed.

Assuming that the UDO amendment is adopted, adoption of the resolution is recommended.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 01-141. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 452

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of August 10-16, 2001: Brunner & Lay (Water), Montgomery Ins. (Traffic Operations), Tim Welsh (Streets) and Josephine Holloway (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Margaret Shook

Ms. Margaret Shook, 709 Crowfields Lane, urged City Council to amend the stormwater ordinance for a 100-year storm in particular as it relates to flooding in the Hendersonville Road area. She also asked Council to contact the N. C. Dept. of Transportation and request them to provide its share of the responsibility for long-term storm-sewer management and planning with its contiguous road improvements.

Councilman Peterson said that it was his understanding that the City Engineer will be briefing City Council on stormwater issues at an upcoming worksession.

Banners

Mayor Sitnick said that she has received a letter from Kelly Martin from the Conventions and Visitors Bureau asking City Council to consider paying for a few banners that have the words "We're Glad You're Here." These banners can be used for not only the N. C. League of Municipalities Convention coming to Asheville in October, but for other events as well.

It was the consensus of City Council to instruct the City Manager to contact Mr. Kelly and find out how many banners and how much financial participation they are requesting from the City.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:10 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – September 4, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

ASHEVILLE SYMPHONY

Dr. Robert Hart Baker, Music Director and Conductor of the Asheville Symphony Orchestra, gave a brief history on the Asheville Symphony which has been in existence since 1960. Currently the Asheville Symphony operates on a budget in excess of $1 Million, employing an 80-100 member orchestra paid on a per-service basis and presents concerts featuring nationally renowned as well as local guest artists. The Symphony presents six Masterworks concerts, a Holiday Pops, a May Pops, a free Children's Concert and a joint production with the Asheville Lyric Opera Company. With regard to education, Dr. Baker explained that the Asheville Symphony management administers the Strings-in-the-Schools educational program in the Asheville City and Buncombe County schools, employing six teachers who work with 250 students. The string instruments include violin, viola, cells and bass.

On behalf of City Council, Mayor Sitnick thanked Dr. Baker and recognized the importance the Asheville Symphony is to Asheville's economic development.

ASHEVILLE-BUNCOMBE VISION DIALOGUES

Mr. Joe McGuire explained that the goal of Asheville-Buncombe VISION Inc. is (1) to encourage discussion among diverse residents in order to promote understanding of how local issues affect different segments of our community and (2) to encourage citizens to collaborate on efforts that benefit the whole community. This year's topic, "How can our community create and support good jobs with good wages?", relates well to the VISION's current focus on economic development and the goal of increasing Buncombe County's per capita income. The jobs and wages topic also received the 2nd highest number of votes during last year's dialogue topic public vote and, with the current economic uncertainty and the upcoming local elections, promises to engage a diverse group of citizens in dialogue. All groups will be talking about this same topic.

Mayor Sitnick thought the topic should read "How can our community create and support more good jobs with more good wages." She also hoped that they would consider discussing, in part, the North American Free Trade Agreement and how it impacts the American worker. Also, she suggested discussion on what the national minimum wage impact has been on the inability for certain sectors to be self-sufficient. Also, they should focus on a living wage and exactly what that means and how it impacts the labor market.

UDO AMENDMENT REVIEWS

Conditional Use Permit Standards for Approval

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on September 25, 2001. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise the findings for conditional uses.

The proposed ordinance amendment would revise two of the seven findings that must be made in order for City Council to grant a Conditional Use Permit. The findings currently in the ordinance are based upon wording found in enabling legislation and in ordinances across the state. While these findings are generally adequate to assess the impacts of proposed uses identified as conditional uses, some refinement is needed to assure that the findings address Asheville's unique conditions and meet the goals of the City.

One issue that has been identified during the review of Conditional Use Permit requests is how the proposed project would impact the natural and topographic features of the site. A proposed revision to finding # 2 would delete the need to find that the proposed use is reasonably necessary for the public health or general welfare. This finding would be revised to require the use or development to be reasonably compatible with significant natural and topographic features on and in the vicinity of the site. The proposed revision would reinforce the concern for protecting and maintaining the natural and topographic features that help define the character of the City of Asheville.

The findings currently address the need for the proposed use or development to conform with the City's comprehensive plan. However, there is no requirement that the use or development conform with the City's smart growth policies or sustainable economic development strategic plan. A proposed revision to finding # 5 identifies these policies and plans, noting that the use or development should comply with them.

The proposed revisions provide clear guidance for applicants in preparing applications for Conditional Use Permits and for the City Council in reviewing the requests. With the proposed revisions, the importance of preserving the City's natural and topographic features is made clear. In addition, the role of the City's smart growth policies and sustainable economic development strategic plan in guiding development is reinforced.

At their July 11, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the findings for conditional uses. The Planning and Development staff recommends approval of the wording amendment.

Discussion occurred with regard to Finding #2 and the result was that Mr. Green would review the issues raised by Council and come back to them with an update at the September 18, 2001, worksession.

Establishment of New Urban Village Zoning District

Planning & Development Director Scott Shuford said that this is consideration of an ordinance to amend the Unified Development Ordinance (UDO) by adding the Urban Village Zoning District.

As part of City Council's Smart Growth initiative, staff has developed a new zoning district of Urban Village. Staff is expediting its review because there are two property owners who wish to have it applied to their property. The two projects where this new zoning district may be initially applied are the Biltmore Park Town Center, currently under construction, and the former Gerber site.

In preparing this ordinance, staff enlisted a focus group of local design professionals, Smart Growth advocates, and a Planning and Zoning Commissioner to review the original draft ordinance and provide comments.

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The Urban Village District is generally intended to be used at the request of a property owner rather than being unilaterally applied to a site by the City. It is a large site zoning district, with a minimum initial property size of 10 acres. Its application will likely be limited to fairly level sites rather hillsides due to the requirement that the developer create an internal network of streets forming a series of blocks, however, a creative designer may be able to adapt it to a hilly situation.

This internal street network is the key to the Urban Village zoning district. The street network will shape the form that the development takes by providing a series of blocks that organize how the buildings are arranged, provide a place for on-street parking, and create a public sphere for community interaction. Off-street parking generally must be shielded from the street by buildings and incentives are provided for the use of structured parking. In effect, the district's requirements for an internal street system, on-street parking, and building setbacks create a small-scale replica of a traditional downtown.

As in a traditional downtown, there is considerable leeway given to the developer regarding building height (the district calls for most structures to be in a range from two to four stories, but some buildings can be single story and others can be as tall as eight stories), residential density (no formal density limits -- the building size and placement will ultimately determine the number of units that can be placed in an Urban Village), on-street parking (the ability to count this parking toward the total parking required for the development), and development review (projects within an Urban Village are considered Level II projects for review purposes). In exchange for this flexibility, the developer must work within the provisions of the ordinance regarding site design and provide a traffic impact analysis.

The Planning and Zoning Commission voted unanimously to recommend adoption of the ordinance amendment. The Planning and Development Department staff supports the ordinance amendment.

Discussion surrounded enforcement of the Master Plan, how much flexibility there will be in the Master Plan once approval is granted, and will major deviations from the Master Plan come back to City Council for a re-review. As a result of this discussion, Mr. Shuford said he would review the issues raised by Council and come back to them with an update at the September 18, 2001, worksession.

Suggestions and concerns raised by Councilwoman Field will also be addressed at the September 18, 2001, worksession.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on September 25, 2001.

RESOLUTION NO. 01-142 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO SELL SURPLUS MOTOR VEHICLES, OFF-ROAD EQUIPMENT AND OTHER SURPLUS PROPERTY AT PUBLIC AUCTION

Purchasing Director Norwood Dunn said that this is the consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 6, 2001, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street, Asheville, N.C.

City staff recommends City Council adopt the resolution.

Due to the next formal meeting of September 11, 2001, being cancelled, Councilman Hay moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Councilman Hay moved to adopt Resolution No. 01-142. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 453

BOARDS AND COMMISSIONS

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Sherry Fitzpatrick and to appoint Mary Robertson to the ADA Compliance Committee.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Gene Bell as Chair to the Civil Service Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Edward Metz, Gail McCarthy, Ken Fulford, Hunt Mallett, Laura Webb and Robert Camille, and to appoint Marvin Slosman to the River District Design Review Committee. In addition, City Council instructed the City Clerk to include the possible expansion of two neighborhood representatives on the River District Design Review Committee on the Boards and Commissions next meeting agenda.

It was the consensus of City Council to instruct the City Clerk to re-advertise for vacancies on the Taxicab Advisory Board.

It was the consensus of City Council to wait until after the election (with no further advertisement) to make a decision with regard to the position currently being held by Tommy Sellers.

When Councilman Peterson suggested a bullet-type list of priorities City Council wants to come out of the renegotiation of the 1994 Water Agreement, Mayor Sitnick assured him that they are working on that. Along those lines, Councilwoman Bellamy felt that for some of the major boards should have a list of priorities as well. She agreed to make a list of the boards and commissions for City Council consideration.

Vice-Mayor Cloninger announced the Bill Moore has resigned from the Airport Authority and instructed the City Clerk to place that vacancy on the next quarterly appointment process.

OTHER BUSINESS

There was a brief discussion about the pole banners requested by the Convention and Visitors Bureau. The 25 pole banners for the "We're Glad You're Here" campaign would cost approximately $4,000. City Manager Westbrook said that he would like to make a modification on the banner to include the City of Asheville logo, not the Chamber of Commerce's logo. Therefore, it was the consensus of City Council to authorize the City Manager to spend up to $4,000 out of contingency with the understanding that he will negotiate the best deal he can with the Convention and Visitors Bureau to possibly half the cost with them.

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Mayor Sitnick explained that not all funds needed for the green building roundtable on October 26, 2001, have been received. Upon her request, it was the consensus of City Council to authorize the City Manager to spend up to $2,000 out of contingency, if necessary.

CLOSED SESSION

At 5:07 p.m., Councilman Hay moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Buncombe County, Henderson County, Regional Water Authority and City of Asheville – G.S. 143-318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 5:30 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – September 18, 2001 - 3:00 p.m.

Worksession

Present: Vice Mayor M. Charles Cloninger, , Presiding; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

RESOLUTION NO. 01-143 - RESOLUTION CONDEMNING TERRORIST ATTACK AND SUPPORTING THE PRESIDENT OF THE UNITED STATES

Vice-Mayor Cloninger read the following resolution condemning terrorist attack on September 11, 2001, and supporting the President of the United States: "On September 11, 2001, the United States was suddenly and brutally attacked by foreign terrorists. These terrorists hijacked and destroyed four civilian aircraft, crashing two of them into towers of the World Trade Center in New York City, and a third into the Pentagon outside Washington, D. C. Thousands of innocent Americans were killed and injured as a result of these attacks, including the passengers and crew of the four aircraft, workers in the World Trade Center and in the Pentagon, rescue workers, and bystanders. These cowardly acts were by far the deadliest terrorist attacks ever launched against the United States, and by targeting symbols of American strength and success, clearly were intended to intimidate our nation and weaken its resolve. These horrific events have affected all Americans. It is important that we carry on with the regular activities of our lives. Terrorism cannot be allowed to break the spirit of the American people, and the best way to show these cowards that they have truly failed is for the people of the United States to stand tall and proud. Now, therefore, (1) The Asheville City Council condemns the cowardly and deadly actions of these terrorists; (2) That the Asheville City Council supports the President of the United States as he works with his national security team to defend against additional attacks, and find the perpetrators to bring them to justice; and (3) That the Asheville City Council recommends to its citizens to support relief efforts by giving blood at the nearest available blood donation center."

Councilman Worley moved to suspend the rules and take formal action at this meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Thirteen individuals spoke with some comments expressed as follows: the word "cowardly" should be removed from the resolution, need for dialogue, discourage acts of retribution, support for President should be conditional, public hearing should be held, and others were in the World Trade Center other than Americans.

After hearing comments and suggestions from the public and after discussion by Council, Councilman Worley moved to adopt the amended resolution as follows : "On September 11, 2001, the United States was suddenly and brutally attacked by foreign terrorists. These terrorists hijacked and destroyed four civilian aircraft, crashing two of them into towers of the World Trade Center in New York City, and a third into the Pentagon outside Washington, D. C. Many innocent people, including thousands of Americans, were killed and injured as a result of these attacks, including the passengers and crew of the four aircraft, workers in the World Trade Center and in the Pentagon, rescue workers, and bystanders. These unprovoked acts were by far the deadliest terrorist attacks ever launched against the United States, and by targeting symbols of American strength and success, clearly were intended to intimidate our nation and weaken its resolve. These horrific events have affected all Americans, it is important that we carry on with the regular activities of our lives, terrorism cannot be allowed to break the spirit of the American people, and the best way to show the perpetrators that they have truly failed is for the people of the United States to stand tall and proud. Now, therefore, (1) The Asheville City Council condemns the unprovoked and deadly actions of these terrorists; (2) The Asheville City Council supports the President of the United States as he works with his national security team to defend against additional attacks, and find the perpetrators to bring them to justice; (3) The Asheville City Council recommends to its citizens to support relief efforts and, as necessary, to give blood at the nearest available blood donation center; and (4) The Asheville City Council encourages dialog among all people, and discourages acts of retribution against any person based on ethnicity or religious belief." This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 455

CONSENT AGENDA:

Budget Amendment for Water 35 Fund

Summary: The consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect funding for a $3 million State Grant for Critical Needs Phase III Water System Improvements.

The Authority has been awarded a $3 million grant from the State of North Carolina for critically needed water system improvements including areas with undersized lines, low pressure problems, and frequent water interruptions. This is the third year in a row that the Authority has received a grant from the State. They were one of the few water systems fortunate enough to receive a $3 million grant in 1999, a $2 million grant in 2000, and a $3 million grant this year. The combined $8 million will go a long way to help fund the replacement of our aging water system and improve service to locations most in need.

The following improvement projects have been identified as critical needs and will be funded with this grant: North Bear Creek Road, Deavermont Circle, Starnes Cove Road, Old Oak Hill Road, Town Mountain Road/Peach Knob Reservoir, Reed Road, US 70 East (Grovemont), Bull Mountain Road, Burgins Chapel Road, Old Buckeye Cove Road, Flint and Ocala Streets, Short Shiloh Road, June Sayles Road, Vista Street, Allen Avenue, Galax and Holly Streets, Dale and Courtney Streets, Branning Street, Millbrook Road, Worley Place, and Sunrise Drive. Most of these are very old two-inch water lines that need to be upgraded to six inch or larger lines. Construction is tentatively scheduled to start in Spring 2002.

Staff recommends approval of the budget amendment to the 35 Fund.

Intent to Close Cherry Street from Marigold Street to Shiloh Road and Setting a Public Hearing on October 23, 2001

Summary: The consideration of a resolution of intent to close the unopened right-of-way known as Cherry Street and setting a public hearing for October 23, 2001.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, Matney and Associates Law Firm, on behalf of M Realty Limited Partnership, has requested to close Cherry Street.

Public Works Department staff has determined that the right-of-way known as Cherry Street, beginning at Shiloh Road, and ending at the Marigold Street, as shown on Plat Book 6 at Page 137, is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution of intent to close the unopened right-of-way known as Cherry Street and to set the public hearing for October 23, 2001.

Appropriation of Fiscal Year 2001 Fair Housing Assistance Program Grant

Summary: The consideration of a budget amendment, in the amount of $50,800, for the Fair Housing Assistance Program (FHAP) for Fiscal Year 2001-02.

The City has been carrying out its Fair Housing Program under contract with the Asheville-Buncombe Community Relations Council (ABCRC) and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

In August 2001 we received notification of the grant awarded to the City for the current federal fiscal year of 10/1/00-9/30/01. This notification required the City to draw down the funds no later than September 15, 2001. Staff has submitted the necessary paperwork to HUD. It is characteristic of this grant program that we receive notification of the grant amount near the end of the program year.

A budget ordinance is required in order to receive these funds and subgrant them to ABCRC.

Community Development staff recommends adoption of the ordinance.

Budget Amendment from N.C. Dept. of Environment & Natural Resources for Computer Equipment and Training

Summary: The consideration of a budget amendment, in the amount of $25,000, to receive grant money from the N. C. Dept. of Environment & Natural Resources (NCDENR) for computer equipment and training.

The City of Asheville Engineering Department requested $25,000 from NCDENR for training and computer equipment. Staff was successful in obtaining those funds. We received money to purchase five laptop computers and provide training for staff and contractors.

The computers and training will improve the City of Asheville Erosion and Sediment Control Program.

City staff recommends City Council approve the budget amendment to receive grant money from the NCDENR.

Contract for Improvements on W. T. Weaver Boulevard

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Precision Contracting, Inc. in the amount of $635,465 for the greenway and roadway improvements on W.T. Weaver Boulevard.

City of Asheville requested bids for the construction of a new greenway and roadway improvements to W.T. Weaver Boulevard. Three bids were received on August 30, 2001. The bids were as follows:

☐ Precision Contracting	$635,465.00
☐ Carolina Mountain Construction	$868,227.00
☐ Taylor and Murphy Construction	$1,155,476.75

After reviewing the bids, staff recommends that the project be awarded to Precision Contracting in the amount of $635,465. The Engineer's estimate for this project was $600,000.

The City will receive a grant from the N. C. Dept. of Transportation, in the amount of $195,465, for the cost of the greenway. The roadway portion of the project ($440,000) is currently budgeted in the City budget.

Precision Contracting is a Certified Minority contractor and met the minority bidding requirements.

City staff recommends City Council authorize the City Manager to execute a contract with Precision Contracting, Inc.

Encroachment Agreement on West Haywood Street

Summary: The consideration of a resolution authorizing an encroachment agreement at 401 West Haywood Street.

The owners of property at 401 West Haywood Street in the Chicken Hill neighborhood recently learned, through a survey, that the house on the property encroaches slightly on the City's right-of-way along West Haywood Street. This encroachment has existed since the house was built, many years ago. The encroachment is minimal, and does not extend into the paved portion of the right-of-way, but stops about 6-8 feet short of the pavement. The encroachment does not interfere with the use of the right-of-way.

The owners are trying to clear up this title issue in order to obtain financing for renovation of the house.

If Council agrees that the encroachment should be permitted, adoption of the resolution is recommended.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AZALEA ROAD PARK

Director of Parks and Recreation Irby Brinson said that this is the consideration of a resolution approving the master plan for Azalea Road Park.

In January, 2001, City Council approved the purchase of 155 acres of property on Azalea Road for the development of a park. The City continued its agreement with Woolpert LLP to enter into the next phase of the contract which included the development of a master plan for the park.

Mr. Gary Stewart, representative from Woolpert LLP, said that a Steering Committee was formed as part of this master plan process which included members of adjacent neighborhoods, potential user groups, and other agencies such as Buncombe County Recreation Services and Blue Ridge Parkway. The process for developing the master plan included two public input sessions and three Steering Committee meetings with Woolpert. A consensus-building process was used to develop the master plan that included ideas generated by the public, Steering Committee, and staff for elements to be included in the park.

Mr. Stewart said the following sources were used in the program analysis: Asheville Parks 2015 Comprehensive Master Plan, Asheville Greenways Master Plan, recreation providers/City staff, the Steering Committee and the general public. He reviewed with Council the different facilities with high and moderate percentage of approval. Two alternative concepts were developed and evaluated.

Final recommended recreational facilities included: soccer complex (both youth and adult); multi-field complex (youth baseball, girls softball and multi-purpose field); disc golf; meeting/retreat center; outdoor amphitheater (350) day-use only; picnic areas/shelters (throughout the park); volleyball, horseshoe, and playgrounds; fishing areas along the river and existing ponds; maintain open space throughout the park; Azalea Road to be closed; no vehicular access to Thomas Wolfe cabin; bikeway/greenway separate (can use same corridor); bikeway/greenway trails to be paved; bikeway to follow both Azalea Road and Swannanoa River; fitness trail – both moderate and extreme; interpretive trail – woods/river/wetlands; arts sculpture/ADA sensory trail; two pedestrian bridge connections; connection to Mountain to Sea Trail; connection to Recreation Park; and kayak launch/takeout areas.

It should be noted that this plan represents approximately a $16 million investment. The consultant and staff are quick to share that this plan will be developed in five phases over at least a 10 to 15 year period. Phase I recreation facility improvements include: two picnic shelters; one large playground; two observation decks; one kayak launch area; walkway trail; fitness trail; interpretive trail; two soccer fields with irrigation; bleacher areas; 205 parking spaces; one restroom/concession building; and one maintenance building with security lighting, security gates and water/sewer service.

Funding will be from a number of sources including a commitment from the Western North Carolina Soccer Foundation to develop and maintain the soccer facilities.

The Parks and Recreation Advisory Board and staff recommend City Council approve the master plan for Azalea Road Park.

Mr. Stewart answered several questions from Council, some being, but are not limited to, concerns expressed by the Steering Committee, phasing, the reasoning behind the recommendation to close Azalea Road, and are soccer fields open to the public.

Councilwoman Field urged the City Manager to come back quickly with a report on the beneficial fill site as the City is spending a large amount of money every day dumping in other places.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

UPDATE – Establishing a New Urban Village Zoning District

Planning & Development Director Scott Shuford reviewed with Council the changes they recommended at the September 4, 2001, worksession with regard to this Unified Development Ordinance amendment which is scheduled for public hearing on September 25, 2001.

Mr. Shuford addressed Councilman Peterson's concern about what would constitute increases in the overall development intensity to require the developer to bring back his revised master plan to City Council for review.

UPDATE – Revise Findings for Conditional Use Permits

Chief Planner Gerald Green reviewed with Council the changes they recommended at the September 4, 2001, worksession with regard to this Unified Development Ordinance amendment which is scheduled for public hearing on September 25, 2001.

Exempt Agricultural Uses from Zoning Regulation, Define Confined Animal Feeding Operation, Add Research and Technology Production as Permitted Use in Certain Business Districts and to Eliminate Level III Review of Industrial Uses

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled on Wednesday, October 10, 2001. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to exempt agricultural uses from zoning regulation, to define confined animal feeding operation, to add research and technology production as a permitted use in certain business districts, and to eliminate level III site plan review of industrial uses.

The proposed ordinance amendment would make several small changes in the UDO in an effort to address several small issues that have been identified by the staff and the public. These changes, though minor, will make it easier to undertake a variety of business activities in the City of Asheville and its jurisdiction while protecting the public interest. The proposed changes and the impacts of each change are described below:

- Exemption of bona fide agricultural uses from zoning regulation. This amendment codifies the City's existing approach to regulation of bona fide agricultural uses. An agricultural use recognized as such for tax purposes would be exempt from all zoning regulations. In order to recognized as a bona fide agricultural use, the use would have to meet minimum acreage, income, and production standards. Confined animal feeding operations would not be exempt from zoning regulation.
- Confined animal feeding operations are defined as operations where the animal (or poultry) is confined inside a building for at least 60% of its life with waste products collected from the building and treated either on-site or off-site. Operations of this type can produce adverse environmental impacts and therefore would not be exempt from zoning regulation.
- Research and technology production uses are identified as permitted uses in several business districts. As our economy changes, we find that most high tech production activities do not create the type of adverse impacts typically associated with manufacturing and production activities. Research and technology production is often carried out in conjunction with retail operations. The proposed change would permit research and technology production uses in the Community Business II and higher intensity business districts, providing more opportunities for the location of businesses of this type.
- Elimination of the requirement that large industrial development projects be subject to the level III site plan review process. The level III site plan review process requires projects with potential community wide impacts to be reviewed and approved by City Council as conditional uses. Requirements already in place for industrial development projects would ensure that any impacts of these developments would be mitigated and industrial zones are located in areas that minimize the potential for such impacts. Elimination of this requirement would ensure that the City is committed to proactive economic development.

The proposed amendments would address issues that have come to staff's attention during the extension of the City's extraterritorial jurisdiction area and through discussions with persons involved in economic and industrial development. In presenting these amendments, the staff is being responsive to the reasonable needs of the community.

At their August 23, 2001, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the wording amendment.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on Wednesday, October 10, 2001.

CIVIC CENTER FACILITY FEE

Budget Director Ben Durant said that this is the consideration of a resolution charging a $1.00 facility fee for all ticketed entertainment events and a $0.50 facility fee for all trade show events at the Asheville Civic Center.

The National Basketball Developmental League (NBDL) contract with the City of Asheville makes provisions for the collection of a $1.00 facility fee. City staff surveyed other civic center and entertainment facilities in the southeast of similar size to determine if they charged a similar fee and if there was a revenue sharing arrangement between the city and event promoters regarding facility fee proceeds.

Seven cities were included in the survey and they are as follows: Roanoke, Virginia; Huntsville, Alabama; Mobile, Alabama; Fayetteville, North Carolina; Spartanburg, South Carolina; and Johnson City, Tennessee. All cities in the survey either collected such a fee or anticipated charging one in the near future. In addition, unless otherwise expressed in a contract, all revenue generated from the facility fee was retained exclusively by the city.

Based on the results of the survey, staff recommends charging a facility fee of $1.00 on all entertainment tickets and $0.50 on all trade show tickets. Staff further recommends that the City retain all revenues generated from this fee unless other contractual provisions have been made. Staff estimates that if implemented for a full year, this fee could provide an additional $200,000 per year in revenues to the Center.

Staff further recommends this revenue be used in one or more of the following ways:

1) To fund capital maintenance projects;
2) To fund future expenses related to the on-going renovation efforts of the Civic Center Task Force,
3) To reduce the General Fund operating subsidy to the Center.

City staff recommends City Council adopt a $1.00 facility fee on all entertainment tickets and a fee of $0.50 on all trade show tickets with all fees taking effect immediately after adoption by Council.

Mr. Durant said that the Civic Center Commission has endorsed this fee.

Councilwoman Bellamy felt that if the City had a plan on how this revenue will be used, it may have more public support.

Councilman Hay said that he personally would like the first year's allocation to be earmarked for improvements to the Civic Center.

Upon inquiry of Councilman Peterson, Mr. Durant explained why they are recommending a flat fee and not a percentage fee.

Dr. Carl Mumpower, Chairman of the Civic Center Committee, said that the Commission is in favor of the development of a facility fee program for the Civic Center at the rate recommended by staff. They offered the following comments and considerations: (1) the Commission raised the issue of a possible facility fee approximately two years ago and at that time the Commission was generally supportive of the concept; (2) prior to finalization of a fee plan, they would encourage that some input be solicited from promoters, consumers, and other facility users as to the potential impact of this fee; (3) they acknowledge that a facility fee is a standard practice with Civic Centers, and that a majority of facilities surveyed by staff receive substantial revenue support through such a fee; (4) they encourage that all funds received through this fee be specifically devoted to facility improvements; (5) they courage the name of the fee be changed in such a way as to provide clarity to the public as to the targeted use of the fee – for example – facility improvement fee; and they recommend that, excepting existing contracts, all funds from this fee be retained for use by the facility and not implemented as a shared revenue source with other promoters or tenants.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 5:21 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – September 25, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; Assistant City Manager Jeffrey B. Richardson; and City Clerk Magdalen Burleson

Absent: City Manager James L. Westbrook Jr.

INVOCATION

Councilman Hay gave the invocation.

RECOGNITIONS

Mayor Sitnick recognized the Ms. Betsy Yarborough and her 6th Grade Class from Carolina Day School.

Mayor Sitnick thanked Ms. Robin Nix, the City's Public Information Coordinator, and Ms. Debbie Welch, Buncombe County's Public Information Officer, for arranging the vigil at the City-County Plaza on September 17, 2001, which honored the people who were missing or dead after the terrorist attacks in New York and Washington on September 11, 2001.

ADDITION TO THE AGENDA

Mayor Sitnick asked that a resolution be placed on Council's agenda after the proclamations..

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER, 2001, AS "ASHEVILLE SYMPHONY MONTH"

Vice-Mayor Cloninger read the proclamation proclaiming September, 2001, as "Asheville Symphony Month" in the City of Asheville. He presented the proclamation to Dr. Robert Hart Baker who briefed City Council on some activities that took place during the month.

B. PROCLAMATION PROCLAIMING SEPTEMBER 24-28, 2001, AS "KIDS VOTING WEEK"

Mayor Sitnick read the proclamation proclaiming September 24-28, 2001, as "Kids Voting Week" in the City of Asheville. She presented the proclamation to Ms. Susan Fisher, Director of Kids Voting – Buncombe County, who briefed City Council on some activities that will take place during the week.

C. PROCLAMATION PROCLAIMING OCTOBER, 2001, AS "ASHEVILLE-BUNCOMBE VISION'S HOW CAN OUR COMMUNITY CREATE AND SUPPORT GOOD JOBS WITH GOOD WAGES MONTH"

Councilwoman Bellamy read the proclamation proclaiming October, 2001, as "Asheville-Buncombe VISION'S How Can our Community Create and Support Good Jobs with Good Wages Month" in the City of Asheville. She presented the proclamation to Ms. Leslie Burnside who briefed City Council on some activities that will take place during the month.

RESOLUTION NO. 01-144 - RESOLUTION CONDEMNING TERRORIST ATTACK AND SUPPORTING PRESIDENT OF THE UNITED STATES (also rescinded Resolution No 01-143)

Mayor Sitnick said that since she was not at the September 18, 2001, meeting when the resolution regarding condemnation of the terrorist attack and support for the President of the United States was adopted, she wished to rescind her signature on that resolution. Therefore, she moved to adopt the original resolution with the words "cowardly" and "cowards" reinserted as in the original version of the resolution, along with the other amendments approved by City Council on September, 18, 2001. Said resolution rescinds Resolution No. 01-143 which was adopted on September 18, 2001. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 455

II. CONSENT:

Councilwoman Bellamy asked that Item D be removed from the Consent Agenda due to a conflict of interest.

Councilman Peterson asked that Items H and I be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 28, 2001; THE WORKSESSION HELD ON SEPTEMBER 4, 2001; AND THE WORKSESSION HELD ON SEPTEMBER 18, 2001

B. ORDINANCE NO. 2846 - BUDGET AMENDMENT TO THE WATER 35 FUND

Summary: The consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) to reflect funding for a $3 million State Grant for Critical Needs Phase III Water System Improvements.

The Authority has been awarded a $3 million grant from the State of North Carolina for critically needed water system improvements including areas with undersized lines, low pressure problems, and frequent water interruptions. This is the third year in a row that the Authority has received a grant from the State. They were one of the few water systems fortunate enough to receive a $3 million grant in 1999, a $2 million grant in 2000, and a $3 million grant this year The combined $8 million will go a long way to help fund the replacement of our aging water system and improve service to locations most in need.

The following improvement projects have been identified as critical needs and will be funded with this grant: North Bear Creek Road, Deavermont Circle, Starnes Cove Road, Old Oak Hill Road, Town Mountain Road/Peach Knob Reservoir, Reed Road, US 70 East (Grovemont), Bull Mountain Road, Burgins Chapel Road, Old Buckeye Cove Road, Flint and Ocala Streets, Short Shiloh Road, June Sayles Road, Vista Street, Allen Avenue, Galax and Holly Streets, Dale and Courtney Streets, Branning Street, Millbrook Road, Worley Place, and Sunrise Drive. Most of these are very old two-inch water lines that need to be upgraded to six inch or larger lines. Construction is tentatively scheduled to start in Spring 2002.

Staff recommends approval of the budget amendment to the 35 Fund.

ORDINANCE BOOK NO. 19 - PAGE 241

C. RESOLUTION NO. 01-145 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE CHERRY STREET FROM MARIGOLD STREET TO SHILOH ROAD AND CALLING FOR A PUBLIC HEARING ON OCTOBER 23, 2001

RESOLUTION BOOK NO. 26 – PAGE 457

D. ORDNANCE TO APPROPRIATE FISCAL YEAR 2001 FAIR HOUSING ASSISTANCE PROGRAM GRANT

This item was removed from the Consent Agenda due to a conflict of interest for Councilwoman Bellamy.

E. ORDINANCE NO. 2847 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR COMPUTER EQUIPMENT AND TRAINING

Summary: The consideration of a budget amendment, in the amount of $25,000, to receive grant money from the N. C. Dept. of Environment & Natural Resources (NCDENR) for computer equipment and training.

The City of Asheville Engineering Department requested $25,000 from NCDENR for training and computer equipment. Staff was successful in obtaining those funds. We received money to purchase five laptop computers and provide training for staff and contractors.

The computers and training will improve the City of Asheville Erosion and Sediment Control Program.

City staff recommends City Council approve the budget amendment to receive grant money from the NCDENR.

ORDINANCE BOOK NO. 19 – PAGE 263

F. RESOLUTION NO. 01-146 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PRECISION CONTRACTING INC. FOR THE GREENWAY AND ROADWAY IMPROVEMENTS ON W.T. WEAVER BOULEVARD

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Precision Contracting, Inc. in the amount of $635,465 for the greenway and roadway improvements on W.T. Weaver Boulevard.

City of Asheville requested bids for the construction of a new greenway and roadway improvements to W.T. Weaver Boulevard. Three bids were received on August 30, 2001. The bids were as follows:

☐ Precision Contracting	$635,465.00
☐ Carolina Mountain Construction	$868,227.00
☐ Taylor and Murphy Construction	$1,155,476.75

After reviewing the bids, staff recommends that the project be awarded to Precision Contracting in the amount of $635,465. The Engineer's estimate for this project was $600,000.

The City will receive a grant from the N. C. Dept. of Transportation, in the amount of $195,465, for the cost of the greenway. The roadway portion of the project ($440,000) is currently budgeted in the City budget.

Precision Contracting is a Certified Minority contractor and met the minority bidding requirements.

City staff recommends City Council authorize the City Manager to execute a contract with Precision Contracting, Inc.

RESOLUTION BOOK NO. 26 – PAGE 458

G. RESOLUTION NO. 01-147 - RESOLUTION AUTHORIZING AN ENCROACHMENT AT 401 WEST HAYWOOD STREET

Summary: The consideration of a resolution authorizing an encroachment agreement at 401 West Haywood Street.

The owners of property at 401 West Haywood Street in the Chicken Hill neighborhood recently learned, through a survey, that the house on the property encroaches slightly on the City's right-of-way along West Haywood Street. This encroachment has existed since the house was built, many years ago. The encroachment is minimal, and does not extend into the paved portion of the right-of-way, but stops about 6-8 feet short of the pavement. The encroachment does not interfere with the use of the right-of-way.

The owners are trying to clear up this title issue in order to obtain financing for renovation of the house.

If Council agrees that the encroachment should be permitted, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 26 – PAGE 460

H. RESOLUTION ADOPTING THE AZALEA ROAD PARK MASTER PLAN

This item was removed from the Consent Agenda for further discussion.

I. ORDINANCE AMENDING FISCAL YEAR 2001-02 BUDGET TO PROVIDE FOR CIVIC CENTER FACILITY FEE

This item was removed from the Consent Agenda for further discussion.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA TO BE DISCUSSED

ORDINANCE NO. 2848 - ORDINANCE TO APPROPRIATE FISCAL YEAR 2001 FAIR HOUSING ASSISTANCE PROGRAM GRANT

Vice-Mayor Cloninger moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a budget amendment, in the amount of $50,800, for the Fair Housing Assistance Program (FHAP) for Fiscal Year 2001-02.

The City has been carrying out its Fair Housing Program under contract with the Asheville-Buncombe Community Relations Council (ABCRC) and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

In August 2001 we received notification of the grant awarded to the City for the current federal fiscal year of 10/1/00-9/30/01. This notification required the City to draw down the funds no later than September 15, 2001. Staff has submitted the necessary paperwork to HUD. It is characteristic of this grant program that we receive notification of the grant amount near the end of the program year.

A budget ordinance is required in order to receive these funds and subgrant them to ABCRC.

Community Development staff recommends adoption of the ordinance.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2848. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 265

RESOLUTION NO. 01-148 - RESOLUTION ADOPTING THE AZALEA ROAD PARK MASTER PLAN

Director of Parks and Recreation Irby Brinson said that this is the consideration of a resolution approving the master plan for Azalea Road Park.

In January, 2001, City Council approved the purchase of 155 acres of property on Azalea Road for the development of a park. The City continued its agreement with Woolpert LLP to enter into the next phase of the contract which included the development of a master plan for the park. A Steering Committee was formed as part of this master plan process which included members of adjacent neighborhoods, potential user groups, and other agencies such as Buncombe County Recreation Services and Blue Ridge Parkway. The process for developing the master plan included two public input sessions and three Steering Committee meetings with Woolpert. A consensus-building process was used to develop the master plan that included ideas generated by the public, Steering Committee, and staff for elements to be included in the park.

This plan represents approximately a $16 million investment. The consultant and staff are quick to share that this plan will be developed in five phases over at least a 10 to 15 year period. Funding will be from a number of sources including a commitment from the Western North Carolina Soccer Foundation to develop and maintain the soccer facilities.

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The Parks and Recreation Advisory Board and staff recommend City Council approve the master plan for Azalea Road Park.

At the request of Steering Committee member Bette Jackson, Mr. Brinson said that the final Master Plan section would be amended to include specific language that the Steering Committee recommends that Azalea Road be gated.

Mr. Robert Born, member of the Steering Committee and speaking on behalf of the Viewpoint Homeowners Association Board of Directors, agreed that Azalea Road should be closed at Highway 81. In addition, his Association is strongly opposed to any truck traffic that goes through the Azalea Road park area.

Upon inquiry of Councilman Peterson, Mr. Brinson explained that since the WNC Soccer Foundation will be paying for the development and maintenance of the soccer fields, they would have the first right to use the soccer fields for games. The agreement being negotiated with the Soccer Foundation dealing with the financial side of this would be that they would have primary use of the soccer fields, however, the City would reserve the right to use those fields for other reasons. Mr. Brinson pointed out that there are a large number of areas adjacent to the soccer fields that will be seeded and open play areas.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-148 adopting the Azalea Road Master Plan. This motion was seconded by Councilwoman Field.

Councilman Peterson moved to amend the motion to add on page 5-2 before the fourth bullet under Final Master Plan that "The Steering Committee recommends Azalea Road be gated." This motion was seconded by Councilwoman Bellamy and carried unanimously.

The original motion, as amended, carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 462

ORDINANCE NO. 2849 – ORDINANCE AMENDING FISCAL YEAR 2001-02 BUDGET TO PROVIDE FOR CIVIC CENTER FACILITY FEE

Budget Director Ben Durant said that this is the consideration of an ordinance to allow the charging a $1.00 facility fee for all ticketed entertainment events and a $0.50 facility fee for all trade show events at the Asheville Civic Center.

The National Basketball Developmental League (NBDL) contract with the City of Asheville makes provisions for the collection of a $1.00 facility fee. City staff surveyed other civic center and entertainment facilities in the southeast of similar size to determine if they charged a similar fee and if there was a revenue sharing arrangement between the city and event promoters regarding facility fee proceeds.

Seven cities were included in the survey and they are as follows: Roanoke, Virginia; Huntsville, Alabama; Mobile, Alabama; Fayetteville, North Carolina; Spartanburg, South Carolina; and Johnson City, Tennessee. All cities in the survey either collected such a fee or anticipated charging one in the near future. In addition, unless otherwise expressed in a contract, all revenue generated from the facility fee was retained exclusively by the city.

Based on the results of the survey, staff recommends charging a facility fee of $1.00 on all entertainment tickets and $0.50 on all trade show tickets. Staff further recommends that the City retain all revenues generated from this fee unless other contractual provisions have been made. Staff estimates that if implemented for a full year, this fee could provide an additional $200,000 per year in revenues to the Center.

Staff further recommends this revenue be used in one or more of the following ways:

1) To fund capital maintenance projects;
2) To fund future expenses related to the on-going renovation efforts of the Civic Center Task Force;
3) To reduce the General Fund operating subsidy to the Center.

City staff recommends City Council adopt a $1.00 facility fee on all entertainment tickets and a fee of $0.50 on all trade show tickets to be effective immediately after Council adoption.

When Councilman Peterson questioned the immediate effective date, City Attorney Oast said that some issues have been raised about people who have advertised ticket prices in advance of knowing about this facility fee. He said he would research those issues and see what the contractual provisions say. But, rather than exempt them from the ordinance, he recommended Council adopt the ordinance so that the fee will be in place and then he can work with those organizations individually on a contractual and a fairness basis.

Councilman Peterson questioned how the funds will be accounted for in the budget. Mr. Durant explained that there is no firm estimate on what revenue will be produced from this fee at this time. Therefore, staff will monitor the revenues and then once they have a firm estimate, they will come back to Council with a specific plan and it will depend on Council's priorities as to how those expenditure will be made.

Councilman Hay felt the additional revenue, especially in the first year, should be dedicated to specific improvements at the Civic Center.

Councilman Peterson was concerned that the regular tenants had not been informed or involved in this new fee. Mr. Durant said that staff researched what other facilities were charging and then presented that information to the Civic Center Commission. The plan was to get the fee adopted and then inform the affected vendors as to how this might impact their events and make appropriate exceptions as needed.

Councilman Hay said that the Civic Center Commission did recommend that some of the primary tenants be contacted. Civic Center Director David Pisha said that he has contacted some of the Civic Center's major users and cleared up some misconceptions.

Upon inquiry of Councilwoman Bellamy, Mr. Durant said that the anticipated revenue can be used for reducing the subsidy to the Civic Center but that would be entirely up to Council on how they want that additional revenue spent.

At the request of Councilman Peterson, Mr. Durant explained the facility fee with regard to the National Basketball Development League (NBDL) and also why the staff is recommending a flat fee opposed to a percentage fee.

Mr. Fred English felt this was nothing more than a secret tax increase.

Mr. John Patterson, owner of Western Carolina Productions which produces events at the Civic Center, felt that there was not much input solicited from the tenants who use the Civic

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Center. He said attendance at his events are down over the past three years by 28%. If this fee is implemented, attendance in the Civic Center will further deteriorate. He felt there must be other ways to raise fund to renovate the Civic Center.

Dr. Carl Mumpower, Chair of the civic Center Commission, said that the Commission is in support of this fee. The Commission felt it is a good opportunity to target taking care of what we have and they encourage City Council to earmark this money for improving the facility.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2849. This motion was seconded by Councilwoman Field.

Vice-Mayor Cloninger felt this is a good opportunity for the City to put revenue towards improvements to the Civic Center.

Even though Councilman Peterson felt we need to generate more revenue from the users to provide for improvements to the Civic Center, he would have to vote against the ordinance because he felt the luxury boxes should be paying more than the cheap seats.

Councilwoman Bellamy felt that we are putting steps in place to show our state legislature as well as the community that we are thinking pro-actively about how we are going to fund improvements at the Civic Center.

The motion made by Councilman Hay and seconded by Councilwoman Field carried on a 6-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 19 - PAGE 267

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CONDITIONAL USE PERMIT STANDARDS FOR APPROVAL

ORDINANCE NO. 2850 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CONDITIONAL USE PERMIT STANDARDS FOR APPROVAL

Mayor Sitnick opened the public hearing at 6:22 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise the findings for conditional uses. This public hearing was advertised on September 14 and 21, 2001.

The proposed ordinance amendment would revise two of the seven findings that must be made in order for City Council to grant a Conditional Use Permit. The findings currently in the ordinance are based upon wording found in enabling legislation and in ordinances across the state. While these findings are generally adequate to assess the impacts of proposed uses identified as conditional uses, some refinement is needed to assure that the findings address Asheville's unique conditions and meet the goals of the City.

One issue that has been identified during the review of Conditional Use Permit requests is how the proposed project would impact the natural and topographic features of the site. A proposed revision to finding # 2 would delete the need to find that the proposed use is reasonably necessary for the public health or general welfare. This finding would be revised to require the use or development to be reasonably compatible with significant natural and topographic features on and in the vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant. The proposed revision would reinforce the concern for protecting and maintaining the natural and topographic features that help define the character of the City of Asheville.

The findings currently address the need for the proposed use or development to conform with the City's comprehensive plan. However, there is no requirement that the use or development conform with the City's smart growth policies or sustainable economic development strategic plan. A proposed revision to finding # 5 identifies these policies and plans, noting that the use or development should comply with them.

The proposed revisions provide clear guidance for applicants in preparing applications for Conditional Use Permits and for the City Council in reviewing the requests. With the proposed revisions, the importance of preserving the City's natural and topographic features is made clear. In addition, the role of the City's smart growth policies and sustainable economic development strategic plan in guiding development is reinforced.

At their July 11, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the findings for conditional uses. The Planning and Development staff recommends approval of the wording amendment.

Upon inquiry of Councilman Peterson, Mr. Green gave examples of mitigation techniques.

Ms. Sharon Martin felt these two amendments go a long way to protect our environment.

Ms. Margaret Shook, 709 Crowfields, urged City Council to strengthen the requirements of the 1997 stormwater ordinance and not wait until March 2003 when the federal government mandates it.

Ms. Elaine Anderson, 711 Crowfield Condominiums, agreed with Ms. Shook in that something need to be done about the water runoff and the ordinance needs to be strengthened.

Mr. Jim Bannon, President of Smart Growth Partners, supported the ordinance changes.

Councilwoman Field suggested the Stormwater Task Force be reconstituted to look at revising the ordinance.

Mayor Sitnick agreed with Councilwoman Field and felt that Ms. Shook would be an excellent member of that Task Force.

Mayor Sitnick closed the public hearing at 6:40 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2850. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 269

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW URBAN VILLAGE ZONING DISTRICT

ORDINANCE NO. 2851 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW URBAN VILLAGE ZONING DISTRICT

Mayor Sitnick opened the public hearing at 6:41 p.m.

Planning & Development Director Scott Shuford said that this is consideration of an ordinance to amend the Unified Development Ordinance (UDO) by adding the Urban Village Zoning District. This public hearing was advertised on September 14 and 21, 2001.

As part of City Council's Smart Growth initiative, staff has developed a new zoning district of Urban Village. Staff is expediting its review because there are two property owners who wish to have it applied to their property. The two projects where this new zoning district may be initially applied are the Biltmore Park Town Center, currently under construction, and the former Gerber site.

In preparing this ordinance, staff enlisted a focus group of local design professionals, Smart Growth advocates, and a Planning and Zoning Commissioner to review the original draft ordinance and provide comments.

The Urban Village District is generally intended to be used at the request of a property owner rather than being unilaterally applied to a site by the City. It is a large site zoning district, with a minimum initial property size of 10 acres. Its application will likely be limited to fairly level sites rather hillsides due to the requirement that the developer create an internal network of streets forming a series of blocks, however, a creative designer may be able to adapt it to a hilly situation.

This internal street network is the key to the Urban Village zoning district. The street network will shape the form that the development takes by providing a series of blocks that organize how the buildings are arranged, provide a place for on-street parking, and create a public sphere for community interaction. Off-street parking generally must be shielded from the street by buildings and incentives are provided for the use of structured parking. In effect, the district's requirements for an internal street system, on-street parking, and building setbacks create a small-scale replica of a traditional downtown.

As in a traditional downtown, there is considerable leeway given to the developer regarding building height (the district calls for most structures to be in a range from two to four stories, but some buildings can be single story and others can be as tall as eight stories), residential density (no formal density limits – the building size and placement will ultimately determine the number of units that can be placed in an Urban Village), on-street parking (the ability to count this parking toward the total parking required for the development), and development review (projects within an Urban Village are considered Level II projects for review purposes). In exchange for this flexibility, the developer must work within the provisions of the ordinance regarding site design and provide a traffic impact analysis.

The Planning and Zoning Commission voted unanimously to recommend adoption of the ordinance amendment. The Planning and Development Department staff supports the ordinance amendment.

As a result of Council's September 4, 2001, worksession, staff has developed some ideas for determining when revisions to an Urban Village District master plan require reconsideration by City Council. Staff is suggesting that revised Urban Village Districts would require review by Council if:

- There is an increase in overall development intensity.
- There is an increase in overall height.
- There is a decrease in perimeter open space or perimeter parking lot buffering.
- There is a reduction of 25% or more in the number of blocks created by the Urban Village street network.

Staff feels these provisions will address the key impacts to surrounding properties by any revisions to the Urban Village District master plan.

Also, as a result of further discussion at Council's September 18, 2001, worksession, over the issue of reconsideration involved when the mix of uses began to be altered over the course of construction, staff has included a quantifiable (25%) factor in the ordinance.

Ms. Anne Campbell, 102 Crowfields Drive, thought the idea of urban villages was a good one, however, she did have some concerns about the density. She felt that Crowfield Condominiums could be a model if designated as an Urban Village District. She did stress, however, that there is no provision for bus stops and there is a desperate need for a sidewalk on Hendersonville Road from Carolina Day School south.

Mayor Sitnick said that she has sent at least two letters to the N. C. Dept. of Transportation requesting sidewalks on Hendersonville Road, at least south of West Chapel Road.

Ms. Hazel Fobes spoke in favor of the Urban Village District designation.

Ms. Rebecca Campbell, 727 Haywood Road, supported the Urban Village concept. She felt that we did need to retrofit the sprawl in south Asheville and also need to deal with proper mitigation of stormwater.

Mr. Jim Bannon, representing Smart Growth Partners, spoke in support of the Urban Village District and explained why they feel this is a good development pattern for Asheville to adopt.

Mr. Pat Whalen, representing the Sustainable Economic Development Implementation Task Force, felt this new district is a useful tool in our development ordinance.

Mayor Sitnick closed the public hearing at 7:10 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2851. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED AT THE NORTHEAST CORNER OF HENDERSONVILLE ROAD AND GERBER ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO URBAN VILLAGE DISTRICT

ORDINANCE NO. 2852 - ORDINANCE TO REZONE PROPERTY LOCATED AT THE NORTHEAST CORNER OF HENDERSONVILLE ROAD AND GERBER ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO URBAN VILLAGE DISTRICT

Mayor Sitnick opened the public hearing at 7:11 p.m.

Urban Planner Alan Glines said that this is consideration of an ordinance to rezone property at the northeast corner of Hendersonville Road and Gerber Road to Urban Village District. This public hearing was advertised on September 14 and 21, 2001.

The property being reviewed is located on Hendersonville Road, which is 23 acres in size and was the site of the former Gerber Plant. This rezoning proposal is for only a portion of the original parcel (PIN No. 9655-09-26-4943) and is bordered by Hendersonville Road and Gerber Road (the property encompasses Gerber Road for a portion of the parcel). The parcel is a likely candidate for the Urban Village District zoning due to its location on Hendersonville Road and it relatively flat topography. The plans of the owner/developer will be a good fit for the Urban Village District. This proposed mixed use project embodies Smart Growth goals by providing higher densities where current infrastructure (roads, water and sewer) already exists. This project will also have the benefit of helping to discourage sprawl by re-developing an in-town brownfield site

He reviewed the master plan for the property which has been submitted. The master plan portrays a network of streets, sidewalks, on-street parking, open space and the building arrangement. The project will be a mixed-use and will have a strong residential component. A majority of buildings will be two to four stories. There will be a commercial node close to Hendersonville Road although commercial activities will be scattered throughout the District. Careful attention has been made to ensure that attractive pedestrian spaces are integrated into the streetscape.

The master plan will be made up of a mixture of the following uses:

- 465 Residential Units
- 100 Tourist Accommodation Units
- 220,000 gross square feet of retail, restaurant and other consumer commercial space (175,000 square feet net)
- 65,000 square feet of office space
- 20,000 gross square feet of other non-residential space

The property is surrounded by a variety of zoning districts including Industrial to the north, Highway Business across Hendersonville Road to the west, and Commercial Industrial to the east and south adjacent to the railroad tracks.

The site is currently vacant and the property is adequately served by water and sewer.

The Planning and Zoning Commission voted 6-0 to recommend application of the Urban Village District zoning to property at northeast corner of Hendersonville Road and Gerber Road. The Planning and Development Department staff also recommends application of the Urban Village District zoning to this site formerly known as the Gerber Plant.

Upon inquiry of Councilman Peterson about how much detail they need to submit with their master plan, Mr. Glines said that the first phase drawings are for buildings two and three stories tall. He said that 95% of the buildings will be between 2-4 stories tall for the full development. There will be potentially 5% of the buildings from the build-out will be one story to accommodate the ancillary uses. Planning & Development Director Scott Shuford further explained that Council is approving a building structure range from 1-4 stories in height. If there is anything taller than 4 stories, it would come back to City Council for re-consideration. He said that as long as they develop the property in the block pattern required and as long as they meet the Traffic Impact Analysis and other technical requirements of the ordinance, they would have some flexibility in how they develop the property.

Mr. Herbert Ellis, representing New Hope Presbyterian Church at 3070 Sweeten Creek Road, was concerned about (1) structures over 35 feet in height blocking the Church's view of the mountains; and (2) street lights that are also high enough to spoil the Church's view and might have glaring light directed toward the Church.

Mayor Sitnick closed the public hearing at 7:34 p.m.

In response to Mr. Ellis' concerns, Mr. Shuford said that in all likelihood, the streets will ultimately be public streets and they would have public street lights on it. Also, the railroad right-of-way is quite significant resulting in a much greater setback from the Church property than you would ordinarily see. He suggested Mr. Ellis attend the Technical Review Committee meeting on this project to have some of his concerns addressed.

Mr. Jackson Ward, property owner, said that they are willing to work with the neighbors and they do not intend to build multiple four-story units. They may build a few four-story units to create a diversity in the skyline of the project.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2852. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilwoman Bellamy felt this is a good development as this project support's our community's initiatives.

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At 7:50 p.m., Mayor Sitnick announced a short break.

D. PUBLIC HEARING TO CONSIDER REZONING PROPERTY KNOWN AS BILTMORE FARMS GARDEN HOMES/TOWN CENTER EAST LOCATED IN BILTMORE PARK FROM CENTRAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT

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ORDINANCE NO. 2853 - ORDINANCE TO REZONE PROPERTY KNOWN AS BILTMORE FARMS GARDEN HOMES/TOWN CENTER EAST LOCATED IN BILTMORE PARK FROM CENTRAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT

Mayor Sitnick opened the public hearing at 8:06 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone Biltmore Park Town Center from Central Business District (CBD) and RS-8 Residential Single-Family High Density District to Urban Village District. This public hearing was advertised on September 14 and 21, 2001.

The Biltmore Park Town Center area is an urban village already under construction in the Biltmore Park development. It is a fine example of Smart Growth in that it creates a mixed use node that serves the surrounding residential and commercial uses within the Biltmore Park project. Its design establishes a street network that creates public space that promotes community interaction while allowing multimodal access both internally and externally.

Most of this area was recently zoned CBD in the extraterritorial jurisdiction initial zoning because that zoning was the most similar to the development pattern being undertaken by the developer. However, CBD zoning is not an ideal "fit" for the Town Center area because of a variety of factors. CBD zoning, while allowing minimal setbacks, is much more intensive than necessary to accomplish the development goals for this project – there are no height limits other than a requirement that buildings be a minimum of two stories in height, for example. For some of the smaller scale residential uses being proposed, CBD did not match at all due to these types of issues and other zoning districts had to be used in the initial zoning.

The Biltmore Park Town Center is projected to contain the following level of development. Ten to fifteen percent (10-15%) of the project's structures will be one story, 80-85% will be two to four stories in height, and five percent (5%) or less of the buildings will be taller than four stories.

- 290 Residential Units
- 350,000 square feet of Retail, Restaurant, and Other Consumer Commercial Space
- 200,000 square feet of Office Space
- 150,000 square feet of Other Non-Residential Space

The Urban Village District also provides for a mix of uses where the infrastructure is in place to support an urban pattern of development. The Urban Village District is designed to promote an internal street network that creates a public sphere, along with reduced setbacks and flexibility in land use types.

With regard to the zoning pattern, the property is surrounded by a variety of zoning districts consistent with the master plan for Biltmore Park. This site is already under construction as an urban village project. The Town Center area is adequately served by water and sewer.

The Planning and Zoning Commission voted 6-0 to recommend application of the Urban Village District zoning to the Biltmore Park Town Center. The Planning and Development Department staff also recommends application of the Urban Village District zoning to the Biltmore Park Town Center.

Mr. William Lapsley, consulting engineer representing Biltmore Farms, spoke in support of the rezoning and explained the project area.

Mayor Sitnick closed the public hearing at 8:12 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2853. This motion was seconded by Councilman Worley and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING FOR 1238 HENDERSONVILLE ROAD, KNOWN AS LAURELWOOD APARTMENTS, FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2854 - ORDINANCE TO REZONE 1238 HENDERSONVILLE HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2855 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 1238 HENDERSONVILLE ROAD

Councilman Hay moved to excuse Vice-Mayor Cloninger and Councilman Worley from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 8:18 p.m.

The following Council members disclosed that they had visited the site: Mayor Sitnick, Councilwoman Bellamy and Councilman Peterson. Mayor Sitnick and Councilwoman Field had a conversation with a representative of the owner to let them know this project was coming before Council, however, they have no special knowledge that will affect the decision.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 9-25-01). This public hearing was advertised on September 14 and 21, 2001.

Ms. Merten said that this is the consideration of rezoning 1228 Hendersonville Road, known as Laurelwood Apartments, from RM-6 Residential Multi-Family Low Density District to

RM-16 Residential Multi-Family High Density District, and issuance of a conditional use permit (conditional use zoning).

On August 3, 2001, John Mock submitted plans for a conditional use rezoning for a 31.7 acre parcel located at 1238 Hendersonville Road (PIN No. 9656.09-05-9482). The request is to conditionally rezone the property from RM-6 to RM-16 (CU) to permit construction of a 440 unit multi-family development for a gross density of 13.88 units per acre. The existing zoning allows six units per acre and 190 dwellings could be placed on the property under that zoning.

The property is located in the City's extraterritorial jurisdiction area on the east side of Hendersonville Road approximately .5 miles north of the Blue Ridge Parkway (City Exhibit 3 - location map). Access to the property is via a driveway located to the north of Ballard Appliances and requires the crossing of the Norfolk Southern railroad line that runs behind the business (City Exhibit 4 – copy of site plan).

The site is partially wooded and currently used primarily for agriculture. There are also a limited number of residential dwellings on the property which will be demolished. The project consists of 21 buildings surrounding a central recreational area. The buildings will be three stories in height and consist of 11 with 20 units each, 7 with 22 units and 3 with 24 units. The project site design preserves existing tree canopy on the site to a significant extent. The buildings are clustered on the lower part of the property leaving a large wooded upland entirely intact .

The project has the potential to assist the City with its affordable housing problem. The anticipated rents for these units are accessible to moderate income residents.

The Planning & Zoning Commission and the Police & Fire Departments have identified access to the property as a concern as the property is "landlocked" except for the access across the railroad tracks. The applicant is working with surrounding property owners to obtain a secondary means of ingress and egress to the site. Additionally, the Fire Department recommends but does not require that the buildings be equipped with sprinklers.

This project will create an urban level of density in an area outside of the City's corporate limits. This requires an urban level of public safety services (Fire, Police and Emergency Medical Services). Voluntary annexation in phases would be one means of addressing this concern, although staff is open to considering other options.

The project consists of over 20 buildings of the same architectural style. The repetition of a single building style with little connection to the architectural character of Asheville was also identified as a concern by the Planning & Zoning Commission. However, it was also acknowledged that the affordability of the units must be taken into consideration. The applicant is willing to work with staff to improve the quality of design while keeping the project within an affordable price range.

All of the technical conditions have been met with a few minor exceptions. A Transportation Impact Analysis (TIA) was required for this project and has been reviewed by the City's Traffic Engineer (City Exhibit 5) . The TIA indicates that the nearby signalized intersections will experience slight increases in delay based on this project, but they will still be within acceptable levels. The TIA makes the following recommendations for the site driveway:

1. Construct the site driveway with one ingress lane and two egress lanes, one of which should be a right turn lane with 150 feet of full width storage. The plan includes a 200 ft. length right turn lane

2. Construct a southbound left turn lane into the site. This can be accommodated by using the existing two-way left turn lane.
3. Install a traffic signal at the site driveway upon full build-out of the development. The City's Traffic Engineer recommends that this traffic signal be required whenever the intersection actually meets signal warrants and is approved for construction by the N. C. Dept. of Transportation (NCDOT). A condition below reflects this recommendation.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1) That the proposed use or development of the land will not materially endanger the public health or safety.

As proposed the project will have a single access via the Norfolk Southern Railroad line. Norfolk Southern has indicated that approximately 8-12 trains per day traverse the tracks at this location. The Asheville Police & Fire Departments have identified this as a public safety concern and have recommended that a secondary means of access be identified to serve the development that would not require emergency vehicles to cross the rail line.

Voluntary annexation of this property or some other method of enhancing security will insure that adequate public safety services will be available for an urban community of over 1,000 persons.

The site will be extensively buffered and the parking areas landscaped in order to mitigate any possible negative environmental impacts from dust, glare and fumes.

2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

The project will provide reasonably priced housing in a rapidly developing area of the City where there is a great need.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

It is recommended that the proposed development be designed and constructed with materials that will be long lasting and in a manner that will contribute to and enhance the surrounding community. If developed in this manner, it is not anticipated that the development would injure the value of adjoining property. The access and layout of the site do not pose a major impact on adjacent property.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The project will be located adjacent to a heavily developed commercial corridor and in the general vicinity of other large scale multi-family development projects.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan and other official plans adopted by the City.

The Asheville City 2010 Plan indicates residential use for this area.

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6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development is located in an existing developed area. The project received conditional approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department and Public Works Department. The Technical Review Committee recommended certain conditions, which have been met. Sidewalks and a transit stop will be provided.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer has submitted a TIA which studies the traffic that is anticipated to be generated by the development. This TIA was completed according to the requirements of the City's ordinances, and the assumptions used have been approved by the City's Traffic Engineer. The City's Traffic Engineer has reviewed this project and the TIA. The Traffic Impact Analysis looked at pre- and post-development traffic conditions at three intersections along Hendersonville Road (US25): the site driveway, the existing signalized intersections at Rock Hill Road, and the existing signalized intersection at Harris Teeter and Carolina Day School. The TIA included a theoretical Traffic Signal Warrant Analysis at the site driveway.

While the nearby intersections are predicted to operate acceptably at build-out, the major roads in this area including Hendersonville Road are experiencing rapid traffic growth and will at some point reach capacity. Any increase in density will accelerate this traffic growth.

The City's Traffic Engineer made a suggestion to the developer to work with the owner of the adjacent property to try and create a new collector road that would connect between Hendersonville Road and Sweeten Creek Road. This would serve to potentially reduce long-term congestion in this area by providing more connectivity and improving the efficiency of existing roads in this area. The developer and the project's engineer decided not to pursue this option, likely due to topographical constraints, costs, and the fact that this road would split the property.

The Planning & Zoning Commission recommended approval with conditions. Based on information available to the Planning & Development Department in advance of the public hearing, staff recommends approval of the conditional use rezoning.

If Council takes action to approve the request, staff also recommends the following conditions:

- The applicant shall work with staff to determine appropriate changes to the building façades to increase variety and better incorporate the architectural character of Asheville while respecting the cost impact of these changes to rent affordability. Pursuant to this, the applicant is encouraged to consider: (1) A greater mix of materials; (2) including greater articulation in the roof line, possibly mixing hip and gabled roof styles; and (3) more variation in the window styles. Staff has worked with the applicant on this issue and they will review revised drawings reflecting the changes discussed.
    - Additional landscaping should be provided around the buildings to help break up the massing.
    - A greenway/trail system should be provided for additional recreation benefits.
    - A transit and school bus stop should be provided within the complex; if this proves infeasible after examination by both the City of Asheville's Transit Director and the Buncombe County School System, the applicant shall provide a bus shelter at Hendersonville Road at a location determined by the Transit Director and/or the Transportation Services Division.

- The developer has proposed building the traffic signal at the intersection of the site driveway and Hendersonville Road at project build-out. However, this signal must be constructed at a time when the intersection meets signal warrants based on the traffic counts at that time, as determined by the NCDOT. To accomplish this, the developer should place funds in escrow to pay for the traffic signal. This amount will be determined by the City Engineering Department based on recommendations from the NCDOT. The amount should include the costs of pedestrian signals and the costs of connecting this traffic signal to other signals in the area.
- The site access for this development is planned to be built between two existing driveways to existing buildings. The driveway spacing is already closer than optimal. The developer must work with the Engineering Department and the NCDOT to eliminate and/or restrict turning movements at some of the nearby driveways. Ideally, the adjacent parking lots can be connected to the site driveway so these properties can have access to the traffic signal for egress.
- A secondary emergency access is required in a location that will not require emergency vehicles to wait for a train. This access does not have to be available to the general public. If general public access is not provided, the blocking mechanism shall be equipped with an electronically operated device or other device acceptable to the Fire and Police Departments. At least 30 ft. of separation between buildings on the site must be maintained to accommodate the emergency access. This access must be constructed with an all-weather surface, but is not required to be paved. The developer has obtained an easement for this secondary emergency access.
- The applicant shall work with staff to insure that the urban level of density proposed in this project receives the urban level of public safety services.
- In order to insure that the grading, erosion control, landscaping, tree protection, access, and paving are consistent with the approved conditional use permit, the applicant shall submit any plans required by other government agencies (including Buncombe County and state agencies) to City staff for prior review. There shall be no City fees for such reviews pursuant to this purpose. If there are any City inspections during and after construction required as a result of this review, such inspections shall be coordinated by the City with the other affected agencies to minimize the potential for any duplication or confusion in requirements.

Ms. Merten said they have worked through the conditions with the developer and they are amenable to all the conditions.

Upon inquiry of Councilwoman Bellamy, Ms. Merten said the existing development next to the proposed subject development will continue to operate. The proposed easement for emergency access only will be on a lot that will still be developed as part of that subdivision and the access will be from the north side into the proposed development (City Exhibit 6).

Ms. Merten answered various questions from Council, some being, but are not limited to: how will the private road be improved; how far away will the first set of buildings begin with regard to the railroad tracks; are the units priced appropriately for the people who need housing; and will sidewalks be required.

Upon inquiry of Councilwoman Bellamy, Ms. Merten said that the Buncombe County Schools will only provide school bus service to a publicly maintained road. After working with the developer, the developer has proposed to make their access road off Hendersonville a publicly maintained road all the way into the development so the children would not have to cross the railroad tracks.

Traffic Engineer Michael Moule explained that the TIA looked at three major intersections with one being the site driveway and the second and third being the nearest signalized

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intersections along Hendersonville Road. The study showed no significant increase in delay and no letter grade deterioration at either of the two intersections based on the traffic generated by this development. A signal will be warranted, however, at the site driveway at the proposed build-out year of 2004.

Mr. Louis Bissette, attorney representing the developer Carroll Investment Properties, gave a brief history of Carroll Investment Properties, stating they have an excellent reputation. They build clean, safe, affordable housing. The explained that the project will contain one, two and three bedrooms ranging from approximately $500-$800. He also described some of the amenities planned for the project (Applicant Exhibit 1). There is almost eight acres near the back of the project which will contain trails and picnic areas and they have designed the project to keep most of the large trees. The developer has had several meetings with City staff and have met with almost all the adjoining neighbors to explain the project and to answer questions. This project was approved by the TRC and unanimously by the Planning & Zoning Commission. The developer has agreed to additional landscaping, to put in a broader mix of materials to change the roof articulation, to change the detail on the windows, and a number of other changes that City staff has suggested. They have agreed to petition for voluntary annexation into the City so their residents will have all of the City services. In addition, they have agreed to the school bus stop and also agreed to build the entrance road to City standards so that the City can accept the road which would allow the school buses to come in, drive around the circle and drive back out. The road will actually be moved over to the north from where it is now so that it will "T" up with Eastwood Road coming out of Biltmore Forest with a traffic light. They have been in close contact with the railroad and they know what kind of gated crossing needs to be installed and they have an easement. He noted that while the project went through the TRC and then the Planning & Zoning Commission, no one mentioned the need for the emergency access easement. However, they have now secured, at some cost, an emergency access 20-foot wide easement from Swann Construction. They have met all the standards and they feel this is affordable housing in a location that will work. He said they did look at the connector road that the City Traffic Engineer recommended. But, behind their site is a mountain and they don't own the approximate one mile from this site to Sweeten Creek Road.

Mr. Chris Eller, Consulting Engineer with Civil Design Concepts, clarified some technical comments regarding the railroad easement and stormwater detention (City Exhibit 4).

Mr. John Mock, Project Manager for Carroll Investment Properties, passed out to Council a rendering of a typical building (Applicant Exhibit 2) and said they will strive to provide nice, affordable housing.

Mr. Roy Carroll, President of Carroll Development Properties, spoke in support of this new development.

Ms. Connie Starnes Driscoll, adjoining property owner, felt the developers have gone out of their way to address the neighbor's concerns.

Mr. Doug Morris, speaking on behalf of the school children of South Buncombe County, said at the present time Estes Elementary is at a 105% capacity. He said they do not have anymore room to put anymore children in the schools. He said that Buncombe County Superintendent Dodson is in opposition to this project because of the number of children already in the schools.

Upon inquiry of Mr. Adam Baylus, Mr. Rex Ballard explained the arrangements of the three tenants currently living in the houses which will be demolished.

Mr. Bill Samuels, Golf Course Superintendent at the Biltmore Forest Country Club, said their concern is stormwater runoff onto the golf course property (City Exhibit 7).

Mr. Eller explained their plans for stormwater detention. He said they have the opportunity in the lower portion of the property to utilize the railroad as a dry detention pond and allow it to retain water in the events of storms. In addition to that, if it looks as though it will not be enough, they do have opportunities to provide that underground with oversized pipes. He explained there are alternatives if need be to account for additional detention.

Mr. Bissette understood Mr. Morris' concern, however, noted for the record that Mr. Morris is not employed by the Buncombe County School System.

Mr. Shuford said that they recognize the school issue is a service issue, but not a service that the City provides in this area. He felt it would be a good idea to try to coordinate our development plans with both the City and the County school systems as applicable so they know these projects are coming online.

Upon inquiry of Councilman Peterson, Mr. Bissette said that as each phase of their project is complete, they will petition for voluntary annexation.

There being no request for rebuttal, Mayor Sitnick closed the public hearing at 9:30 p.m.

Councilwoman Field moved to adopt Ordinance No. 2854 to rezone 1238 Hendersonville Road, known as Laurelwood Apartments, from RM-6 Residential Multi-Family Low Density District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Councilman Hay and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 287

Councilman Hay moved to adopt Ordinance No. 2855 granting the conditional use permit for 1238 Hendersonville Road with the conditions outlined above by City staff, and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Field.

Mayor Sitnick asked if Council could include a condition with regard to stormwater retention. City Attorney Oast said that what Council has before them includes a fairly extensive stormwater control plan.

Mayor Sitnick also said that the City is growing and new schools need to be built to accommodate that growth.

Councilwoman Bellamy said that our community does have decent, safe and affordable housing developments that do receive government subsidies and have even been awarded state awards. She felt this project is smart growth development and it does increase the City's tax base. In addition, it does fill a vacant lot with higher density.

The motion made by Councilman Hay and seconded by Councilwoman Field carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 289

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 01-149 - RESOLUTION APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Cloninger said that the terms of Sherry Fitzpatrick and Francis Black, as members on the ADA Compliance Committee have expired.

On September 4, 2001, City Council instructed the City Clerk to prepare the proper paperwork to (1) reappoint Ms. Fitzpatrick (disabled community representative) to serve an additional three year term, term to expire August 22, 2004; and (2) to appoint Ms. Mary Robertson (disabled community) to serve a three year term, term to expire August 22, 2004.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-149. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 463

B. RESOLUTION NO. 01-150 - RESOLUTION REAPPOINTING CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Cloninger said that City Council must annually appoint the Chair to the Civil Service Board.

On September 4, 2001, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Gene Bell as Chairman of the Civil Service Board.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 01-150. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 464

C. RESOLUTION NO. 01-151 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Cloninger said that the terms of Edward Metz, Ben Slosman, Gail McCarthy, Ken Fulford, Hunt Mallett, Laura Webb and Robert Camille, as members of the River District Design Review Committee, have expired.

At City Council's worksession on September 4, 2001, City Council instructed the City Clerk to prepare the proper paperwork to (1) reappoint Mr. Metz (at-large member); (2) reappoint Ms. McCarthy (member of RiverLink Board of Directors); (3) reappoint Mr. Fulford (design professional); (4) reappoint Mr. Hunt Mallett (owner of property located within the River District; (5) reappoint Ms. Webb (member of RiverLink Board of Directors; (6) reappoint Mr. Camille (design professional); and (7) appoint Marvin Slosman (owner of property located within the River District). All terms are to expire on September 1, 2004, or until their successors have been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Mayor Sitnick moved for the adoption of Resolution No. 01-151. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 465

VI. OTHER BUSINESS:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English spoke in support of the revised resolution which condemned terrorist attack and supported the President of the United States. He handed Mayor Sitnick a flag.

B. COMMENTS BY JAN KUBINEK HOWARD

Ms. Jan Kubinek Howard, 5 Reservoir Road, asked that Reservoir Road be closed to vehicular traffic. Mayor Sitnick said that she would have City staff contact Ms. Howard to arrange a meeting regarding her concern

C. COMMENTS BY PETER DAWES

Mr. Peter Dawes stated his disappointment of the dialogue that took place at the September 18, 2001, worksession regarding the resolution condemning terrorists and supporting the President of the United States.

D. COMMENTS BY REBECCA CAMPBELL

Ms. Rebecca Campbell questioned the City's legal authority to rescind a resolution.

E. COMMENTS BY MAYOR SITNICK

Mayor Sitnick said that she was not at the September 18, 2001, worksession when the now rescinded resolution condemning terrorists and supporting the President of the United States was adopted. On Wednesday, September 19, she signed her name to a resolution she didn't vote on as she has signed many other documents she didn't vote for. She said it was her opinion that the reason why she couldn't sleep several nights since then is that her signature didn't belong on that resolution. It wasn't what she felt and she wasn't even at the meeting. She felt it was horrible to academically, intellectualize semantics when the country was in mourning and she personally felt the acts were cowardly. She removed her signature from the resolution and asked Council if they would rescind the resolution signed on September 18 and adopt a new one. All of Council agreed and that is what Council adopted at this meeting.

F. CLAIMS

The following claims were received by the City of Asheville during the period of August 17-30, 2001: Bryan Fisher (Sanitation), Arrivelle Bolden (Transit Services), Cynthia Wade (Streets), Burgerland (Water), Priscilla Bearden (Water) and Martha Bradley (Streets).

The following claims were received by the City during the period of August 31-September 13, 2001: Land Design (Water), Buncombe County Child Care (Water), Slossman Corporation (Water), Ed Dyson (Police), Turtle Creek (Inspections), Ethel Pickett (Traffic Engineering), Tatanisha Davis (Transit Services), Sue Hunt (Streets), Jack Hobbs (Water), Kenny Hayes (Water) and Thelma Penland (Sanitation).

The following claims were received by the City during the period of September 14-20, 2001: William Allen Stewart (Parks & Recreation), Frank Covine (Streets), Teresa Dye (Streets), Nypro Asheville (Water), Debra Roher (Sanitation), Nypro Asheville (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

G. LAWSUIT

The City filed a lawsuit on September 14, 2001, against Kay T. George. The action was a Complaint, Injunction, Order of Abatement for removal of aesthetic junked vehicles vehicle are in violation of Section 10-31 of the City of Ordinances. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:57p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – October 2, 2001 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilman Brian L. Peterson

CONSENT:

Urban Trail Station 21

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Ed Anderson to construct the public art for Urban Trail Station 21 at the intersection of Market and Walnut Streets.

The City is in need of an artist to construct the Station 21 public art piece to be located on the right-of-way of Walnut Street at Market Street. In accordance with N.C. Gen. Stat. sec. 143-64.32, proposals were solicited. Ed Anderson's proposal was selected by the Urban Trail Design committee to be most consistent with the Urban Trail theme. Those submitting design proposals are listed below:

Contractor	Proposal
Ed Anderson/Kenn Kotara Design	$39,400
Pam Myers	No Construction Estimate
Tucker Cooke	No Construction Estimate

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget in accordance with the N. C. Dept. of Transportation Project E-4138 Urban Trail Grant.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into an agreement with Ed Anderson.

Motorola Service Agreement Renewal

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at a cost of $11,553.90 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the maintenance cost per unit of equipment has remained fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2001, through August 31, 2002, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly decrease of $1,057.40. This is due to the fact that some radio equipment was dropped from maintenance this year, but the agreement covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is $11,553.90.

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Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance to the City's radio communication system.

Budget Amendment for Social Work & Police Partnership Grant

Summary: The consideration of a budget amendment appropriating local matching funds in support of the Social Work and Police Partnership grant for the project's second year.

This amendment will provide the local match of $13,850 required for the second year of this grant funded project. The purpose of the project is to reduce family violence issues contributing to chronic juvenile runaway behavior.

The source of the local match is revenue received from North Carolina's Office of the State Treasurer pursuant to N. C. Gen. Stat. sec. 105-113.105, Unauthorized Substances Taxes.

City staff recommends adoption of the budget amendment.

Speed Limit Changes

Summary: The consideration of an ordinance to reduce speed limits on several city streets.

The streets listed below have been identified for speed concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, or other City staff. Transportation Services Division staff has conducted field reviews of street geometry and conditions and/or speed studies. Many of these streets which exhibit the worst speeding problems are also being evaluated and prioritized for the installation of traffic calming measures per the Neighborhood Traffic Calming Policy. Determination of the appropriate speed limits for streets is one of the steps outlined in the Policy. The Police Department concurs with these recommendations.

10 Miles Per Hour
The following street is a residential alley that has a combination of street geometry features which warrants a very low speed limit. The alley is very narrow with driveways and garages that offer very little sight distance for vehicles entering the alley. In order to ensure safety, traffic on the alley should travel at a speed at which drivers can easily react to vehicles pulling or backing out of driveways or other activities that occur on the alley. The recommended safe operating speed on this street is 10 mph:

1. Cumberland Alley

15 Miles Per Hour
The following street is a downtown street that is designed as a pedestrianized street where the delineation between vehicular traffic and pedestrian traffic is minimal. Therefore, extremely slow vehicular speeds are necessary on this street. The recommended safe operating speed on this street is 15 mph:

2. Wall Street

20 Miles Per Hour
The following streets are local residential streets that have a combination of street geometry features which warrants speed limits slower than the typical speed limit for local residential

streets of 25 mph. These features may include narrow widths, frequent on-street parking, poor sight distance, lack of sidewalks, steep grades, or horizontal or vertical curves. The recommended safe operating speed on these streets is 20 mph:

3. Arthur Road
4. Balm Grove Avenue
5. Harmon Circle
6. Pennsylvania Place
7. Richmond Avenue
8. Sunset Summit
9. Westover Drive
10. Westwood Road

25 Miles Per Hour

Most of the following streets are typical local residential streets without street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. A few of these streets are residential collector streets which have a combination of street geometry features which warrants speed limits slower than the typical speed limit for residential collector streets of 30 mph. The recommended safe operating speed on these streets is 25 mph:

11. Blanton Street
12. Castle Street
13. Chestnut Street, between Furman Avenue and Charlotte Street
14. Chestnut Street, between Montford Avenue and Pearson Drive
15. Country Club Road
16. Craggy Avenue
17. Cub Road
18. Debra Lane
19. Edgemont Road
20. Flint Street
21. Holborn Avenue
22. Kentmere Lane
23. Kenton Lane
24. Majestic Avenue
25. Maney Avenue
26. Middlemont Avenue
27. Mountain Terrace Road
28. Oakmont Terrace
29. Pennsylvania Avenue
30. Phifer Street
31. Tanglewood Drive
32. West Chapel Road, between London Road and Caribou Road
33. West Chapel Road, between Caribou Road and Sweeten Creek Road
34. White Pine Drive
35. Whitson Road
36. Wild Cherry Road

30 Miles Per Hour

The following streets are typical residential collector streets without significant street geometry problems. The recommended safe operating speed on typical residential collector streets is 30 mph:

37. Cisco Road
38. Dover Street
39. London Road, between Bellview Road and West Chapel Road
40. Pinecroft Road
41. Rock Hill Road, between Sweeten Creek Road and West Chapel Road

42. South French Broad Avenue, between Choctaw Street and Livingston Street
43. Wolfe Cove Road
44. West Chapel Road, between Hendersonville Road and London Road

The Engineering Department requests that City Council approve the ordinance amending these speed limit changes.

Upon inquiry of Councilwoman Bellamy, Traffic Engineer Michael Moule said that in an effort to let people know of the changes, a press release will be prepared.

Truck Traffic Prohibited on Residential Streets

Summary: The consideration of an ordinance to prohibit through truck traffic on additional residential streets.

The Traffic Engineering staff has conducted field reviews and collected data on the streets listed below. These streets are residential streets that are not appropriate for truck traffic. Alternative roadways exist that are more appropriate for truck traffic.

1. Beaucatcher Road
2. College Street, between Beaucatcher Road and US-70 (College Street)
3. Mineral Springs Road, between Shaft Street and Beaucatcher Road
4. Montana Avenue
5. St. Dunstans Road

The Engineering Department requests that City Council approve the ordinance prohibiting trucks on various residential streets.

School Zone Speed Limit

Summary: The consideration of an ordinance to create additional school zones on several streets in the City.

The Traffic Engineering staff has performed the necessary traffic analysis and field review to determine locations for this school zone. For some of the streets listed below, the North Carolina Department of Transportation (NCDOT) has indicated that they plan to pass the school speed ordinances. The City Council must pass concurring ordinances in order for this process to be completed. The following streets have been identified for school speed zones during the times when students typically go to and leave school:

- T.C. Roberson High School – 25 mph between the hours of 7:30 a.m. and 8:30 a.m. and between the hours of 2:00 p.m. and 4:00 p.m. on school days.
    - Springside Road – between Springside Park and Overlook Road.
    - Overlook Road – between Briarcliff Drive and Long Shoals Road.
    - Long Shoals Road – between Overlook Road and a point 300 feet east of Miami Circle.
- Asheville Catholic School. Beaverdam Road (SR 2230) – 25 mph between Temple Avenue and a point 0.05 mile north of Culvern Street between the hours of 7:30 a.m. and 8:15 a.m. and between the hours of 2:45 p.m. and 3:30 p.m.
- Haw Creek Elementary School. New Haw Creek Road (SR 2032) – 25 mph between a point 0.18 mile north of Beverly Road and a point 0.38 mile north of Beverly Road, between the hours of 7:30 a.m. and 8:15 a.m. and between the hours of 2:15 p.m. and 3:00 p.m.

The Engineering Department requests that City Council approve the ordinance adding the above school zones.

Sewer Easement at Livingston Street Park

Summary: The consideration of a resolution authorizing sewer easement at Livingston Street Park.

During the summer, a sewer line that ran across Nasty Branch on or near the edge of Livingston Street Ballfield failed. Some emergency maintenance returned it to barely functional condition, but MSD has determined that that section of the line needs to be replaced in order to effect a satisfactory and lasting repair. In order to avoid demolishing a bridge, the new line is proposed to be located slightly further within the park boundary. It will be buried. Parks and Recreation staff have reviewed the proposed new location, and confirm that it will not interfere with the City's use of the park. MSD is requesting both a temporary construction easement and a permanent easement.

Adoption of the resolution is recommended.

Kenilworth Inn at 60 Caledonia Road as a Local Historic Landmark

Summary: The consideration of a public hearing on October 23, 2001, to consider an ordinance designating the Kenilworth Inn located at 60 Caledonia Road, Asheville, N.C., as a local historic landmark.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HOUSING TRUST FUND

Due to a conflict of interest, Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to offer construction loans for in-fill new housing construction from the Housing Trust Fund program.

As part of the 2001-02 budget, City Council approved an allocation of $400,000 to be added to the City's Housing Trust Fund. An additional $100,000 will be repaid from earlier loans by the end of December, making a total of at least $500,000 available for lending in this fiscal year.

The Housing and Community Development Committee (H & CD Committee) has reviewed the first year's program and proposes the following action to allocate this year's funds.

1) General policies and procedures for the management and use of the Fund will remain unchanged;
2) Approximately $250,000 will be allocated in interest-free construction loans for developers of new housing for rent or for home-ownership on small in-fill sites on existing streets;
3) In conjunction with the loan offer, the City will offer to sell some potential in-fill sites which it owns;

4) The remaining funds will be reserved to assist suitable larger scale affordable housing projects as they are presented. The replacement of single room occupancy (SRO) units lost during the past year is seen as a high priority if suitable locations are available.

She reported the following suggested changes for the second year program: (1) emphasize construction loans for rapid pay-back of a large part of funds; (2) focus on projects where for-profits can readily compete with non-profits; (3) extend homeownership targeting into median income range; (4) include outside expertise on application review panel; and (5) retain some funds for flexible use as other good projects are presented.

Applications for loans will be reviewed by the H & CD Committee, which will make recommendations to Council for the award of the loans in February or March 2002.

City staff recommends City Council approve the resolution to offer Housing Trust Funds loans for the construction of new housing on in-fill sites.

Councilman Hay, member of the H & CD Committee, explained in detail why the Committee is recommending the allocation of this year's funding, realizing that the money is City money and they are not tied down to rules and regulations like Community Development Block Grant and HOME funds.

Councilwoman Field, Chair of the H & CD Committee, brought to Council's attention some issues raised to her: (1) zero percentage interest; (2) how long do we let people go without accessing the funds allocated; (3) accessibility issue; (4) concerns raised about the point system; and (5) how do we deal with partnerships.

Discussion occurred regarding deferred loans, how to get for-profits involved, and zero interest loans.

Councilwoman Field felt that as the years progress, we will see more activity in this fund, especially if Buncombe County becomes involved.

Councilwoman Bellamy felt City Council needed a worksession on affordable housing in general, to include what are tax credits, how do they work and how are they leveraged. Mayor Sitnick suggested the H & CD Committee structurally organize the topics and then have staff schedule it for a worksession. Councilwoman Bellamy asked to participate in this organization.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

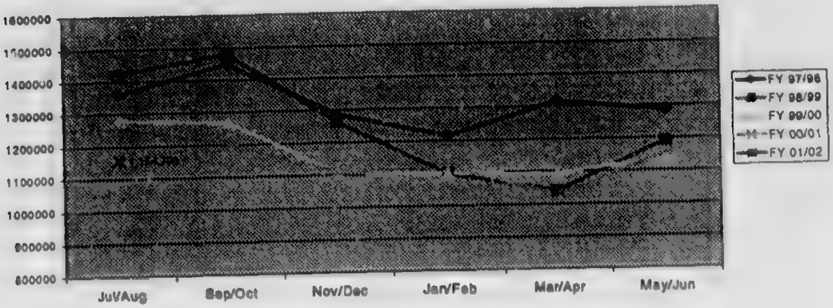
UPDATE ON WATER CONSUMPTION TRENDS

Interim Director of Water Resources David Hanks said that this is an update on water consumption trends that shows a decline in demand for water in recent months.

The Fiscal ear 2002 Water Fund Budget of $21,801,019, which was approved by the City Council in June 2001, is based on the assumption that the average annual growth rate in demand for all customer classes will be approximately 1.2%. This projection was based on historical growth in demand over the past six years.

According to demand data collected in recent months, this projection may need to be adjusted downward. He reviewed a chart which shows water consumption from Fiscal Year 1997-98 through the first bimonthly period of Fiscal year 2001-02.

Total Bimonthly Consumption in Ccf



The number of customers added to the water system has increased as predicted each year, so growth in our service area is occurring. However, consumption has either leveled off or declined. Declines in consumption are due primarily to the loss of some of our largest industrial water users as well as to the conservation efforts of customers. The sharp drop in demand that occurred in January/February 1999 was due largely to the conservation measures put into place by customers in response to a severe drought that required the implementation of water restrictions and surcharges in December 1998. The loss of two of the largest industrial water users is reflected in Fiscal Year 1999-00 demand figures, and the Fiscal Year 2000-01 demand figures reflect a 70% reduction in water consumption by a third large industrial user. In addition to the loss of three major water users, several other industrial customers implemented permanent water efficiency measures. Single-family residential consumption was estimated to increase 1.2% annually following the drought of 1998-99; however, it has leveled off and has not grown at all.

An aggressive water conservation program during and following the drought of 1998-99 has contributed to changing water use patterns in both the residential and non-residential sectors. This decline in consumption has been offset somewhat by an increase in consumption in the commercial light and multi-family residential sectors. Now it appears that demand across all customer classes has either leveled off or dropped. If growth does not occur as predicted or if it continues to decline, a revenue shortfall will occur. Depending upon what happens with demand over the next few months, revenue could be $500,000 to $1,000,000 below what was projected.

Staff has been taking steps to reduce operating expenses over the past few months in order to offset possible deficits in revenue. Purchases of some capital equipment are being postponed and some positions are being held vacant. There was $1.25 million budgeted for replacement of our aging infrastructure this year, and some of these capital improvements may need to be deleted or postponed.

Mayor Sitnick asked City staff to explore the costs of setting up a water bottling company.

Staff will be closely monitoring consumption over the next several months and will notify Council if further budget adjustments are necessary to offset a possible revenue shortfall.

UPDATE ON FISCAL YEAR 2000-01 TRAFFIC CALMING PROJECTS

Traffic Engineer Michael Moule said that the purpose of this report is to update City Council on the status of the 2001 Traffic Calming Projects.

South French Broad Avenue – Citizens collected the 40% signatures needed to initiate project development. The first public meeting was held on April 2, 2001, the YWCA. The preliminary design was completed by staff and a second meeting was held with the community on July 26, 2001. Staff delivered the petitions to the neighborhood contact person in August. The residents are in the process of obtaining the 60% signatures required to advance this project to the final design and construction phase. We are waiting to receive the signed petitions from the community.

Gracelyn Road - Citizens collected the 40% signatures needed to initiate project development. The first public meeting was held on April 19, 2001 at Grace Episcopal Church. The preliminary design was completed by staff and a second meeting was held with the community on July 9, 2001. We sent the petitions to neighborhood residents in August. They are in the process of obtaining the 60% signatures required to advance this project to the final design and construction phase. So far, about half of the necessary signatures have been received from the residents. We are waiting to receive the remainder of the signed petitions from the community.

Caribou Road - Citizens collected the 40% signatures needed to initiate project development. The first public meeting was held on March 12, 2001, at the Shiloh Recreation Center. The preliminary design was completed by staff and a second meeting was held with the community on July 19, 2001. We sent the petitions to neighborhood residents in September. They are in the process of obtaining the 60% signatures required to advance this project to the final design and construction phase. We are waiting to receive the signed petitions from the community.

Florida Avenue - Citizens collected the 40% signatures needed to initiate project development. The first public meeting was held on March 5, 2001. The preliminary design was completed by staff and a second meeting was held with the community on July 12, 2001. We sent the petitions to neighborhood residents in September. They are in the process of obtaining the 60% signatures required to advance this project to the final design and construction phase. We are waiting to receive the signed petitions from the community.

Wyoming Avenue - Citizens collected the 40% signatures needed to initiate project development. The first public meeting was held on March 26, 2001. The preliminary design was completed by staff and a second meeting was held with the community on July 16, 2001. There was a fair amount of opposition to the project at this meeting. Staff has been unable to identify enough residents willing to distribute the petitions in order to obtain the 60% signatures required to advance this project to the final design and construction phase. This is a relatively small petition area and staff will be taking on the task of gathering signatures in order to see if this project can move forward.

Wood Avenue - Staff was unable to get enough citizens willing to gather signatures toward the 40% signatures to initiate project development. Without this support from within the neighborhood, the project has been cancelled for this year. Staff anticipates that as more traffic calming projects are installed in Asheville, there will be more resident support for these projects. It may be a good idea to select this area for a project in upcoming years.

This has been our first year of implementation for the Traffic Calming Policy. As a result, the projects have moved along more slowly than we originally anticipated. However, we think that the time commitment will result in several successful traffic calming projects for this community.

A brief discussion was held about other ways to get community support other than getting signatures on a petition and also if staff is looking at creative ways to fund more traffic calming projects.

SELECTED TRAFFIC CALMING PROJECTS FOR FISCAL YEAR 2001-0

Traffic Engineer Michael Moule described the procedures in Asheville's Neighborhood Traffic Calming Policy adopted by City Council in February 2000. Engineering Department staff have preliminarily selected street segments for traffic calming projects for this fiscal year. He then summarized his report on the street segment ranking and project selection process, described the selected project areas, and described the time frame for implementing these projects during this fiscal year.

The Neighborhood Traffic Calming Policy clearly outlines the rating criteria for prioritizing street segments for traffic calming. The streets segments are rated on speed and volume of existing traffic as determined by electronic tube counters, crash history, nearby pedestrian generators, roadway geometry, residential density, and the presence of existing sidewalks. Traffic Engineering staff has collected speed and volume data on approximately 175 street segments. Of these, 136 street segments met the initial threshold for going through the full ranking process. All of the rating criteria except crash history have been evaluated for all 133 segments.

At this time, City staff does not have access to any crash report databases that can provide the necessary information with a reasonable amount of staff time and effort. An appropriate database may be forthcoming, but to complete the rankings used to select this year's projects, staff used the following process. First, the street segments were ranked based on the point total for all criteria except crash history. Then, the top 26 were selected at a threshold where it could reasonably be assumed that projects below that threshold could not move up high enough to be selected (based on the fact that only 10 points out of a total possible 100 points are available for crash history). A staff person went through the tedious process of reviewing each crash report on or near those 26 street segments, identifying the crashes that occurred on each street segment. Finally, these 26 street segments were ranked based on the total points for all seven rating criteria.

The Traffic Calming Policy states that once the prioritized list is complete, projects will be selected based on the rankings and several other factors. One of these factors is regional equity; traffic calming projects should be dispersed throughout the City. In addition, the Policy is intended to provide traffic calming on both residential local service streets and residential collector streets, but the rating criteria will generally rank collector streets higher. Therefore, some flexibility in the project selection is necessary to realize the goal of regional equity and to be sure to include projects on residential local service streets. This flexibility is the reason why some street segments with lower rankings were selected instead of streets with higher rankings.

The selected street segments are listed below in order of the ratings they received in the prioritization process discussed above. Additional street segments that may be included in each project are also described.

- **Kenilworth Road**: This residential collector street is located in the Kenilworth neighborhood in central Asheville. It carries fairly high traffic volumes of through traffic due to its use as part of a popular short cut through the Kenilworth neighborhood. The highest ranked segment of Kenilworth Road is between Aurora Drive and Beaucatcher

Road, and the segment between Wyoming Road and Aurora Drive is also ranked very high. In order to maintain project continuity, the segment from Forest Hill Drive to Wyoming Road will also be included. The anticipated project limits are from Forest Hill Drive to Beaucatcher Road.

- **Fairview Avenue**: This street is located in the Oakley Community in east Asheville. This is a local service residential street that runs parallel to Fairview Road, a minor arterial in Oakley. A fair amount of traffic uses this street as a short cut. The selected street segment is from Fairview Road to Cedar Street. The segment of Fairview Avenue from Cedar Street to Stevens Street and Stevens Street itself will be evaluated for inclusion in this project. Two nearby streets (Wood Avenue and Cedar Street) were selected for a traffic calming project for FY 2000-2001. However, City staff could not get enough community support to move forward with this project. Staff feels that it will be easier to gain support on Fairview Avenue. A successful traffic calming project on Fairview Avenue, could help bolster support for nearby streets, possibly allowing the City to select Wood Avenue and Cedar Street in an upcoming year.
- **Murdock Avenue**: This is a north Asheville street that carries collector street volumes but has the features of a typical residential local service street. The segment of Murdock from Evelyn Place to Hillside Street was selected based on its ranking, but the project will also include the segment from Merrimon Avenue to Evelyn Place, which also garnered a fairly high ranking. It is anticipated that this street can be treated without having significant negative affects on nearby streets.
- **Wellington Street**: This west Asheville street is built like a typical residential local service street but carries fairly high volumes. The segment from State Street to Ridgelawn Road was selected. Wellington Street from Ridgelawn Road to Haywood Road and Ridgelawn Road itself will be evaluated for inclusion in this project.

It is very critical that the next steps in the project development process happen in a timely manner. Immediately after presenting the selected projects to City Council, Engineering Department staff will contact residents who live in the vicinity of the selected projects and who have previously contacted the Engineering Department about traffic concerns. An educational meeting is scheduled for October 15 where residents from all project areas will attend and be informed about the process for project development. Before or soon after this meeting, a citizen committee for each project will be formed to assist City staff in contacting other residents and garnering support. City Staff will meet with these committees to finalize the petition area and the committees will be sent out to gather signatures toward the 40% of households needed to hold public meetings. It is the goal of the Engineering Department to have signatures in hand and initial project development public meetings scheduled to occur in December or January. This will allow the second public meetings to occur in late spring with anticipated construction during the summer of 2002.

COMMUNITY MEETING

It was the consensus of City Council to cancel the Tuesday, October 30, 2001, community meeting.

UPDATE ON 2025 CITY PLAN

Planning & Development Director Scott Shuford said that the City Plan Advisory Committee (CPAC) continues to work very hard as a full group and in subcommittees developing the public involvement program for this comprehensive plan update project. This planning work is nearly complete and CPAC has reached the following decisions regarding public involvement:

✓ An **informational video** has been produced to stimulate interest in and provide an educational opportunity for the City Plan project. This video will begin airing on Channel 20 early October as public relations for the public forums and input opportunities described below.

✓ **Public forums** will be held the second full week in November. These forums will be geographically distributed (north, east, south and west) and two forums will be held in each area. There will be early afternoon and early evening forums in each geographic area; this is intended to maximize the opportunity for participation. A final forum will be held on a Saturday morning in a central location. Staff is in the process of determining locations for these meetings.

✓ **Forum content** will consist of: Introductory **statements; a review** of the video; small group discussions; and large group prioritization of issues. On September 26, CPAC held a "dry run" of this format and will make a few minor adjustments to insure smoothly-running forums. Feedback from the forums will be posted on the City Plan website.

✓ Public comment will also be taken through the Internet (a **City Plan website** will be created) and through hard copy **survey forms**. We will also open a storefront office called the "**Plan-A-Terrium**" where a variety of City plans will be displayed and where there will be opportunities for people to be educated about the planning process.

✓ After this initial public input, staff will develop a draft plan over the winter months. This plan will be reviewed by CPAC for consistency with the public comments and then it will receive a public review at several well-promoted meetings. CPAC will make a final recommendation on the plan and it will be forwarded to the Planning and Zoning Commission for their review and recommendation, then on to Council for consideration and adoption. We anticipate having our public review meetings in the early spring and having the plan to Council in late spring.

Mr. Shuford then showed the informational video.

When Councilwoman Bellamy said that she had several observations with regard to the video, Mr. Shuford said that he would be happy to meet with her.

REPORTS ON BOARDS AND COMMISSIONS

It was the consensus of City Council to have City Attorney Oast prepare an amendment to the River District Design Review Committee to include two neighborhood representatives.

City Council instructed the City Clerk to distribute the current Civic Center Commission resource list to members of Council as there is a vacancy on this Commission.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:25 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Wednesday – October 10, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Barbara Field

INVOCATION

Councilman Peterson gave the invocation.

MISCELLANEOUS ITEMS

Mayor Sitnick noted that Councilwoman Barbara Field is not at this meeting due to her father's illness.

Mayor Sitnick recognized the 6th graders of Carolina Day School.

I. PROCLAMATIONS:

A. PRESENTATION OF AWARD FROM AMERICANSTYLE MAGAZINE

Ms. Marilyn Patton, owner of Grovewood Galleries, presented Mayor Sitnick, on behalf of the City of Asheville, an award as Asheville was chosen as the 8th top arts destination.

B. PROCLAMATION PROCLAIMING OCTOBER 10, 2001, AS "JOHN LANTZIUS DAY"

Mayor Sitnick read the proclamation proclaiming October 10, 2001, as "John Lantzius Day" in the City of Asheville in honor of his work in downtown Asheville. She presented the proclamation to Mr. Lantzius.

Mayor Sitnick asked the City Attorney to draft an ordinance that will allow the City to require removal of graffiti on private property.

C. JOHN BENJAMIN LEWIS SOCCER CENTER

Mr. Lloyd Sigman, President of the WNC Soccer Foundation, recognized Ben and Becky Lewis.

Mr. and Mrs. Lewis said that in honor of their late son, they pledged $350,000 ($35,000 over ten years) to establish and maintain the John Benjamin Lewis Soccer Center at Azalea Road Park. His 16-year old son, who was killed in an automobile accident three years ago, was an avid soccer player and in honor of his spirit to create a positive and enduring community legacy in his beloved memory, and to begin the foundations fund-raising efforts, they pledged the $350,000.

On behalf of the entire Council and community, Mayor Sitnick thanked Mr. and Mrs. Lewis for their generous gift.

D. GRANT FROM SUZANNE MARCUS COLLINS FOUNDATION

Mr. Peter D. Collins, Executive Director of the Suzanne Marcus Collins Foundation, pledged $175,000 to cover the costs of the programming related to the performing arts center in the next phase of the Civic Center project. He said his organization was thrilled at the prospect of a new performing arts center.

On behalf of the entire Council and community, Mayor Sitnick thanked Mr. Collins for this generous support.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 25, 2001, AND THE WORKSESSION HELD ON OCTOBER 2, 2001

B. RESOLUTION NO. 01-152 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ED ANDERSON TO CONSTRUCT THE PUBLIC ART FOR URBAN TRAIL STATION 21 AT THE INTERSECTION OF MARKET STREET AND WALNUT STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Ed Anderson to construct the public art for Urban Trail Station 21 at the intersection of Market and Walnut Streets.

The City is in need of an artist to construct the Station 21 public art piece to be located on the right-of-way of Walnut Street at Market Street. In accordance with N.C. Gen. Stat. sec. 143-64.32, proposals were solicited. Ed Anderson's proposal was selected by the Urban Trail Design committee to be most consistent with the Urban Trail theme. Those submitting design proposals are listed below:

Contractor	Proposal
Ed Anderson/Kenn Kotara Design	$39,400
Pam Myers	No Construction Estimate
Tucker Cooke	No Construction Estimate

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget in accordance with the N. C. Dept. of Transportation Project E-4138 Urban Trail Grant.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into an agreement with Ed Anderson.

RESOLUTION BOOK NO. 26 – PAGE 466

C. RESOLUTION NO. 01-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT RENEWAL WITH MOTOROLA COMMUNICATIONS AND ELECTRONICS INC. TO PROVIDE MAINTENANCE TO THE CITY'S RADIO COMMUNICATION SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at a cost of $11,553.90 per month.

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Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the maintenance cost per unit of equipment has remained fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2001, through August 31, 2002, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly decrease of $1,057.40. This is due to the fact that some radio equipment was dropped from maintenance this year, but the agreement covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is $11,553.90.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance to the City's radio communication system.

RESOLUTION BOOK NO. 26 – PAGE 467

D. ORDINANCE NO. 2856 - ORDINANCE REDUCING SPEED LIMITS ON VARIOUS CITY STREETS

Summary: The consideration of an ordinance to reduce speed limits on several city streets.

The streets listed below have been identified for speed concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, or other City staff. Transportation Services Division staff has conducted field reviews of street geometry and conditions and/or speed studies. Many of these streets which exhibit the worst speeding problems are also being evaluated and prioritized for the installation of traffic calming measures per the Neighborhood Traffic Calming Policy. Determination of the appropriate speed limits for streets is one of the steps outlined in the Policy. The Police Department concurs with these recommendations.

10 Miles Per Hour
The following street is a residential alley that has a combination of street geometry features that warrants a very low speed limit. The alley is very narrow with driveways and garages that offer very little sight distance for vehicles entering the alley. In order to ensure safety, traffic on the alley should travel at a speed at which drivers can easily react to vehicles pulling or backing out of driveways or other activities that occur on the alley. The recommended safe operating speed on this street is 10 mph: Cumberland Alley

15 Miles Per Hour
The following street is a downtown street that is designed as a pedestrianized street where the delineation between vehicular traffic and pedestrian traffic is minimal. Therefore, extremely slow vehicular speeds are necessary on this street. The recommended safe operating speed on this street is 15 mph: Wall Street

20 Miles Per Hour
The following streets are local residential streets that have a combination of street geometry features which warrants speed limits slower than the typical speed limit for local residential streets of 25 mph. These features may include narrow widths, frequent on-street parking, poor

sight distance, lack of sidewalks, steep grades, or horizontal or vertical curves. The recommended safe operating speed on these streets is 20 mph:

Arthur Road
Balm Grove Avenue
Harmon Circle
Pennsylvania Place
Richmond Avenue
Sunset Summit
Westover Drive
Westwood Road

25 Miles Per Hour

Most of the following streets are typical local residential streets without street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. A few of these streets are residential collector streets which have a combination of street geometry features which warrants speed limits slower than the typical speed limit for residential collector streets of 30 mph. The recommended safe operating speed on these streets is 25 mph:

Blanton Street
Castle Street
Chestnut Street, between Furman Avenue and Charlotte Street
Chestnut Street, between Montford Avenue and Pearson Drive
Country Club Road
Craggy Avenue
Cub Road
Debra Lane
Edgemont Road
Flint Street
Holborn Avenue
Kentmere Lane
Kenton Lane
Majestic Avenue
Maney Avenue
Middlemont Avenue
Mountain Terrace Road
Oakmont Terrace
Pennsylvania Avenue
Phifer Street
Tanglewood Drive
West Chapel Road, between London Road and Caribou Road
West Chapel Road, between Caribou Road and Sweeten Creek Road
White Pine Drive
Whitson Road
Wild Cherry Road

30 Miles Per Hour

The following streets are typical residential collector streets without significant street geometry problems. The recommended safe operating speed on typical residential collector streets is 30 mph:

Cisco Road
Dover Street
London Road, between Bellview Road and West Chapel Road

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Pinecroft Road
Rock Hill Road, between Sweeten Creek Road and West Chapel Road
South French Broad Avenue, between Choctaw Street and Livingston Street
Wolfe Cove Road
West Chapel Road, between Hendersonville Road and London Road

The following street is a residential arterial street that is maintained by the North Carolina Department of Transportation. The NCDOT has made a request to the City to pass a concurring ordinance to make the speed limit 30 mph.

Brevard Road (N.C. 191), from the westbound I-240 exit ramps, northward to US 19-23 Business in Asheville

The ordinance also includes several changes that are necessary to take out obsolete references to streets and clean up other errors.

The Engineering Department requests that City Council approve the ordinance amending these speed limit changes.

ORDINANCE BOOK NO. 19 – PAGE 296

E. ORDINANCE NO. 2857 - ORDINANCE PROHIBITING TRUCK TRAFFIC ON VARIOUS CITY STREETS

Summary: The consideration of an ordinance to prohibit through truck traffic on additional residential streets.

The Traffic Engineering staff has conducted field reviews and collected data on the streets listed below. These streets are residential streets that are not appropriate for truck traffic. Alternative roadways exist that are more appropriate for truck traffic.

1. Beaucatcher Road
2. College Street, between Beaucatcher Road and US-70 (College Street)
3. Mineral Springs Road, between Shaft Street and Beaucatcher Road
4. Montana Avenue
5. St. Dunstans Road

The Engineering Department requests that City Council approve the ordinance prohibiting trucks on various residential streets.

ORDINANCE BOOK NO. 19 – PAGE 300

F. ORDINANCE NO. 2858 - ORDINANCE CREATING ADDITIONAL SCHOOL ZONES ON SEVERAL STREETS IN THE CITY

Summary: The consideration of an ordinance to create additional school zones on several streets in the City.

The Traffic Engineering staff has performed the necessary traffic analysis and field review to determine locations for this school zone. For some of the streets listed below, the North Carolina Department of Transportation (NCDOT) has indicated that they plan to pass the school speed ordinances. The City Council must pass concurring ordinances in order for this process to be completed. The following streets have been identified for school speed zones during the times when students typically go to and leave school:

- T.C. Roberson High School – 25 mph between the hours of 7:30 a.m. and 8:30 a.m. and between the hours of 2:00 p.m. and 4:00 p.m. on school days.
    - Springside Road – between Springside Park and Overlook Road.
    - Overlook Road – between Briarcliff Drive and Long Shoals Road.
    - Long Shoals Road – between Overlook Road and a point 300 feet east of Miami Circle.
- Asheville Catholic School. Beaverdam Road (SR 2230) – 25 mph between Temple Avenue and a point 0.05 mile north of Culvern Street between the hours of 7:30 a.m. and 8:15 a.m. and between the hours of 2:45 p.m. and 3:30 p.m.
- Haw Creek Elementary School. New Haw Creek Road (SR 2032) – 25 mph between a point 0.18 mile north of Beverly Road and a point 0.38 mile north of Beverly Road, between the hours of 7:30 a.m. and 8:15 a.m. and between the hours of 2:15 p.m. and 3:00 p.m.

The Engineering Department requests that City Council approve the ordinance adding the above school zones.

ORDINANCE BOOK NO. 19 – PAGE 301

G. ORDINANCE NO. 2859 - BUDGET AMENDMENT TO SUPPORT THE SOCIAL WORK AND POLICE PARTNERSHIP GRANT PROJECT

Summary: The consideration of a budget amendment appropriating local matching funds in support of the Social Work and Police Partnership grant for the project's second year.

This amendment will provide the local match of $13,850 required for the second year of this grant funded project. The purpose of the project is to reduce family violence issues contributing to chronic juvenile runaway behavior.

The source of the local match is revenue received from North Carolina's Office of the State Treasurer pursuant to N. C. Gen. Stat. sec. 105-113.105, Unauthorized Substances Taxes.

City staff recommends adoption of the budget amendment.

ORDINANCE BOOK NO. 19 – PAGE 303

H. RESOLUTION NO. 01-154 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A SEWER EASEMENT AT LIVINGSTON STREET PARK

Summary: The consideration of a resolution authorizing sewer easement at Livingston Street Park.

During the summer, a sewer line that ran across Nasty Branch on or near the edge of Livingston Street Ballfield failed. Some emergency maintenance returned it to barely functional condition, but MSD has determined that that section of the line needs to be replaced in order to effect a satisfactory and lasting repair. In order to avoid demolishing a bridge, the new line is proposed to be located slightly further within the park boundary. It will be buried. Parks and Recreation staff have reviewed the proposed new location, and confirm that it will not interfere with the City's use of the park. MSD is requesting both a temporary construction easement and a permanent easement.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 26 – PAGE 468

I. RESOLUTION NO. 01-155 - RESOLUTION FIXING DATE OF PUBLIC HEARING FOR OCTOBER 23, 2001, ON THE QUESTION OF VOLUNTARY ANNEXATION OF PROPERTY KNOWN AS BRAESIDE, SECTION 6 OF BILTMORE PARK

RESOLUTION BOOK NO. 26 – PAGE 470

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER TO BE LOCATED AT 740 TUNNEL ROAD, ASHEVILLE, N.C.

At the request of City staff, this public hearing will need to be postponed until further notice and advertisement.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO EXEMPT AGRICULTURAL USES FROM ZONING REGULATION, DEFINE ANIMAL FEEDING OPERATION, ADD RESEARCH AND TECHNOLOGY PRODUCTION AS A PERMITTED USE IN CERTAIN BUSINESS DISTRICTS AND TO ELIMINATE LEVEL III SITE PLAN REVIEW OF INDUSTRIAL USES

ORDINANCE NO. 2860 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO EXEMPT AGRICULTURAL USES FROM ZONING REGULATION AND TO DEFINE ANIMAL FEEDING OPERATION

Mayor Sitnick opened the public hearing at 5:30 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to exempt agricultural uses from zoning regulation, to define confined animal feeding operation, to add research and technology production as a permitted use in certain business districts, and to eliminate level III site plan review of industrial uses. This public hearing was advertised on September 28 and October 5, 2001.

The proposed ordinance amendment would make several small changes in the UDO in an effort to address several small issues that have been identified by the staff and the public. These changes, though minor, will make it easier to undertake a variety of business activities in the City of Asheville and its jurisdiction while protecting the public interest. The proposed changes and the impacts of each change are described below:

- Exemption of bona fide agricultural uses from zoning regulation. This amendment codifies the City's existing approach to regulation of bona fide agricultural uses. An agricultural use recognized as such for tax purposes would be exempt from all zoning regulations. In order to recognized as a bona fide agricultural use, the use would have to meet minimum acreage, income, and production standards. Confined animal feeding operations would not be exempt from zoning regulation.

- Confined animal feeding operations are defined as operations where the animal (or poultry) is confined inside a building for at least 60% of its life with waste products collected from the building and treated either on-site or off-site. Operations of this type can produce adverse environmental impacts and therefore would not be exempt from zoning regulation.
- Research and technology production uses are identified as permitted uses in several business districts. As our economy changes, we find that most high tech production activities do not create the type of adverse impacts typically associated with manufacturing and production activities. Research and technology production is often carried out in conjunction with retail operations. The proposed change would permit research and technology production uses in the Community Business II and higher intensity business districts, providing more opportunities for the location of businesses of this type.
- Elimination of the requirement that large industrial development projects be subject to the level III site plan review process. The level III site plan review process requires projects with potential community wide impacts to be reviewed and approved by City Council as conditional uses. Requirements already in place for industrial development projects would ensure that any impacts of these developments would be mitigated and industrial zones are located in areas that minimize the potential for such impacts. Elimination of this requirement would ensure that the City is committed to proactive economic development.

The proposed amendments would address issues that have come to staff's attention during the extension of the City's extraterritorial jurisdiction area and through discussions with persons involved in economic and industrial development. In presenting these amendments, the staff is being responsive to the reasonable needs of the community.

At their August 23, 2001, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the wording amendment.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford gave examples of industrial developments that would not be receiving Level III site plan review. He said that there would still be public input through the Technical Review Committee (TRC) process. Public notice will still be given to the surrounding property owners and they would have the opportunity to come to the TRC Committee to make comments. He said even though the City cannot put conditions on the developer above what the ordinances require, the developer could take into account comments made by the public at that meeting.

Mr. Shuford responded to questions/comments from Council, some being, but are not limited to: what other districts are industrial development projects allowed in, what requirements are already in place that will ensure that the impact of industrial development projects would be mitigated, what is the appeal process for the developer if the TRC denies the project because it doesn't meet requirements, and describe the notification process for public comment.

Councilman Peterson noted that even though City Council has approved several conditional use permits, the Council has been able to approve them with conditions. With the elimination of the Level III City Council approval of industrial uses, the Council will not have the ability to place conditions on the project they feel will protect neighboring properties or enhance the project.

Councilman Peterson suggested the elimination of Level III review of industrial uses be voted on separately and it was the consensus of Council to do that.

Mr. Shuford suggested Council take action on the other amendments and refer the elimination of Level III review back to Planning staff to resolve some issues. He will then bring

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this issue back to the Council unless it requires Planning & Zoning Commission consideration first.

Councilman Worley asked Mr. Shuford to include in his report back to Council if there are any differences between the current Level III process and what we can impose as a conditional use in conditional use zoning.

With regard to the amendment to add research and technology production as a permitted use in certain business districts, Mayor Sitnick said that research can imply all kinds of things, like bio-research, bio-technology, and voiced concern over the possibility of incompatible intermingling of certain research opportunities. Mr. Shuford said there are separate environmental rules for those types of uses that would cover them in no matter what zoning district they might be in, but suggested this text amendment be excluded from the ordinance before Council to be reported on at a separate date as well.

Mayor Sitnick closed the public hearing at 5:55.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2860 to exempt agricultural uses from zoning regulations and adopt the definitions of "confined animal feeding operations" and "research and technology production uses." This motion was seconded by Councilwoman Bellamy and carried unanimously.

Vice-Mayor Cloninger moved that amendments to add research and technology production as a permitted use in certain business districts and to eliminate Level III review of industrial uses be postponed indefinitely until either Planning staff brings a report back to Council or the Planning & Zoning Commission makes their recommendation if changes are made by City staff. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 305

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2861 - BUDGET AMENDMENT FOR THE NEXT PHASE OF THE CIVIC CENTER PROJECT

RESOLUTION NO. 01-156 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HEERY INTERNATIONAL INC. FOR PROGRAMMING, FUNDING ANALYSIS AND PARTIAL SCHEMATIC DRAWINGS FOR THE CIVIC CENTER

City Engineer Cathy Ball said that this is the consideration of (1) a budget amendment, in the amount of $175,000 from private contributions and a transfer of $85,000 from Contingency, for contract with Heery International Inc. for next Civic Center phase; and (2) a resolution authorizing the City Manager to sign a contract with Heery International Inc. for programming, funding, and partial schematic design of the Civic Center.

In January 2001, City Council contracted with Heery International, Inc. to perform the architectural feasibility study for the Civic Center. This architectural study determined that the existing site should be utilized by renovating the arena, restoring the Thomas Wolfe Auditorium to a Great Hall and constructing a new performing arts center east of the arena.

The next step in the process is to complete the programming, funding, and partial schematic design for the project. In an effort to create a name for the entire complex, staff has developed the acronym of HEART District. HEART stands for Historic Entertainment, Arts and Recreation Triangle.

In an effort to keep the project moving, the Civic Center Task Force asked Heery to provide a proposal for completing the programming, funding, and partial schematic design of HEART District. Their proposal has been provided for your review.

The Task Force unanimously voted to move forward with this phase of the project on October 2, 2001. They are recommending that City Council approve a contract with Heery International, Inc. in the amount of $260,000 to complete this phase of the work.

The Task Force has received a donation in the amount of $175,000 to pay for this work. The additional $85,000 would come from the City's contingency fund.

The consideration of a resolution authorizing the City Manager to sign a contract with Heery International, Inc., and an associated budget amendment.

Upon inquiry of Councilman Peterson, Ms. Ball said that the $260,000 is for renovating the arena, restoring the Thomas Wolfe Auditorium and constructing a new performing arts center east of the arena. She said that because all three pieces fit together, it was very difficult for them to break down the costs for each of the three projects. She said Heery noted that the programming is not as much for the arena and the Thomas Wolfe Auditorium because it is an existing building.

At the request of Councilman Worley, Ms. Ball explained that all three pieces fit into a business plan so the deliverable on will be a business plan and that document will be used to secure additional funding, possibly go to the state for funding, etc.

Mayor Sitnick stressed that the Council fully intends to seek revenue sources from everywhere and anywhere they can. That process has already started as seen by the pledge by the Suzanne Marcus Collins Foundation donation of $175,000. In addition, the Council has recently adopted a facility fee at the Civic Center which is a wonderful mechanism to spread the burden for the needs of the building.

Councilman Worley said a lot of questions have been raised about the seating capacity and seating arrangement in the arena portion and the programming piece will enable us to determine exactly what this community wants and be certain that can be accomplished in a way that is satisfactory to the entire community and satisfactory to the events.

At the request of Councilman Peterson, Ms. Ball explained that Heery could have looked at only studying the performing arts center as a stand-alone. But one of the issues they brought up during those discussions was for instance, a restaurant. It's hard to program a restaurant that wouldn't be used by all three facilities. If you had a restaurant that you could build above the arena, it could be used by the performing arts center. Maybe the facility itself would be located in the arena, but the use could be shared by all three buildings. Their concern is that you would limit revenue potential.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the ordinance and resolution and they would not be read.

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Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2861. This motion was seconded by Councilwoman Bellamy.

Councilman Peterson said that the arena renovations do not have the support from the public or the members of the legislative delegation. However, he felt that there is support in the community for the performing arts center. He would be willing to move ahead on the performing arts center, but he doesn't think it is a good use of funds with regard to the arena, given the lack of support.

Councilman Hay said that we have a comprehensive plan and each piece relates to the other. It makes no economic sense and certainly no design sense not to relate each one to the other. For example, the conceptual plan uses the arena floor connected to the new renovated Thomas Wolfe Auditorium, which is also connected to the new performing arts center, which is all joined by restaurants, etc. It is truly all one facility. To look at them one at a time makes no financial sense at all. The Future of the Civic Center Task Force is firm in seeing it all done together because they feel that is the best product. He also thought that the $175,000 pledge, which is meant to move them along on the entire project, could not be recharacterized as just being dedicated to the performing arts center. He has not heard from the legislative delegation that they are not interested in renovating the arena. What he's heard from them is for us to show them a plan and how it all fits together with funding mechanisms independent upon what the legislature might be considering. What we will be presenting to them is a funding plan that has the financial support of a lot of people who want to see it happen.

When Councilwoman Bellamy asked if we can take two separate actions with regard to the budget amendment – one being accepting the $175,000 pledge and one taking $85,000 from the contingency fund. Councilman Hay explained that the $175,000 pledge from Mr. Collins is a pledge made if the City moves forward now with the recommendations of the Future of the Civic Center Task Force. If we don't adopt the report then the pledge doesn't stand.

Mayor Sitnick said that she has clearly heard that the community does want the City to move forward.

Councilman Worley pointed out that it will cost $25 Million to rebuild within the existing shell of the arena. A comparable arena at a new location would cost estimated $40 Million, plus site preparation cost and parking which would be an additional $10 Million.

Councilman Hay also noted that the two anchor tenants in the Civic Center (hockey and basketball) also favor the rebuilding within the existing Civic Center.

Mr. Mickie MaHaffey said that there are a lot of residents in Asheville that are struggling to pay their water bills and there are more critical needs of taxpayers other than rebuilding the Civic Center.

Councilman Hay didn't want to lose the perspective that if we do nothing and don't have a plan, then we must spend $15 Million now to keep the Civic Center open. Keeping it open still gives us an obsolete facility and we then lose many of the revenue generating events there and the deficit continues to build.

Mr. Fred English spoke in opposition to this and felt that it will end up costing $75-80 Million when it is finally built.

Ms. Susan O'Neil asked Council to make a concerted effort to endorse a higher minimum wage and a living wage for the new jobs they say will be brought to Asheville.

Mayor Sitnick encouraged the private business sector to pay living wages.

Upon inquiry of Councilman Peterson, City Manager Westbrook said that he does have the authority to transfer certain funds from the General Fund Contingency, however, he always gets that approval from Council first. He said that the General Fund Contingency for this Fiscal Year started out at $300,000 and during the budget process City Council made some adjustments to $150.000. He believed Council made one transfer out of it but he didn't recall what that transfer was.

In response to Councilman Peterson, Councilman Hay said that the project can be phased in, but the legislative support is not being asked for the arena itself, it's being asked for the overall complex. He said that it is conceivable that, depending on how the funding comes together, we can phase the project in one at a time.

The motion made by Vice-Mayor Cloninger and seconded by Councilwoman Bellamy carried on a 5-1 vote with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 19 – PAGE 307

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-156. This motion was seconded by Councilman Worley and carried on a 5-1 vote with Councilman Peterson voting "no"..

RESOLUTION BOOK NO. 26 – PAGE 472

B. RESOLUTION OFFERING CONSTRUCTION LOANS FOR IN-FILL NEW HOUSING CONSTRUCTION FROM THE HOUSING TRUST FUND PROGRAM

At the request of City staff, this matter was pulled from the agenda and will be brought before Council at a future date.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of September 21-27, 2001: Communication Ser. (Parks & Recreation), Susan Roemisch (Streets), John T. Davidson (Streets), Arlington T. Bridges (Streets) and Virginia Fortune (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City filed a Complaint on October 1, 2001, in the matter of City v. William Griffin Porter as a Complaint for money owed for parking tickets. Also the City filed a Complaint on October 1, 2001, in the matter of the City v. Mark Christian McClure as a Complaint for money owed for parking tickets. Both matters will be handled in-house.

The City was served with a Complaint on October 4, 2001, by Robert Daryl Fisher, and wife Kimberly Hall Fisher and, Ronald E. Sneed, Guardian Ad Litem for Parker Daryl Fisher. The nature of the proceedings is compensatory damages for alleged birth defects and other medical problems due to presence of carbon monoxide level incident in Municipal Building during renovations. This matter will be handled by outside attorneys.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English briefed Council on a trip he made in which he drove 2,800 miles going through very small towns and very large towns. His point was that they all had Wal-Mart Superstores and Asheville should have allowed that store to be located in Asheville when they applied for a permit.

B. COMMENTS BY MICKIE MAHAFFEY

Mr. Mickie MaHaffey voiced concern over the renegotiation of the water agreement and the necessary time restraints and focus on the negotiations necessary by Mayor Sitnick and Councilman Worley.

C. CLOSED SESSION

At 6:45 p.m., Vice-Mayor Cloninger moved to go into closed session to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Councilman Worley and carried unanimously.

At 7:13 p.m. Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:13 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – October 23, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson (arrived at meeting at 5:15 p.m.).; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

MISCELLANEOUS ITEMS

Councilwoman Field thanked everyone for their kind thoughts, letters and cards regarding the recent passing of her father Mr. Stanton Field.

Mayor Sitnick thanked the City volunteers who worked on the NC League of Municipalities meeting held in Asheville on October 13-16, 2001.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 28 – NOVEMBER 4, 2001, AS "PORNOGRAPHY AWARENESS WEEK"

Mayor Sitnick read the proclamation proclaiming October 28-November 4, 2001, as "Pornography Awareness Week" in the City of Asheville. She presented the proclamation to Ms. Gail Harding, who briefed City Council on what can be done to combat pornography.

II. CONSENT:

Due to a conflict of interest, Vice-Mayor Cloninger asked that Consent Agenda Item B be removed from the Consent Agenda.

Due to conflict of interest, Councilwoman Bellamy asked that Consent Agenda Item C be removed from the Consent Agenda.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 10, 2001

B. RESOLUTION ACCEPTING THE STREET MAINTENANCE OF COLE RIDGE ROAD

This item was removed from the Consent Agenda due to a conflict of interest.

C. MOTION SETTING A PUBLIC HEARING FOR NOVEMBER 13, 2001, TO AMEND THE COMMUNITY DEVELOPMENT BLOCK GRANT/HOME CONSOLIDATED ACTION PLAN

This item was removed from the Consent Agenda due to a conflict of interest.

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Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Hay moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA DUE TO A CONFLICT OF INTEREST

RESOLUTION NO. 01-157 - RESOLUTION ACCEPTING THE STREET MAINTENANCE OF COLE RIDGE ROAD

Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Summary: The consideration of a resolution to accept Cole Ridge Road as a public right-of-way and City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public use be accepted by resolution of City Council.

Cole Ridge Road is a newly constructed street servicing residential structures. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is a dead end street that is approximately 1276 feet long and has an average width of 18 feet.

The developer is required to provide a two year warranty for major repairs to the street from the date of City Council's acceptance of the street.

Following City Council's approval of this resolution, Cole Ridge Road will be added to the official Powell Bill list.

Staff request City Council accept Cole Ridge Road as a public right-of-way and City maintained street.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-157. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 473

MOTION SETTING A PUBLIC HEARING FOR NOVEMBER 13, 2001, TO AMEND THE COMMUNITY DEVELOPMENT BLOCK GRANT/HOME CONSOLIDATED ACTION PLAN

Vice-Mayor Cloninger moved to excuse Councilwoman Bellamy from participating in this item. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Worley moved to set a public hearing on November 13, 2001, to amend the Community Development Block Grant/HOME Consolidated Action Plan. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING ON THE CONSIDERATION OF THE VOLUNTARY ANNEXATION OF A CONTIGUOUS AREA KNOWN AS BRAESIDE, SECTION 6 OF BILTMORE PARK

ORDINANCE NO. 2862 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE AREA KNOWN AS BRAESIDE, SECTION 6 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 5:17 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to extend the corporate limits of the City of Asheville on property located west of Overlook Road and identified as Braeside, Section 6, Biltmore Park. This public hearing was advertised on October 12 and 19, 2001.

Biltmore Farms, Inc. and four other property owners have submitted an annexation petition for Braeside, Section 6, Biltmore Park. This area is north of and adjacent to Braeside, Section 5, which has been previously annexed and is within the corporate limits. Biltmore Park is generally located west of Overlook Road and north of Long Shoals Road. This annexation is pursuant to an agreement between Biltmore Farms Inc. and the City of Asheville.

The area proposed for annexation consists of 17.4 acres and is platted for 10 single-family residential lots. The area will be accessed by Braeside Circle, Braeside Lane and South Braeside Court.

Utilities and streets are being developed by Biltmore Farms Inc. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

City staff recommends City Council adopt an ordinance extending it's corporate limits to the area known as Braeside, Section 6, Biltmore Park.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook said that he would provide Council with how much tax base has been added to the City as a result of the 22 Biltmore Park voluntary annexations.

Mayor Sitnick closed the public hearing at 5:21 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 2862. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 310

B. PUBLIC HEARING TO REZONE 9 WEDGEFIELD DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 2863 - ORDINANCE TO REZONE 9 WEDGEFIELD DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Sitnick opened the public hearing at 5:22 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to rezone the Super 8 Motel at 9 Wedgefield Drive from RM-16 Residential Multi-Family High Density District. to Community Business II District. This public hearing was advertised on October 12 and 19, 2001.

The City staff has initiated this rezoning to implement the original intent of the staff to zone all of the hotels in the Wedgefield Drive/Rocky Ridge Road area of the recent extraterritorial jurisdiction (ETJ) extension Community Business II. During the zoning process for the 1,163 properties in the "west" ETJ area, the Super 8 property was unintentionally zoned RM-16. The Planning and Zoning Commission, at their October 3, 2001, meeting, reviewed, and by unanimous vote, recommended this rezoning.

Staff has received no comments of concern or opposition to the proposed rezoning.

The Planning and Development staff and the Planning and Zoning Commission recommend that City Council adopt an ordinance rezoning the property at 9 Wedgefield Drive from RM-16 Residential Multi-Family High Density District to Community Business II District.

Mayor Sitnick closed the public hearing at 5:25 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2863. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 312

C. **PUBLIC HEARING TO PERMANENTLY CLOSE CHERRY STREET FROM MARIGOLD STREET TO SHILOH ROAD**

RESOLUTION NO. 01-158 - RESOLUTION TO PERMANENTLY CLOSE CHERRY STREET FROM MARIGOLD STREET TO SHILOH ROAD

Mayor Sitnick opened the public hearing at 5:25 p.m.

Mr. David Foster, Project Coordinator for the Public Works Department, said that this is the consideration of a resolution to close the unopened right-of-way known as Cherry Street. This public hearing was advertised on September 28, October 5, 12, and 19, 2001.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, Matney and Associates Law Firm, on behalf of M Realty Limited Partnership, has requested to close Cherry Street.

Public Works Department staff has determined that the right-of-way known as Cherry Street, beginning at Shiloh Road, and ending at the Marigold Street, as shown on Plat Book 6 at Page 137, is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution to close the unopened right-of-way known as Cherry Street.

Ms. Norma Baynes, representing the Shiloh Community Association, stated their concerns are what the property owner will do if this portion of road is closed. At one time the owner wanted to build a parking lot and City Council denied that request, so they just want to make sure this will not permit him to do that.

Planning & Development Director Scott Shuford said that the unopened right-of-way will revert back to the property owners on either side of the right-of-way. This closing does not change the underlying zoning which is single-family residential. It is his understanding that Mr. Morosani (property owner) is pursuing some form of residential development of that property that fronts on Shiloh.

Mayor Sitnick was concerned that if Council closes the right-of-way now and in the future the owner comes back and asks that this property be rezoned for commercial development or a parking lot, then this would take away one of the impediments. Mr. Shuford responded that if Council were interested in a rezoning that would allow something to occur there and they were willing to take that action, they would probably also be willing to take the street closing action that is being proposed now.

Councilman Peterson wondered if by leaving the right-of-way open, would it be easier for someone to build another residence in the back part of the lot. Mr. Shuford said that there would be the possibility of getting additional lots in the interior but it would be an expensive proposition because they would have to build a public street to serve what would amount to probably no more than four additional lots.

Councilman Hay felt that the concern here is that this may be a different way to get a parking lot built in this area when City Council denied the commercial proposal several months ago. He didn't feel this closing would allow that to occur.

Councilwoman Bellamy confirmed that if Mr. Morosani wants to do something on that property other than residential he will have to come back to City Council.

Mayor Sitnick closed the public hearing at 5:45 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-158. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 474

D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING FOR PROPERTY ON CHARLOTTE STREET AT GROVE PARK FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2864 - ORDINANCE TO REZONE PROPERTY ON CHARLOTTE STREET AT GROVE PARK FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2865 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY ON CHARLOTTE STREET AT GROVE PARK

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:47 p.m.

Ms. Stacy Merten, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 10-23-01). This public hearing was advertised on October 12 and 19, 2001.

Ms. Merten said that this is the consideration of an ordinance to conditionally rezone property located on Charlotte Street at Grove Park from RS-4 Residential Single-Family Medium Density District and RM-6 Residential Multi-Family Low Density District to Neighborhood Business/Conditional Use.

On August 22, 2001, the City of Asheville submitted an application for conditional use rezoning of the E. W. Grove Park and Office Building as Neighborhood Business/Conditional Use (PIN No. 9649.11-66-1122). The parcel is currently split zoned RS-4 and RM-6 (Location Map attached to City Exhibit 3). The 3.16 acre site is located between Charlotte Street and Gertrude Place, north of Celia Place. The office building is located at the southeast corner of the property near the intersection of Charlotte Street and Celia Place. The park is in the middle of a residential neighborhood and surrounded by RS-4 and RM-6 zoning.

The conditional use zoning would allow the Preservation Society of Asheville & Buncombe County to occupy the building for their headquarters office (Proposed Site Drawing attached to City Exhibit 3). The building has been vacant for over 10 years and is suffering from deterioration and neglect. The Preservation Society has proposed to undertake the restoration at a cost of approximately $80,000, in exchange for a long-term lease of the building from the City. The building will not be altered except to allow handicap access, replacement of all mechanical system and general maintenance and repair to both the interior and exterior. The Preservation Society would also like to make a small conference room in the building available, as a meeting place, for other groups such as neighborhood and community associations.

As proposed under this conditional use zoning request, the use of the building would be limited to use by the Preservation Society of Asheville & Buncombe County for office and community space (City Exhibit 4). In addition, the park area would remain in its current configuration and undeveloped state.

The Planning & Zoning Commission reviewed this project at their October 3, 2001, meeting and voted 6-1 to recommend approval of the project with conditions.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must find that all seven standards (this application was received prior to the recent changes adopted to the conditional use standards) for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary review, absent the benefit of public input, is that all seven standards appear to be met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed use is the leasing of an existing building by the Preservation Society of Asheville & Buncombe County for use as an office and community center. The building is currently vacant and in a deteriorating state. The Preservation Society proposes to rehabilitate the building in accordance with state building code. The proposed use will not materially endanger the public health or safety if developed in accordance with the approved site plans and applicable regulations.

2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region.

The proposed use will greatly enhance the successful operation of the area by allowing an adaptive reuse of a previously vacant historic structure. The proposed use will allow the park to remain in use for the surrounding community and also provide a convenient location for community groups to meet.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed use will be very low impact with no substantive changes to the existing park or building. It is not anticipated that the use would have a negatively affect on the value of adjoining or abutting property.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

As stated above, the proposed use will be very low impact with no substantive changes to the existing park or building and therefore in keeping with the existing character, scale and density of the neighborhood.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan and other official plans adopted by the City.

The Comprehensive Plan indicates residential and institutional uses for this area.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located in an existing building in a developed area. The project received approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, MSD, Engineering and Public Works. Due to the minor level of traffic activity under this request, no traffic impact analysis is required.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The existing building is less than 1,000 sq. ft. and will house one full time employee, who will secure a parking space at a nearby church. Traffic generation will be minimal.

Planning & Development Staff recommend approval of the conditional use rezoning with the following conditions:

1) Engineering & Planning staff should work with the Preservation Society to insure there is adequate on street parking and to locate a spot for a handicap accessible parking space on the street.
2) The hours of operation should be limited from 7:30 a.m. to 10:00 p.m.
3) The existing undeveloped area of the park should remain undeveloped, per the site plan.
4) The building should be limited to use by the Preservation Society of Asheville & Buncombe County for office and community space.

Mr. Allen Fleishel, Executive Director of the Preservation Society, said that the Preservation Society thinks that the building and park is very significant to our local history and they will be good stewards of the property.

Ms. Harriette Winner, President of the Preservation Society, stated how excited they were to be able to restore this building. They have a letter from the Unitarian Church that allows them to use their parking space at anytime other than Sunday morning and whenever they have special events.

Mr. Bridgett Eckert, resident on Charlotte Street, felt the Preservation Society will be a good tenant for the building, however, asked that the hours of operation be more closely to reflect the actual hours of operation, e.g. 8:00 a.m. to 5:00 p.m. Monday through Friday.

Councilman Hay said that since the City actually owns the property, there will be a lease between the City and the Preservation Society in which things like hours of operation, etc., can be negotiated and made part of the lease.

Mr. Bill Wescott, Board Member of the Preservation Society, appreciated Council's support in helping them bring this building back to life. He said that meetings will be held in the building that lasts sometimes until 6:30 p.m. or 7:00 p.m.

There being no request for rebuttal, Mayor Sitnick closed the public hearing at 6:00 p.m.

City Attorney Oast said that the lease with the Preservation Society will be coming back to City Council for approval and specifics like hours of operation and parking can be dealt with at that time.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2864 to rezone property on Charlotte Street at Grove Park from RS-4 Residential Single-Family Medium Density District and RM-6 Residential Multi-Family Low Density District to Neighborhood Business District/ Conditional Use. This motion was seconded by Councilman Worley and carried unanimously.

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Vice-Mayor Cloninger moved to adopt Ordinance No. 2865 granting the conditional use permit for E.W. Grove Park and Office Building with the following conditions: (1) Engineering & Planning staff should work with the Preservation Society to insure there is adequate on street parking and to locate a spot for a handicap accessible parking space on the street; (2) The hours of operation should be limited from 7:30 a.m. to 10:00 p.m.; (3) The existing undeveloped area of the park should remain undeveloped, per the site plan; and (4) The building should be limited to use by a tax exempt local historic preservation organization for office and community space; and to instruct the City Attorney to prepare the Order for the Mayor's signature This motion was seconded by Councilman Worley and carried unanimously.

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E. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Sitnick opened the public hearing at 6:02 p.m.

Ms. Stacy Merten, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of 1153 Sweeten Creek Road from RS-8 Residential Single-Family High Density District to Commercial Industrial District. This public hearing was advertised on October 12 and 19, 2001.

On August 28, 2001, Chris Jarrett submitted an application for the rezoning of the eastern portion of the property located at 1153 Sweeten Creek Road (PIN No. 9657.18-30-1919). The property is located on the east side of Sweeten Creek Road, between W. Chapel and Busbee View Road. The parcel is currently split zoned, with the front portion, adjacent to Sweeten Creek, zoned Commercial Industrial and the back portion zoned RS-8. The rezoning request is for the back portion of the property only, which is approximately 2.5 acres. The entire parcel is approximately 4 acres and 745 feet deep, extending into a residential neighborhood. The only access to the parcel is via Sweeten Creek Road.

In recognition of the unique nature of the parcel in question, Planning & Development staff recommend that the property be rezoned to Community Business II, instead of Commercial Industrial. CBII is designed to provide areas for medium to high-density business and service uses along major or minor thoroughfares. Although many of the uses allowed in CBII overlap with those allowed in CI, the CB II is a less intensive zone than CI and would provide a more appropriate transition from the existing portion of the property to the residentially zoned property surrounding the parcel. The Planning & Zoning Commission reviewed this at their meeting on October 3, 2001, and recommend 6-1 to approve with conditions that the parcel be rezoned CBII.

Ms. Merten said that the applicant's primary concern was not necessarily that did not really want the CI designation, but he was after

Councilwoman Bellamy pointed out several uses that would be allowed in the CBII district, including barber shops, salons, bars, nightclubs, convenience stores, etc.

Upon inquiry of Mayor Sitnick, Ms. Merten said that the applicant mainly wanted his property all zoned commercially so that it would be marketed as such, but he was not adamant that it be zoned Commercial Industrial.

Mr. Chris Jarrett, property owner, said that his main reason for this rezoning request is to get the property zoned the same for marketability. Prior to adoption of the Unified Development Ordinance most of the lot was zoned Commercial Industrial. He said that his property does not touch Rock Hill Road and noted that there currently exists housing that faces Rock Hill Road, with their back to his property.

Upon inquiry of Councilman Hay, Mr. Jarrett explained that the property is not marketable as residential in the back because the person would have to drive through the industrial part first at the front of the lot to get to the residential part in the back of the lot.

Mr. Samuel Mohamed Abdu-Allah, speaking on behalf of his brother who lives on the corner of West Chapel Road and Rock Hill Road, felt that surrounding property owners did not want to be around commercial development.

Ms. Annie W. Harrison, resident on Rock Hill Road, voiced concern over what will be built on the property if rezoned to Commercial Industrial.

Ms. Norma Baynes, representing the Shiloh Community Association, felt that the property is almost totally surrounded by residential homes and noted that if the property is zoned something other than residential, there will be increased traffic on the area roads.

Mr. Ben Baker, realtor speaking on behalf of Mr. Jarrett, spoke in support of the rezoning request. He noted that it would really be hard to develop the rear part of the property as residential when you have to access it through a heavy commercial area. Allowing the property to remain residential, with the access problem, would create a hardship on Mr. Jarrett as far as the value of the property is concerned.

Upon inquiry of Councilman Hay, Mr. Baker said that even zoning the back portion multi-family residential would still have the same problem of having people access their homes through a commercial area.

Upon inquiry of Councilwoman Field, Ms. Merten said that buffering requirements between the two zones would range from 15 feet to 30 feet, depending on the use and the intensity of the use. If the property remains split zoned, a buffer will still be required between the uses if the back portion is developed.

Councilman Worley asked if there has been any discussion with the applicant about the desirability of waiting until there is a proposed use and then going forward with a conditional use permit (CUP). Ms. Merten said that it was discussed with the applicant, however, he preferred to request the straight rezoning of the property, because it's her understanding that they do intend to sell the property. Mr. Baker also responded that in not knowing what the zoning will be, it severely affects the marketability of the property.

Mr. James Harrison spoke against the requested rezoning and asked Council to keep the property zoned residential because of the number of uses which are allowed even under the Community Business II District.

Ms. Merten responded to Councilman Peterson's question about size limitations in the CBII District.

When Mr. Keith Thomson wondered if this would be good for the new Urban Village District, Mr. Shuford said that the Urban Village District is a 10-acre minimum and this entire parcel is only four acres. In addition, it does not meet some other criteria for the new district.

Mr. Shuford said that this property would best be handled through a conditional use rezoning where you had a particular use and you could address those concerns. He said that Planning staff recognized that right at the start but they also recognized too that the applicant was not interested in developing the property. The compromise, recognizing that it was a split-zoned lot, was to try to go to a commercial (Community Business II) classification that would signal to any prospective buyer that something more intense than an RS-8 zoning would be acceptable to the City. But, at the same time, be less intensive than the Commercial Industrial in order to encourage the ultimate owner to come back and do a conditional use rezoning. Another alternative might even be CB I, which would be much less intense and probably result in that same thing.

Upon inquiry of Councilman Worley, City Attorney Oast said that ordinarily you can't have something in a conditional use classification for which a use is not specified.

Along those lines, City Attorney Oast said that a solution might be to design a zone for this property and specify a range of uses. He said that he would be willing to work on that with the property owner and Planning staff.

Councilwoman Bellamy did not favor zoning the property to either Community Business I or II. She felt that this residential area gets more commercial encroachment than other areas in Asheville and we need to hold the line on that. She felt that an RM-16 zoning could work, citing River Ridge being residential next to commercial uses, and the property owner could get more money for his land with that designation.

Vice-Mayor Cloninger moved to continue this public hearing until December 18, 2001, in order to give the staff time to work with the property owner and his realtor to refine the uses and at the same time to work with the neighborhood to coordinate the uses through them. This motion was seconded by Councilwoman Bellamy and carried unanimously.

F. PUBLIC HEARING TO CONSIDER THE DESIGNATION OF THE KENILWORTH INN AT 60 CALEDONIA ROAD AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2866 - ORDINANCE DESIGNATING THE KENILWORTH INN AT 60 CALEDONIA ROAD AS A LOCAL HISTORIC LANDMARK

Mayor Sitnick opened the public hearing at 6:47 p.m.

Historic Resources Director Maggie O'Connor said that this is the consideration of an ordinance designating the Kenilworth Inn located at 60 Caledonia Road, Asheville, N.C., as a local historic landmark. This public hearing was advertised on October 12 and 19, 2001.

In 1918, James Madison Chiles built the Kenilworth Inn. Mr. Chiles was the driving force behind the establishment of the Town of Kenilworth. The Inn's impressive porte cochere, built entirely of granite is the focal point of the main façade and is accented by granite wrap-around porches and terraces. Much of the granite used in the construction of Kenilworth Inn was mined from a quarry located at the bottom of the hill behind 33 Chiles Avenue in Kenilworth. The Inn served as a military hospital during World War I and World War II and as a mental health facility known as Appalachian Hall from 1931 until 2000. The Kenilworth Inn is one of the few remaining wood framed luxury hotels constructed before 1920 in Asheville and Buncombe County.

Designation of this building as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. Currently the assessed value of the property is $1,637,300 and the total taxes paid for this year were $22,758.47. If the Kenilworth Inn is designated a local historic landmark the taxes would be reduced by half to $11,379.24. However, the current owners plan to convert the building into 91 apartment units at a projected rehabilitation cost of $4,300,000.

When a property is designated historic, restrictions are placed on the property and on any exterior improvements or interior improvement where interiors are designated as significant. Any modification to the structures or land must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC) and all improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons for future generations.

The HRC, by unanimous vote, recommends to City Council that the Kenilworth Inn be designated a local historic landmark. Staff concurs with the recommendation of the HRC to designate the Kenilworth Inn a local historic landmark.

City staff recommends City Council consider an ordinance designating the Kenilworth Inn as a local historic landmark.

Mr. Frank Thomson, Ms. Leah Karpen and Mr. John Chiles all spoke in support of this designation and were pleased that the owners will be renovating this beautiful cornerstone of the community.

Mayor Sitnick closed the public hearing at 6:54 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2866. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. ASHEVILLE FILM BOARD

Vice-Mayor Cloninger, member of the Asheville Film Board, said that after lengthy discussion and consideration, they request City Council change their name from the Asheville Film Board to the Asheville Film Commission. They believe the title "Asheville Film Board" handicaps their effectiveness within the entertainment industry, evoking images of censorship and control, rather than growth and development. He said that the name change would not affect the powers of the board.

It was the consensus of City Council to instruct the City Attorney to prepare the proper ordinance to change the name of the Asheville Film Board to the Asheville Film Commission and to bring it back to Council as a consent agenda item.

B. SCHOOL BOARD SUPERINTENDENT; CHAIRMAN OF CIVIL SERVICE BOARD

Councilwoman Bellamy, liaison to the Asheville School Board, noted that the School Board has hired a new Superintendent, Mr. Robert Logan. She hoped that after Mr. Logan takes office in December that City Council will invite him to a worksession to talk about what his plans are and how the City Council can support him in his endeavors.

Councilwoman Bellamy also noted that Mr. Gene Bell, Chair of the Civil Service Board, is in the hospital and on behalf of City Council wishes him well and a speedy recovery.

C. CLAIMS

The following claims were received by the City of Asheville during the period of September 28-October 11, 2001: Jewel Jones (Water), Evelyn Boone (Water), Janet Miller (Parks & Recreation), Osmose (Water) and Dian Robinson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUITS

The City received the following Complaint on October 17, 2001, by Frank J. Covine: Complaint for money owed for property damage to an automobile. This matter will be handled in-house.

The City filed the following Complaint on October 19, 2001, against Luis Trejo Hernandez and Francesca Jimenez: Complaint for money owed for property damage to an automobile. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY PETER DAWES

Mr. Peter Dawes asked City Council to reconsider having a place marked off on the floor for the media to video from. He felt that as long as the media is does not disturb the meetings, they should be able to film from any place in the Chamber.

B. COMMENTS BY LULA MOON

Ms. Lula Moon asked City Council to direct the City to enforce the zoning violation complaint filed August 28, 2001, regarding the noisy 24-hour recycling center that is operating illegally next door to her home at 41 Long Street, which is a narrow residential street. Using pictures, she showed trash and debris around the area and the traffic problems associated with the center. She briefed Council on the violations of the Asheville Standard Specifications and Details Manual with regard to street width, the Noise Ordinance, development parking requirements, and the State of N.C. Standard Fire Prevention Code. She noted that the property is now being requested to be rezoned, however, felt the rezoning request should be denied due to unfeasibility of meeting applicable codes. She urged the City to find a new location for the recycling center.

City Manager Westbrook said that he is pursuing all avenues with regard to Ms. Moon's complaint and will continue to work with her to address her concerns.

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C. CLOSED SESSION

At 7:24 p.m., Councilwoman Bellamy moved to go into closed session in order to (1) consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. Williams, Paul E. Fruits, B. Joy MacFadyen Bulluck, Buncombe County, and City of Asheville - G.S. 143-318.11(a)(3); and (2) To consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee - G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - G.S. 143-318.11(a)(2). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 8:05 p.m., Councilman Hay moved to go out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:05 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Wednesday – November 7, 2001 - 3:00 p.m.

Worksession

Present: Vice-Mayor M. Charles Cloninger, Presiding; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Leni Sitnick

CONSENT:

Vice-Mayor Cloninger noted that he had a conflict of interest on "Setting public hearing on December 18, 2001, to close portion of Porter Street from Pond Avenue to Rosscraggon Road and the 15-foot alleyway from Porter Street to Lee Street" and also the "Parking Easement on Grove Street".

Setting Public Hearing on December 18, 2001, to Close Portion of Porter Street from Pond Avenue to Rosscraggon Road and the 15-foot alleyway from Porter Street to Lee Street

Amendment to Personnel Policy regarding Military Leave

Summary: The consideration of a resolution amending Section 49, Military Leave, of the City of Asheville's Personnel Policy.

Section 49(2)(a), Military Leave, of the City's Personnel Policy currently provides that, in the event of national emergency or war, the health and dental insurance (including family coverage) of any City employee who is called-up for active military duty would continue until the employee's military insurance became effective.

The resolution amends this section of the City's Personnel Policy to continuously provide any benefit plan(s) in which the employee participates as if the employee were still working - regardless of any insurance that may be provided to these employees by the military.

Staff recommends the adoption of the resolution.

New Street Name of Glesta Knoll Drive

Summary: The consideration of a resolution accepting the new proposed street name "Glesta Knoll Drive."

Mr. Tommy Pressley, owner of lots in Glesta Knoll Subdivision, has petitioned the City of Asheville to accept the street name " Glesta Knoll Drive." The new street will begin at Eliada Home Road and end at cul-de-sac on Glesta Knoll Drive.

City staff recommends adoption of the resolution.

Amendment to Water Bond Capital Improvements Fund

Summary: The consideration of a budget amendment to the 29 Fund (Water Bond Capital Improvements Fund) to reflect an increase in the Pipeline Replacement Phase II (Bee Tree Crossing), an increase in the N. C. Dept. of Transportation (NCDOT) Betterment Projects, and a decrease in the Building Safety Improvements.

Funding for the Pipeline Phase II (Bee Tree Crossing Project) needs to be increased by $20,000 to cover the multiple change orders that have been necessary since this project was first initiated in 1996. There are also additional engineering expenses that have accumulated due to the time extension and changes in the project.

Funding also needs to be increased for two NCDOT Betterment Projects totaling $147,630. The Utility Agreements for Sweeten Creek Phase I and Pisgah Highway Phase I included construction estimates that were lower than actual costs. The invoice from NCDOT for Sweeten Creek Phase I is $69,125 more than NCDOT's construction estimate and Pisgah Highway Phase I is $78,505 more.

Funding is available in the Building Safety Project since it has been determined that this project needs to be deleted to provide additional funding for NCDOT Non-Betterment Projects in Fiscal year 2003-2005. There is currently $1 million available and $167,630 of it is being redistributed to the Bee Tree Crossing and the NCDOT Non-Betterment Projects described above. The remaining $832,370 can be used to fund additional NCDOT projects that were initially planned to be funded with a second Revenue Bond Issue in Fiscal Year 2003. The City will not be issuing additional revenue bonds at this time. NCDOT Projects in Fiscal Year 2003 through 2005 total approximately $4 million. If sufficient revenue is not generated to pay for these projects on a pay-as-you-go basis, it will be necessary to set up a payment plan with NCDOT.

Staff recommends approval of the budget amendment to the 29 Fund to reflect the changes identified above.

City Council Meetings to be Rescheduled

Summary: Due to the upcoming holidays the City Council meeting schedule will need to be modified as follows: (1) December 4, 2001, should be the organizational meeting beginning at 4:00 p.m. in the Council Chamber followed by the formal meeting at 5:00 p.m. in the Council Chamber; (2) December 11, 2001, needs to be a worksession beginning at 3:00 p.m. in the First Floor North Conference Room; (3) December 18, 2001, needs to be a formal meeting beginning at 5:00 p.m. in the Council Chamber; (4) December 25, 2001, meeting needs to be cancelled; and (5) January 1, 2002, meeting needs to be cancelled.

Donation for Douglas Ellington Collection

Summary: The Asheville Art Museum has requested the donation of several items from City Hall for the Douglas Ellington collection.

Over the past several years, the Asheville Art Museum has become a major repository for Douglas Ellington's architectural drawings, correspondence and other materials from the City Hall Building. The museum is trying to preserve and document his work in Asheville as a major figure in the art culture arena. They are working closely with his family to preserve his work and his legacy. The museum is requesting that the City donate a chair from the Council Chamber as well as two pieces of terra cotta from the roof of the City Hall Building. (We have several pieces of terra cotta that they could have.) The City would be placing these objects with the Asheville Art Museum in trust for their Douglas Ellington collection.

Staff recommends that Council approve the donation of a chair from the Council Chamber and two pieces of terra cotta from the City Hall roof to the Asheville Art Museum.

Semi-Annual Update of the Regional Water Authority's Activities

Summary: Update on Regional Water Authority's past six month's activities.

Parking Easement on Grove Street

Summary: The consideration of a resolution authorizing City to enter into an easement for parking at the Senior Opportunity Center on Grove Street.

Earlier this year, the City agreed to sell certain property located at 36 Grove Street. The property is situated between the building currently occupied by the Employment Security Commission at 48 Grove Street and the building used by the City for the Senior Opportunity Center (SO). The property is used for parking for both buildings and has some metered spaces on it. The buyers also own the 48 Grove Street building and intend to expand and renovate it, and acquired the City property for parking and access in connection with this expansion. This conveyance was subject to the City retaining an easement to allow for continued parking at the SOC.

The City has now negotiated that easement, which allows for the City to use the lot for parking for the SOC during non-business hours and on weekends, when it will not interfere with the use by the 48 Grove Street building, but also when its need by the SOC is highest. The easement is personal in nature, and terminates when the City ceases its use of the SOC. The parking spaces right next to the SOC were not part of the property conveyed and will continue to be available for daytime use by staff and visitors.

Adoption of the resolution authorizing the City to execute the easement.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

Revision of Process for Review of Ancillary Use Requests in Residential Districts

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled for Tuesday, November 27, 2001. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise the process for the review of requests for ancillary uses in residential districts.

The Planning and Zoning Commission is recommending adoption of an amendment to the UDO revising the process for reviewing requests for ancillary uses in residential districts and changing the name of this provision. The change in the review process is proposed in response to concerns regarding the current process voiced by citizens and Council members. This issue was discussed at a Planning and Zoning Commission meeting, with the changes proposed in the ordinance amendment identified by the Commission. The following revisions are proposed by the proposed wording amendment:

- The name of the use will be changed from "Ancillary Non-Residential Uses" to "Ancillary Commercial Uses in Residential Districts"; and
- The Technical Review Committee will have the authority to send, at its discretion, requests that are controversial to the Planning and Zoning Commission for review and recommendation, following a public hearing. The recommendation of the Commission will be

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forwarded with the request to City Council for final action. Currently all requests are sent directly to the City Council following TRC review.

The name change will clarify the types of uses permitted through this permitting process. By providing provide an opportunity for additional public input on controversial requests, the revised review process will provide time to resolve issues before requests are heard by City Council.

Staff has received no comments in opposition to the proposed revisions.

At their October 3, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

A brief discussion surrounded the name of the use. It was the consensus to change the name of the use to Ancillary Non-Residential Uses in Residential Districts.

A brief discussion occurred after Councilwoman Bellamy stated her concerns that this amendment does not address the problems regarding the number of spaces, buffering, traffic flow, etc. Mr. Green responded that the Planning & Zoning Commission realized that as this is a conditional use, Council would have the discretion to make requirements on a case by case basis as the need arose, rather than trying to find one, for instance, buffer, to fit all needs.

In response to Councilwoman Bellamy, City Attorney Oast said that we do encourage developers to meet with the surrounding neighborhood and business property owners, however, it would be difficult to require that without specifically designating the neighborhood representatives and the specific business property owners.

Councilman Peterson said that he plans to make a motion to delete the entire provision since we do have the process for conditional use rezoning. Mr. Green responded that this, however, does not require a zoning change.

Councilman Peterson stated that the difference between rezoning and this being a non-rezoning is the protest petition process which gives the nearby property owners that added protection that requires the approval by the super majority of Council. He asked if the ordinance could be amended to include provisions for a protest petition process with the same voting requirements. Mr. Green responded that the protest petition procedure is established by state statutes and very specifically applies only to rezonings, not to conditional use processes. City Attorney Oast also responded that in fact, with respect to conditional use permits, that the statute says that a simple majority vote is all that is required. If it is a rezoning, then the protest petition procedure would apply, but we couldn't incorporate into the ordinance a protest petition procedure applicable to a particular kind of conditional use permit.

Revision of Certain Development Standards in the Central Business District

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise certain development standards in the Central Business District.

The Planning and Zoning Commission is recommending adoption of an amendment to the UDO revising certain development standards in the Central Business District (CBD). The proposed revisions address issues that were identified during the process of extending the CBD zoning to areas adjacent to the current CBD. With these revisions, the creation of non-conforming uses will be avoided and continuation of the historic urban development pattern in the

CBD will be encouraged. The proposed revisions would make the following changes in the development standards in the CBD:

- Identify automobile sales as a conditional use in the CBD and establish standards for this use. The proposed standards include:
  - Minimum lot size of one acre;
  - In order to maintain an urban streetscape the number of automobiles that can be stored outside an enclosed building shall be limited to not more than 25% of the total offered for sale, or, alternately, the outdoor storage of automobiles for sale shall be screened by buildings occupying at least 75% of the street frontage of the property;
  - Prohibit outdoor storage of autos needing repair or, alternately, require autos needing repair to be screened from all public rights-of-way; and
  - New structures proposed within the Downtown Design Review Area must substantially comply with the Downtown Design Review Guidelines.
- Identify government buildings and uses as conditional uses and establish conditions for these buildings and uses. The proposed conditions include:
- The proposed location of the building or use will not restrict the availability of key land for private development;
- No alternative location for the building exists within areas previously developed for government buildings and/or uses; and
- New structures proposed within the Downtown Design Review Area must substantially comply with the Downtown Design Review Guidelines.
- Clarifies the standard for a zero front setback and provides the Downtown Commission or the Planning and Development director with the authority to allow greater setbacks if certain conditions are met.

The proposed revisions are designed to strengthen the development pattern in the CBD while providing for some flexibility in the standards for development. The need for the revisions was identified by staff and the Planning and Zoning Commission while listening to comments from the property owners during the discussion of the extension of the CBD boundaries.

Staff has received no comments in opposition to the proposed revisions.

At their October 3, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Councilwoman Field thought it might be a good idea for the Planning staff and Planning & Zoning Commission to review the Downtown Design Review Guidelines which are still in draft form after several years.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on November 27, 2001.

BUILDING CODE PILOT PROGRAM

Director of Building Safety Terry Summey said that this is the consideration of a resolution acknowledging the City of Asheville as a participant in the pilot program for rehabilitating existing buildings in the City of Asheville and adopting the Pilot Code, currently being prepared by Mecklenburg County.

Mr. Summey said that North Carolina General Assembly approved Session Law 2001-373, Senate Bill 633 on August 17, 2001, which is an act to establish a building code pilot program for rehabilitating existing buildings. The pilot code is based upon the New Jersey Uniform Construction Code Rehabilitation Subcode, which has received national praise and attention.

In 1999 the State of New Jersey's Rehabilitation Subcode was a winner of the "Innovations In American Government Award, an award competition of the Ford Foundation, the John F. Kennedy School of Government at Harvard University and Council for Excellence in Government." Their prize of $100,000 recognized their innovation and leadership of implementing a user friendly rehab code.

Benefits of the Rehabilitation Subcode in New Jersey included:

- Dramatic increase in the estimated dollar amount of rehabilitation work undertaken in New Jersey's urban areas during the first year that the rehabilitation subcode was in place.
- Takes a common sense approach and applies building code requirements to the rehabilitation of existing buildings in a rational manner, protecting the safety of building occupants without imposing needless requirements or unnecessary additional costs.
- Eliminate building code requirements as a disincentive to the rehabilitation of existing buildings

Senate Bill 633 authorizes a lead local jurisdiction in North Carolina to develop a pilot rehabilitation building code based upon the New Jersey Subcode. Substantive changes to the New Jersey model are not allowed. The pilot code may then be administered by local building inspection departments that have been approved by the Building Code Council to do local plan reviews. Asheville obtained local plan review approval in December 1997.

In order to participate in the pilot program, the eligible local jurisdiction's governing body must adopt the pilot code. Mecklenburg County, the lead local jurisdiction is currently in the process of finalizing the pilot code. It is anticipated the pilot code will be available for use before April, 2002.

Mr. Jim Bartl, Director of the Land Use and Environmental Services Agency Code Enforcement Department for Mecklenburg County, gave a brief summary of the 15-month effort to initiate the pilot rehab code for existing structures.

Mr. Summey recommended City Council approve the resolution acknowledging the City of Asheville as a participant in the pilot program for rehabilitating existing buildings and further recommends adopting the pilot code.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PARKS AND RECREATION SUMMER ACTIVITIES REPORT

Recreation Division Superintendent Butch Kisiah highlighted activities and programs offered to the City of Asheville during the summer of 2001 (May – August).

Mr. Kisiah responded to Councilman Peterson regarding the City's summer employment for young people.

Councilman Peterson encouraged the City to participate more in education by possibly providing facilities for tutoring and mentoring.

Vice-Mayor Cloninger thanked Mr. Kisiah and the entire Parks and Recreation Department for the activities they offer.

ANNUAL COMMUNITY DEVELOPMENT BLOCK GRANT/HOME REPORT

Councilman Peterson moved to excuse Councilwoman Bellamy from participating in this discussion. This motion was seconded by Councilman Worley and carried unanimously.

Ms. Charlotte Caplan, Community Development Director said that the this is the review of information on the City's Consolidated Annual Performance and Evaluation Report.

The Community Development Division has submitted to HUD on September 28, 2001, its annual performance report on our Community Development Block Grant (CDBG) and HOME programs. The City spent a total of $2,779,361 CDBG and HOME funds, leveraging at least $11,543,000 in other funding. Key performance indicators are as follows:

- ⇒ 424 units of housing production (367 with CDBG or HOME assistance and 57 through fee rebates and Housing Trust Fund assistance), comprising:
    - 20 owner-occupied houses completely rehabilitated
    - 157 rental units rehabilitated
    - 54 homes given urgent repairs
    - 40 new houses built and sold to first-time homebuyers
    - 6 other new homeowners received down-payment assistance
    - 100 new rental units built and leased
    - 47 households received rent assistance to avoid homelessness;
- ⇒ 158 people helped with jobs or self-employment;
- ⇒ 3500 people helped through other programs (housing counseling, homeless shelter youth activities, etc).

These figures greatly exceed the targets set in the Strategic Plan for 2000-2005 and represent a year of record achievement by the City and its many non-profit and for-profit partners.

Ms. Caplan answered various questions from Councilman Peterson with regard to the Report.

AMENDMENT TO COMMUNITY DEVELOPMENT BLOCK GRANT/HOME CONSOLIDATED PLAN

Councilman Peterson moved to excuse Councilwoman Bellamy from participating in this discussion. This motion was seconded by Councilman Worley and carried unanimously.

Ms. Charlotte Caplan, Community Development Director said that the this is the review of an amendment to the Community Development Block Grant (CDBG)/HOME Consolidated Plan.

The City's Consolidated Action Plan, approved in May each year, allocates our annual entitlement of CDBG and HOME funds to specific projects. From time to time, amendments are needed to deal with cancelled projects, cost over-runs, new urgent projects, or differences between actual and estimated program income. At this time, staff recommends the following amendments:

A. HOME Funding

The Board of the Asheville Regional Housing Consortium recommends the following amendments:

1. **Cancellation of Neighborhood Housing Services' multi-family rehabilitation project.** NHS used $103,500 in 1998 HOME funds to rehabilitate 14 apartments in three buildings in the Montford and midtown neighborhoods. However, NHS did not have enough other funding to bring the units completely up to standard and has decided to sell the buildings "as is" as part of its financial restructuring. The tenants have been relocated with help from the City, and NHS is repaying the HOME investment as each building is sold. $70,700 has already been repaid. These funds will be returned to the City's HOME Fund for future use on eligible activities.

2. **Reduction in funding for Rankin Heights project.** The construction of infrastructure for 17 new single family homes on Buttonwood Court in West Asheville was completed in 1999, slightly under budget. $4,469 is available to be re-allocated.

3. **Reduction in funding for HOME Administration.** Up to 10% of HOME funds may be set aside for the planning and administration of the program. The City of Asheville and the other Member Governments of the Regional Housing Consortium have consistently used only 6%-7% for this purpose. The Board recommends reducing the administrative allocation for 2001 by $43,000 and allocating that amount to projects instead.

4. **New HOME loan to Mountain Housing Opportunities to acquire land in Woodfin ($118,169)** Mountain Housing Opportunities plans to acquire a 9-acre site on Reynolds Mountain Blvd, off Weaverville Highway in Woodfin, for the construction of 70 affordable family apartments to be called Northpoint Commons. MHO currently holds an option on the site which is about to expire. It proposes to use HOME funds and private financing to acquire the site for a total price of $405,000. MHO intends to apply for Low Income Housing Tax Credits in the 2002 round and start construction in fall 2002.

5. **Cancellation of Probart Hills Subdivision Project in Brevard and Reallocation of unexpended funds to scattered site development.** Transylvania Housing Development Corporation was allocated a total of $233,889 in HOME funds in 1998 and 2000 to acquire land and develop a new S/F subdivision in Brevard. The agency was unable to obtain other funding needed for the development and now plans to sell the land and reimburse the HOME Investment Fund the $128,609 already expended on the project. The Agency and the City of Brevard have requested that the remaining $105,280 be re-allocated to assist the construction of three single family homes on scattered sites in Brevard. A public hearing will be held on this project in Brevard.

Financial Summary of Proposed HOME Amendments

Year	Project	Source	Original	Amended	Difference
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2001	MHO Northpoint Commons	HOME	-0-	118,169	118,169
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2000	TCHDC Probart Hills	HOME	104,860	-0-	(104,860)
2000	TCHDC Scattered site S/F development	HOME	-0-	105,280	105,280
	Unallocated (repayments not yet received)	HOME	-0-	161,409	161,409
	TOTAL	HOME			-0-

B. CDBG Funding

The City's Housing and Community Development Committee recommends the following amendments:

1. $210,000 Float Loan to Neighborhood Housing Services, for Single Family New Construction
NHS has requested additional assistance in the construction of three new homes on Buttonwood Court (site of the former Rankin School). In order to reduce financing costs it has requested a short-term CDBG construction loan from the City in addition to a permanent HOME subsidy already allocated. The loan would be secured by an irrevocable letter of credit from a bank and repaid in July 2002. This type of loan can be "floated" by using funds already allocated to other projects which have not yet been spent and are unlikely to be spent in that time frame. Staff have identified the project to redevelop South Pack Square (current CDBG balance $500,000) as such a project.

2. Revised Certification on Low- and Moderate-Income Benefit.
HUD rules require not less than 70% of CDBG funds to be used for activities that directly benefit residents with income less than 80% of area median. This threshold may be met annually, or by averaging over three years. The City usually spends over 95% of its CDBG funds on such activities annually. However, we expect that expenditure on the revitalization of South Pack Square, which primarily addresses slum and blight, will cause the City to fall short of this threshold next year. Staff recommends revising the City's certification to HUD to specify the three-year period for meeting the threshold.

City staff recommends approval of the amendments.

Vice-Mayor Cloninger asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on November 13, 2001.

RESOLUTION NO. 01-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ASHEVILLE PAVING COMPANY TO PREPARE THE SURFACE AND REPAVE THE .3 MILE OVAL AT THE FRENCH BROAD RIVER PARK PHASE IV

Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

It was the consensus of City Council that Councilman Worley chair this portion of the meeting due to the conflict of interest of Vice-Mayor Cloninger.

City Manager Westbrook said that because of the weather, he asked that City Council consider at this meeting a resolution authorizing the City Manager to enter into a contract with Asheville Paving Company to prepare the surface and repave the .3 mile oval at French Broad River Park Phase IV.

The City of Asheville is continuing its development of the French Broad River Park Phase IV, which entails numerous recreational activities within the western most tract of land along Amboy Road. Among these activities is the old .3 mile oval that is being used for cycling, roller blading, and a variety of other fitness activities. It is necessary to repave the track to provide a quality surface that will be safe for the users of the facility. The project is funded through City of Asheville funds which are supplemented by the Parks and Recreation Trust Fund Grant. The Asheville Paving Company was the lowest responsible bidder to repave the track at a cost of $42,430.00.

The Parks and Recreation Department recommends the City Manager to authorized to enter into a contract with Asheville Paving Company to repair and repave the existing .3 mile oval at French Broad River Park Phase IV.

Councilman Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Bellamy moved to adopt Resolution No. 01-159. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 476

BOARDS AND COMMISSIONS

City Council gave directions to City Clerk Burleson on interviews on various boards.

ADJOURNMENT:

Vice-Mayor Cloninger adjourned the meeting at 5:00 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – November 13, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Due to a conflict of interest by Councilwoman Bellamy, Consent Agenda Item "F" was removed from the Consent Agenda to be voted on separately.

Due to a conflict of interest by Vice-Mayor Cloninger , Consent Agenda Items "H" and "J" were removed from the Consent Agenda to be voted on separately.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 23, 2001, AND THE WORKSESSION HELD ON NOVEMBER 7, 2001

B. RESOLUTION NO. 01-160 - RESOLUTION RECOGNIZING THE CITY OF ASHEVILLE AS A PARTICIPANT IN THE PILOT PROGRAM FOR REHABILITATING EXISTING BUILDINGS

Summary: the consideration of a resolution acknowledging the City of Asheville as a participant in the pilot program for rehabilitating existing buildings in the City of Asheville and adopting the Pilot Code, currently being prepared by Mecklenburg County.

The North Carolina General Assembly approved Session Law 2001-373, Senate Bill 633 on August 17, 2001, which is an act to establish a building code pilot program for rehabilitating existing buildings. The pilot code is based upon the New Jersey Uniform Construction Code Rehabilitation Subcode, which has received national praise and attention.

In 1999 the State of New Jersey's Rehabilitation Subcode was a winner of the "Innovations In American Government Award, an award competition of the Ford Foundation, the John F. Kennedy School of Government at Harvard University and Council for Excellence in Government." Their prize of $100,000 recognized their innovation and leadership of implementing a user friendly rehab code.

Benefits of the Rehabilitation Subcode in New Jersey included:

- Dramatic increase in the estimated dollar amount of rehabilitation work undertaken in New Jersey's urban areas during the first year that the rehabilitation subcode was in place.
- Takes a common sense approach and applies building code requirements to the rehabilitation of existing buildings in a rational manner, protecting the safety of building occupants without imposing needless requirements or unnecessary additional costs.

- Eliminate building code requirements as a disincentive to the rehabilitation of existing buildings

Senate Bill 633 authorizes a lead local jurisdiction in North Carolina to develop a pilot rehabilitation building code based upon the New Jersey Subcode. Substantive changes to the New Jersey model are not allowed. The pilot code may then be administered by local building inspection departments that have been approved by the Building Code Council to do local plan reviews. Asheville obtained local plan review approval in December 1997.

In order to participate in the pilot program, the eligible local jurisdiction's governing body must adopt the pilot code. Mecklenburg County, the lead local jurisdiction is currently in the process of finalizing the pilot code. It is anticipated the pilot code will be available for use before April, 2002.

The Director of Building Safety recommends City Council approve the resolution acknowledging the City of Asheville as a participant in the pilot program for rehabilitating existing buildings and further recommends adopting the pilot code.

RESOLUTION BOOK NO. 26 – PAGE 477

C. RESOLUTION NO. 01-161 - RESOLUTION AMENDING THE SCHEDULED CITY COUNCIL MEETINGS

Summary: (1) December 4, 2001, will be the organizational meeting beginning at 4:00 p.m. in the Council Chamber followed by the formal meeting at 5:00 p.m. in the Council Chamber; (2) December 11, 2001, will be a worksession beginning at 3:00 p.m. in the First Floor North Conference Room; (3) December 18, 2001, will be a formal meeting beginning at 5:00 p.m. in the Council Chamber; (4) December 25, 2001, meeting will be cancelled; and (5) January 1, 2002, meeting will be cancelled.

RESOLUTION BOOK NO. 26 – PAGE 478

D. RESOLUTION NO. 01-162 - RESOLUTION AMENDING PERSONNEL POLICY REGARDING MILITARY LEAVE

Summary: The consideration of a resolution amending Section 49, Military Leave, of the City of Asheville's Personnel Policy.

Section 49(2)(a), Military Leave, of the City's Personnel Policy currently provides that, in the event of national emergency or war, the health and dental insurance (including family coverage) of any City employee who is called-up for active military duty would continue until the employee's military insurance became effective.

The resolution amends this section of the City's Personnel Policy to continuously provide any benefit plan(s) in which the employee participates as if the employee were still working - regardless of any insurance that may be provided to these employees by the military.

Staff recommends the adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 479

E. RESOLUTION NO. 01-163 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "GLESTA KNOLL DRIVE" OFF OF ELIADA HOME ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Glesta Knoll Drive."

Mr. Tommy Pressley, owner of lots in Glesta Knoll Subdivision, has petitioned the City of Asheville to accept the street name " Glesta Knoll Drive." The new street will begin at Eliada Home Road and end at cul-de-sac on Glesta Knoll Drive.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 - PAGE 480

F. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 27, 2001, TO CONSIDER THE PROPOSED SALE OF PROPERTY ON BROTHERTON AVENUE TO MORSE PROPERTIES INC. FOR AFFORDABLE HOUSING DEVELOPMENT SITE AND THE AMENDMENT OF THE 2001 ACTION PLAN TO INCREASE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE PROJECT

This item was removed from the Consent Agenda due to a conflict of interest by Councilwoman Bellamy.

G. ORDINANCE NO. 2868 - BUDGET AMENDMENT TO THE WATER 29 FUND

Summary: The consideration of a budget amendment to the 29 Fund (Water Bond Capital Improvements Fund) to reflect an increase in the Pipeline Replacement Phase II (Bee Tree Crossing), an increase in the N. C. Dept. of Transportation (NCDOT) Non-Betterment Projects, and a decrease in the Building Safety Improvements.

Funding for the Pipeline Phase II (Bee Tree Crossing Project) needs to be increased by $20,000 to cover the multiple change orders that have been necessary since this project was first initiated in 1996. There are also additional engineering expenses that have accumulated due to the time extension and changes in the project.

Funding also needs to be increased for two NCDOT Non-Betterment Projects totaling $147,630. The Utility Agreements for Sweeten Creek Phase I and Pisgah Highway Phase I included construction estimates that were lower than actual costs. The invoice from NCDOT for Sweeten Creek Phase I is $69,125 more than NCDOT's construction estimate and Pisgah Highway Phase I is $78,505 more.

Funding is available in the Building Safety Project since it has been determined that this project needs to be deleted to provide additional funding for NCDOT Non-Betterment Projects in Fiscal year 2003-2005. There is currently $1 million available and $167,630 of it is being redistributed to the Bee Tree Crossing and the NCDOT Non-Betterment Projects described above. The remaining $832,370 can be used to fund additional NCDOT projects that were initially planned to be funded with a second Revenue Bond Issue in Fiscal Year 2003. The City will not be issuing additional revenue bonds at this time. NCDOT Projects in Fiscal Year 2003 through 2005 total approximately $4 million. If sufficient revenue is not generated to pay for these projects on a pay-as-you-go basis, it will be necessary to set up a payment plan with NCDOT.

Staff recommends approval of the budget amendment to the 29 Fund to reflect the changes identified above.

ORDINANCE BOOK NO. 19 – PAGE 327

H. RESOLUTION CALLING FOR A PUBLIC HEARING ON DECEMBER 18, 2001, TO CLOSE A PORTION OF PORTER STREET FROM POND AVENUE TO ROSSCRAGGON ROAD AND THE 15-FOOT ALLEYWAY FROM PORTER STREET TO LEE STREET

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

I. MOTION APPROVING THE DONATION OF A CHAIR FROM THE COUNCIL CHAMBER AND TWO PIECES OF TERRA COTTA FROM THE CITY HALL ROOF TO THE ASHEVILLE ART MUSEUM FOR THE DOUGLAS ELLINGTON COLLECTION

Summary: The Asheville Art Museum has requested the donation of several items from City Hall for the Douglas Ellington collection.

Over the past several years, the Asheville Art Museum has become a major repository for Douglas Ellington's architectural drawings, correspondence and other materials from the City Hall Building. The museum is trying to preserve and document his work in Asheville as a major figure in the art culture arena. They are working closely with his family to preserve his work and his legacy. The museum is requesting that the City donate a chair from the Council Chamber as well as two pieces of terra cotta from the roof of the City Hall Building. (We have several pieces of terra cotta that they could have.) The City would be placing these objects with the Asheville Art Museum in trust for their Douglas Ellington collection.

Staff recommends that Council approve the donation of a chair from the Council Chamber and two pieces of terra cotta from the City Hall roof to the Asheville Art Museum.

J. RESOLUTION AUTHORIZING EXECUTION OF A PARKING EASEMENT AT 36 GROVE STREET

This item was removed from the Consent Agenda due to a conflict of interest by Vice-Mayor Cloninger.

K. RESOLUTION NO. 01-164 - RESOLUTION FIXING DATE OF PUBLIC HEARING FOR NOVEMBER 27, 2001, ON THE QUESTION OF VOLUNTARY ANNEXATION OF PROPERTY KNOWN AS GARDEN HOMES AT BILTMORE PARK

RESOLUTION BOOK NO. 26 – PAGE 481

L. ORDINANCE NO. 2869 - ORDINANCE CHANGING THE NAME FROM THE ASHEVILLE FILM BOARD TO THE ASHEVILLE FILM COMMISSION

Summary: The consideration of an ordinance changing the name of the Asheville Film Board to Asheville Film Commission.

As Council requested last month, the ordinance changes the name of the "Asheville Film Board" to "Asheville Film Commission" and change "board" to "commission" where it appears in the ordinance. There are no changes to the Board's/Commission's powers or duties in connection with this name change. This name change has no budgetary implications. Some changes were also made to paragraph (b) to remove an apparent redundancy, and to paragraph (d) to make it read more smoothly.

Adoption of the ordinance is recommended.

ORDINANCE BOOK NO. 19 – PAGE 329

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA TO BE VOTED ON SEPARATELY

MOTION SETTING A PUBLIC HEARING ON NOVEMBER 27, 2001, TO CONSIDER THE PROPOSED SALE OF PROPERTY ON BROTHERTON AVENUE TO MORSE PROPERTIES INC. FOR AFFORDABLE HOUSING DEVELOPMENT SITE AND THE AMENDMENT OF THE 2001 ACTION PLAN TO INCREASE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE PROJECT

Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Worley moved to set a public hearing on November 27, 2001, to consider the proposed sale of property on Brotherton Avenue to Morse Properties Inc. for affordable housing development site and the amendment of the 2001 Action Plan to increase Community Development Block Grant funding for the project. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION NO. 01-165 - RESOLUTION CALLING FOR A PUBLIC HEARING ON DECEMBER 18, 2001, TO CLOSE A PORTION OF PORTER STREET FROM POND AVENUE TO ROSSCRAGGON ROAD AND THE 15-FOOT ALLEYWAY FROM PORTER STREET TO LEE STREET

Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Hay moved for the adoption of Resolution No. 01-165. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 483

RESOLUTION NO. 01-166 - RESOLUTION AUTHORIZING EXECUTION OF A PARKING EASEMENT AT 36 GROVE STREET

Councilman Hay moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

Summary: The consideration of a resolution authorizing City to enter into an easement for parking at the Senior Opportunity Center on Grove Street.

Earlier this year, the City agreed to sell certain property located at 36 Grove Street. The property is situated between the building currently occupied by the Employment Security

Commission at 48 Grove Street and the building used by the City for the Senior Opportunity Center (SOC). The property is used for parking for both buildings and has some metered spaces on it. The buyers also own the 48 Grove Street building and intend to expand and renovate it, and acquired the City property for parking and access in connection with this expansion. This conveyance was subject to the City retaining an easement to allow for continued parking at the SOC.

The City has now negotiated that easement, which allows for the City to use the lot for parking for the SOC during non-business hours and on weekends, when it will not interfere with the use by the 48 Grove Street building, but also when its need by the SOC is highest. The easement is personal in nature, and terminates when the City ceases its use of the SOC. The parking spaces right next to the SOC were not part of the property conveyed and will continue to be available for daytime use by staff and visitors.

Adoption of the resolution authorizing the City to execute the easement.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-166. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 484

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND THE COMMUNITY DEVELOPMENT BLOCK GRANT/HOME CONSOLIDATED ACTION PLAN

RESOLUTION NO. 01-167 - RESOLUTION AMENDING THE COMMUNITY DEVELOPMENT BLOCK GRANT/HOME CONSOLIDATED ACTION PLAN

Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 5:07 p.m.

Community Development Charlotte Caplan said that this is consideration of an amendment Community Development Block Grant (CDBG)/HOME Consolidated Plan.

The City's Consolidated Action Plan, approved in May each year, allocates our annual entitlement of CDBG and HOME funds to specific projects. From time to time, amendments are needed to deal with cancelled projects, cost over-runs, new urgent projects, or differences between actual and estimated program income. At this time, staff recommends the following amendments:

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1. **Cancellation of Neighborhood Housing Services' multi-family rehabilitation project.**

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2. Reduction in funding for Rankin Heights project.
The construction of infrastructure for 17 new single family homes on Buttonwood Court in West Asheville was completed in 1999, slightly under budget. $4,469 is available to be re-allocated.

3. Reduction in funding for HOME Administration.
Up to 10% of HOME funds may be set aside for the planning and administration of the program. The City of Asheville and the other Member Governments of the Regional Housing Consortium have consistently used only 6%-7% for this purpose. The Board recommends reducing the administrative allocation for 2001 by $43,000 and allocating that amount to projects instead.

4. New HOME loan to Mountain Housing Opportunities to acquire land in Woodfin ($118,169)
Mountain Housing Opportunities plans to acquire a 9-acre site on Reynolds Mountain Blvd, off Weaverville Highway in Woodfin, for the construction of 70 affordable family apartments to be called Northpoint Commons. MHO currently holds an option on the site which is about to expire. It proposes to use HOME funds and private financing to acquire the site for a total price of $405,000. MHO intends to apply for Low Income Housing Tax Credits in the 2002 round and start construction in fall 2002.

5. Cancellation of Probart Hills Subdivision Project in Brevard and Reallocation of unexpended funds to scattered site development.
Transylvania Housing Development Corporation was allocated a total of $233,889 in HOME funds in 1998 and 2000 to acquire land and develop a new S/F subdivision in Brevard. The agency was unable to obtain other funding needed for the development and now plans to sell the land and reimburse the HOME Investment Fund the $128,609 already expended on the project. The Agency and the City of Brevard have requested that the remaining $105,280 be re-allocated to assist the construction of three single family homes on scattered sites in Brevard. A public hearing will be held on this project in Brevard.

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2. Revised Certification on Low- and Moderate-Income Benefit.
HUD rules require not less than 70% of CDBG funds to be used for activities that directly benefit residents with income less than 80% of area median. This threshold may be met annually, or by averaging over three years. The City usually spends over 95% of its CDBG funds on such activities annually. However, we expect that expenditure on the revitalization of South Pack Square, which primarily addresses slum and blight, will cause the City to fall short of this threshold next year. Staff recommends revising the City's certification to HUD to specify the three-year period for meeting the threshold.

City staff recommends approval of the amendments.

Ms. Caplan responded to Councilman Peterson's questions regarding the three-year period for meeting the threshold with regard to the City's certification to HUD.

Mayor Sitnick closed the public hearing at 5:31 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 01-167. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 485

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

At the request of City Attorney Oast, Vice-Mayor Cloninger moved to defer the following Board appointments until the next worksession in order to give the City Attorney time to research an issue that has arisen regarding potential appointments made by the present City Council. Said board appointments include the (1) ABC Board; (2) Sustainable Economic Development Strategic Plan Implementation Task Force; (3) Fair Housing Commission; (4) Firemen's Relief Fund; (5) Greenway Commission; (6) MSD Board; (7) Public Art Board; (8) Transit Commission; and (9) Tree Commission. This motion was seconded by Councilwoman Bellamy and carried unanimously.

VI. OTHER BUSINESS:

OUTSIDE MAGAZINE

Mayor Sitnick announced that Asheville is one of the top ten favorite "outdoor towns" of Outside Magazine.

SPONSORSHIPS AVAILABLE FOR BUS SHELTERS AND BENCHES

Mayor Sitnick announced that if anyone is interested in sponsoring a bus shelter and/or bus bench to contact Transit Services Director Bruce Black.

STATE OF THE CITY ADDRESS

Mayor Sitnick announced that the State of the City Address, which is a four year compilation of accomplishments and challenges, is available in the City Clerk's Office.

CLAIMS

The following claims were received by the City of Asheville during the period of October 12-25, 2001: Lula Mayes (Water), Beverly Workman (Parks & Recreation), Seth Allcorn (Water), Anna Arevalo (Sanitation), Paul Fleischer (Water), Melanie Grooms (Sanitation), BellSouth (Water), Laurie McKenzie (Sanitation), Michelle Stymacks (Streets) and James Conner (Sanitation).

The following claims were received by the City during the period of October 26-November 1, 2001: Mary Dowdle (Fire), Allen Yowell (Water), Sandra Webb (Police), Shawn Stirewalt (Transit Services), Don McCurry (Water) and Civic Center.

The following claims were received by the City during the period of November 2-9, 2001: David Gullyes (Streets), Mary Alice Nard (Water), Stephanie Miller (Streets), Dane Gumbinger (Streets), Jonathan H. Dorsey (Transit Services), and Steve Hughes (Civic Center.)

These claims have been referred to Asheville Claims Corporation for investigation.

LAWSUIT

The City filled a Complaint on October 30, 2001, against David Hamilton regarding violation of Section 10-31 of the Code of Ordinances regulating abandoned or junked motor vehicles. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

COMMENTS BY FRED ENGLISH

Mr. Fred English explained why he felt why race car drivers Bob Presley, Robert Presley and Jack Ingram should be given special recognition by the City of Asheville. He also questioned Asheville's enforcement of the vagrancy laws in the downtown area.

COMMENTS BY WALTER PLAUE

Mr. Walter Plaue asked City Council for suggestions on how to work with the School Board on enforcement of the truancy program which would address the high drop-out rate in our area.

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COMMENTS BY HAZEL FOBES

Ms. Hazel Fobes urged City Council to write and call our legislators to enact the Clean Smokestack Act.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:01 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

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Tuesday – November 20, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr. (excused from meeting at 3:45 p.m.); Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Lease for Rock House

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease agreement with the Preservation Society of Asheville and Buncombe County for the use of the Rock House at Grove Park.

For several months, the Parks and Recreation Department has been working with the Preservation Society for the renovation and use of the Rock House at Grove Park on Charlotte Street. The Rock House was the original office building for E. W. Grove. This facility has been vacant for at least 10 years and has continued to deteriorate from lack of upkeep. The Preservation Society wishes to move their offices to the Rock House. This agreement calls for the Preservation Society to make all necessary renovations and improvements to the facility in order to obtain a Certificate of Occupancy. The rent will be deferred for a period of time in an effort to recoup their costs for this renovation. This lease will allow for the building to be brought back into a state of repair and will allow for a tenant in the facility that will continue to maintain the facility. The City of Asheville will not have any costs associated with this renovation and will maintain ownership of the facility. This agreement will greatly benefit both the Preservation Society and the City of Asheville.

The Parks and Recreation Department recommends that City Council authorize the City Manager to enter into a lease agreement with the Preservation Society of Asheville and Buncombe County for the use of the Rock House at Grove Park.

Parks & Recreation Director Irby Brinson responded to questions from Councilwoman Bellamy as they related to some of the concerns expressed by the neighbors with regard to the hours the building would be open.

Agreement with Lewis' for Funding of Soccer Fields at Azalea Road Park

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement amongst the Western North Carolina Soccer Foundation, Ben and Becky Lewis, and the City of Asheville for funding for the John B. Lewis Soccer Complex at Azalea Road.

Ben and Becky Lewis have donated $350,000 to the Western North Carolina Soccer Foundation for construction of a soccer complex at Azalea Road in memory of their son, John, and avid soccer player, who tragically lost his life in a car accident several years ago. The Western North Carolina Soccer Foundation, in turn, will make grant payments to the City of Asheville in the amount of $35,000 per year over a ten-year period to support construction of the soccer complex.

In order to begin construction within the next year, the City will need funding in advance of the $35,000 annual payments from the Soccer Foundation. To provide the necessary advance funding, staff plans to request from an appropriation of $350,000 from Council in the upcoming budget process. This amount will be reimbursed over a ten-year period as the Western North Carolina Soccer Foundation makes the annual grant payments to the City.

The agreement will allow the City, through communication with the Soccer Foundation, the right to use the soccer complex for other uses. We anticipate this funding will assist in securing additional funds in the future from both grants and corporate sponsorships.

The Parks and Recreation Department requests City Council to authorize the City Manager to enter into an agreement with Western North Carolina Soccer Foundation and Ben and Becky Lewis for $350,000 for the construction of the John B. Lewis Soccer Complex.

Parks & Recreation Director Irby Brinson answered various questions from Councilman Peterson and Councilwoman Bellamy regarding how this affects the budget process, if the fields will be available for public use, and how this fits in with other priorities.

License Agreement Amendment for US Cellular at White Fawn

Summary: The consideration of a resolution authorizing City Manager to execute Amendment #2 to the lease with North Carolina RSA #4, Inc. for tower and ground space at 36 Reservoir Road

The property at 36 Reservoir Road is the site of the former White Fawn Reservoir. In recent years the site was used as a beneficial fill site for the City of Asheville. Currently, three telecommunication towers are located on the property and the City leases antenna space on two of the towers and ground space for related equipment for a total of eight tenants. One tower is not in use. The property is the proposed future site of the "Sister Cities Park."

North Carolina RSA #4, Inc. (formerly U.S. Cellular "USC") has leased tower and ground space at the site since 1987. The site is the location of USC's primary mobile telephone switching office (MTSO) for Western North Carolina. Due to service demand, USC has requested an amendment to its lease in order to expand the MTSO facility and provide better all-weather access to the site. The proposed lease amendment will enable USC to expand the MTSO facility and separate the tower access from the proposed park access.

The lease currently is in a rent credit stage amortizing an original construction cost of $76,500. Over $20,000 construction cost remains to be credited at $400 per month. Under the current lease terms, beginning in 2006 when the construction cost is fully credited, building rent in the amount of $550 per month would begin making a total rent of $950 per month payable until 2017. The present value of the current lease is approximately $67,262. Under the proposed amendment both the rent credit and the building rent would be eliminated and a total monthly rent of $1,500 would begin no later than January 1, 2002. The rent would be adjusted annually based on the Consumer Price Index. The term of the lease would remain unchanged. The present value of the proposed amendment is approximately $228,507.

In addition to the above, USC will construct a separate access at a cost of approximately $50,000 and remove the abandoned tower and equipment shed on the site. The appearance of the building will be upgraded along with the expansion and buffer planting will be added.

Planning Department staff recommends adoption of the resolution.

Grove Arcade Sidewalk and Bulb-Out Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Weaver Cooke Construction, LLC, to construct sidewalks and bulb-outs located along Battle Square, Battery Park Avenue, Page Avenue, and O.Henry Avenue adjacent to the Grove Arcade in Asheville, N.C.

The City is in need of a contractor to provide sidewalk and bulb-out construction services for sidewalks and bulb-outs along Battle Square, Battery Park Avenue, Page Avenue, and O.Henry Avenue adjacent to the Grove Arcade. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for sidewalk and bulb-out construction services were solicited and five responses were received, with two qualified bids received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Weaver Cooke Construction, LLC	0%	Yes	No	$ 71,000.00
Candler Concrete Works Inc.	0%	Yes	No	$136,868.60

Funding for this project has been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Weaver Cooke Construction LLC to construct sidewalks and bulb-outs along Battle Square, Battery Park Avenue, Page Avenue, and O.Henry Avenue adjacent to the Grove Arcade.

Cost Sharing Agreement with Mountain Housing Opportunities

Summary: The consideration of a resolution authorizing a cost sharing agreement between the City of Asheville and Mountain Housing Opportunities (MHO) to resurface and construct sidewalks located along Hilliard Avenue in Asheville, North Carolina.

In conjunction with the West End-Clingman Avenue Neighborhood (WE-CAN project, Mountain Housing Opportunities will resurface and install sidewalks along a portion of Hilliard Avenue. The City had previously identified Hilliard Avenue as a potential resurfacing project. The City and MHO wish to enter into an agreement for MHO to extend the limits of its project to resurface and install sidewalks along the entire length of West Hilliard Avenue. MHO will comply with all bidding laws as required of the City, specifically with N.C. Gen. Stat. sec. 143-129.

Funding for this project has been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into agreement with Mountain Housing Opportunities to resurface and construct sidewalks along West Hilliard Avenue.

Parking Citations Management Agreement

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Complus Data Innovations, Inc. for parking citations management services.

In April 1992 the City entered into an agreement with Complus Data Innovation, Inc. for parking citation management services. The agreement was for a period of three years with two additional automatic one year extensions. In June 1997 the original agreement was extended for two years with an option for two additional one-year extensions – through 2001. Complus provides the City with data automation equipment (handheld ticket writing devices, bar code reader, desktop computer with parking citation management software and modem), communications links with Complus' nationwide citation management system, nationwide research of vehicle owners and addresses and mailing of delinquent citation notices. In exchange for these services, the City reimburses Complus a percentage of the revenue received from citations issued through the Complus system (14.5% for tickets issued to North Carolina registered vehicles and 20% for out of state vehicles). Complus' equipment and delinquent citation follow-up services have been instrumental in improving the City's parking citation collection rates and increasing associated revenues.

The proposed new agreement is for a period of three years with an automatic option for one additional three year period unless either party gives sixty days notice of their intent not to enter into the option. Reimbursements to Complus in Fiscal Year '01-'02 are included in the Finance Department Collections Division Contracted Services budget.

City Council approve the proposed resolution which authorizes the City Manager to execute the agreement.

Olympic Torch Run Relay Agreement

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Salt Lake Organizing Committee (SLOC) to provide services for the Olympic Torch Relay in Asheville on December 5, 2001.

The SLOC for the Olympic Winter Games of 2002 approached the Mayor and City Manager and requested the City of Asheville's participation in the Olympic Torch Relay.

The Olympic Torch Relay is scheduled to come through Asheville on Wednesday, December 5, 2001, arriving at approximately 10:30 a.m. and departing at approximately 12:30 p.m. The Relay will begin in South Asheville on Hendersonville Road and depart from I-240. At approximately 12:15 p.m., the Relay will take an official break in downtown Asheville in City-County Plaza. Consultation with the Police Department for security and traffic procedures has been performed.

A Task Force was formed through the Parks and Recreation Department to coordinate this effort. Representatives from the City, the United Way of Asheville and Buncombe County, the Volunteer Center, Buncombe County Recreation Services, the Community Foundation of WNC, Henderson County, the Asheville Track Club, Asheville High School, and the Mayor's Committee on the Disabled serve on this Task Force.

The Parks and Recreation Department recommends the City of Asheville to enter into an agreement with the Salt Lake Organizing Committee for the Olympic Torch Relay for the Olympic Winter Games of 2002.

Budget Amendment regarding Outside Professional Fees

Summary: The consideration of an amendment to the Fiscal Year 2001-2002 Budget Ordinance to provide for legal and professional services.

The budget for fiscal year 2001-2002 provided $30,000 for legal services and $1,000 for other professional services in the City Attorney's Office. Due primarily to costs associated with the defense of the challenges to the annexation ordinances adopted by the City in 2000, these line items are nearly depleted.

Two more legal challenges to the 2000 annexations will be tried during the current fiscal year. Additionally, there will be other matters arising during the remainder of the fiscal year for which outside counsel and professional services are required or are typically used.

We estimate that an additional $40,000 will be needed for outside counsel to assist in our defense of annexation challenges and other matters and $10,000 will be needed for the other professional services. A proposed ordinance making a $50,000 appropriation from fund balance to cover these additional legal expenses has been prepared.

Adoption of the ordinance is recommended.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

BOARD APPOINTMENTS

Councilwoman Bellamy moved to waive the rules and take action on the following four board appointments at this meeting. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION NO. 01-168 - RESOLUTION APPOINTING A MEMBER TO THE ABC BOARD

Vice-Mayor Cloninger said that this is the consideration of appointing a member to the Alcoholic Beverage Control Board.

The term of Gene Ellison, as a member on the ABC Board, expired on November 13, 2001.

Councilman Worley moved to excuse Councilwoman Field from participating in this item. This motion was seconded by Councilman Hay and carried unanimously.

Councilwoman Bellamy moved to appoint Barbara Field to serve a three year term, term to begin December 5, 2001, and expire November 13, 2004, or until her successor has been appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 1

RESOLUTION NO. 01-169 - RESOLUTION APPOINTING A MEMBER TO THE AIRPORT AUTHORITY

Vice-Mayor Cloninger said that this is the consideration of appointing a member to the Asheville Regional Airport Authority.

Mr. William Moore has resigned from the Asheville Regional Airport Authority, thus leaving an unexpired term until June 30, 2002.

On November 13, 2001, City Council interviewed Rod Whiteside, Edison Seel, George Keller, John Mills, Rhett Grotzinger and Barbara Shagan-Dave.

Mr. Rhett Grotzinger received seven votes, therefore, Mr. Grotzinger was appointed to serve the unexpired term of William Moore, term to expire June 30, 2002, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 2

RESOLUTION NO. 01-170 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE

Vice-Mayor Cloninger said that there currently exists four vacancies on the Sustainable Economic Development Strategic Plan Implementation Task Force: Ben Slosman, David Brown, Theo Pritchett and Brenda Webster. Said terms will expire June 30, 2003.

The Task Force has presented City Council with the following list of people who have been contacted and who have confirmed their willingness to serve, if asked: Paula O'Hara (New South Business Ventures); Marvin Slosman (Slosman Development); Oscar Wong (Highland Brewing); Gene Bell (Housing Authority); Tom Hallmark (Asheville Merchants Association); David Phillips (Carolina Power & Light Company); Brady Blackburn; Mike Greene (Wick and Greene); Valerie Dennis (Anaya Gallery); and Barbara Field.

Councilwoman Barbara Field asked that her name be removed from consideration due to her recent appointment to the ABC Board.

David Phillips received 6 votes; Gene Bell received 6 votes; Marvin Slosman received 4 votes; Paula O'Hara received 3 votes; Tom Hallmark received 2 votes; Valerie Dennis received 2 votes; Brady Blackburn received 2 votes; Mike Greene received 2 votes; and Oscar Wong received 1 vote. Therefore, Paula O'Hara, Marvin Slosman, Gene Bell and David Phillips are hereby appointed until June 30, 2003, or until their successors have been appointed.

After Councilwoman Bellamy pointed out that there is no African American female on this Task Force and that Valerie Dennis would fill that spot, City Clerk Burleson noted that there is still a vacancy on this Task Force as Council set the Task Force up to a maximum of 19 members. Councilwoman Field also pointed out that it would be good to have the Chairman of the MSD Board (Brady Blackburn) as a member on the Task Force.

Councilwoman Bellamy moved to appoint Valerie Dennis as a member to the Sustainable Economic Development Implementation Plan Task Force to serve until June 30, 2003, or until her successor has been appointed. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Councilwoman Field voting "no".

RESOLUTION BOOK NO. 27 – PAGE 3

RESOLUTION NO. 01-171 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Cloninger said that this is the consideration of appointing members to the Asheville Film Commission.

The terms of Vice-Mayor Chuck Cloninger, Gayle Wurthner, Lee Nesbitt, Andrea Dray, Kathleen Bobak, Guy Chancey, Diana Bilbrey, and David Quinn, as members on the Asheville Film Commission, expired on November 1, 2001. In addition, Sarah Blankenship has resigned her position, thus leaving an unexpired term until November 1, 2003.

At their November meeting, the Asheville Film Commission recommended City Council (1) reappoint Gayle Wurthner, Lee Nesbitt, Andrea Dray, Kathleen Bobak, and Guy Chancey to each serve a three year term, terms to expire November 1, 2004; and (2) appoint Councilwoman Terry Bellamy to serve a three year term, term to expire November 1, 2004, or whenever her term of City Council ends.

In addition, the Commission requested City Council readvertise for the other three positions currently left vacant by the resignations of David Quinn, Diana Bilbrey and Sarah Blankenship. The Commission members were not comfortable making recommendations from the applications received from City residents. The Film Commission members will actively recruit for qualified candidates.

Mayor Sitnick moved to (1) reappoint Gayle Wurthner, Lee Nesbitt, Andrea Dray, Kathleen Bobak, and Guy Chancey to each serve a three year term, terms to expire November 1, 2004; and (2) appoint Councilwoman Terry Bellamy to serve a three year term, term to expire November 1, 2004,or until her term on City Council ends. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 4

BOARD VACANCIES THAT EXPIRE ON OR AFTER 12/31/01

City Attorney Oast explained that the City Council in office at the time the vacancies occur hold the power to fill those vacancies. Therefore, it was the consensus of City Council to defer action on the following boards/commissions that will have vacancies that expire on or after 12/31/01 to the new Council: Board of Adjustment, Community Relations Council, Fair Housing Commission, Firemen's Relief Fund, Greenway Commission, Metropolitan Sewerage District Board of Directors, Public Art Board, Transit Commission and Tree Commission.

At 3:45 p.m., Councilman Worley moved to excuse Councilman Hay from the meeting. This motion was seconded by Councilwoman Bellamy and carried unanimously.

AZALEA ROAD BENEFICIAL FILL REPORT

Public Works Director Mark Combs said that in June City Council directed staff to investigate practicable sites for the long term disposal of beneficial fill materials.

The Public Works and Water Departments dispose of approximately 11,000 tons of old concrete, asphalt and dirt each year. In February the City's White Fawn Reservoir fill site reached maximum capacity, which necessitated disposal at the Buncombe County landfill.

In October of 1997 staff instituted a site selection team for the purpose of finding a new disposal/fill site. In June of 1998 staff selected a site on Azalea Road and started negotiations with the property owner. After numerous public hearings, a citizen/staff task force developed a request for proposal (RFP) to conduct a feasibility study of this site. In January 2001, Woolpert LLC (Engineering Firm who conducted feasibility study) presented their report to City Council and advised further development and subsequent operations.

On May 15, 2001, staff requested and received a $75,000 appropriation to pay for anticipated tip fees due to the closing of White Fawn. Through October, 19, 2001, the City has paid tip fees of $234,329.28. In the same meeting Council directed staff to conduct a thorough investigation into all potential sites and report their findings when completed.

In the current fiscal year (4 months), Public Works spent $52,341 for tip fees, which is $22,341 more than the $30,000 originally budgeted. Staff had anticipated the final site selection would be completed by the second quarter.

Mr. Combs then explained that a beneficial fill is defined as including only used asphalt and inert debris such as concrete, brick, concrete block, uncontaminated soil, rock and gravel. No permit is required so long as (1) fill activity involves no excavation; and (2) the purpose is to improve land use potential.

A letter received on June 15, 2001, from Mr. Dan LaMontagne, Head of the State's Superfund, stated that "no hazardous substances can be associated with the Azalea Road landfill and no release of hazardous substances from the landfill have been documented …"

Mr. Richard Grant, Solid Waste Manager, explained that the following sites were investigated: Azalea Road, Bartlett Street (Murray Hill), Beaverdam Baptist Church, Buncombe County Landfill, Burney Mountain Road Fairview, Gaston Street, Hawthorne Drive (Beverly Hills), Houston Street and Courtland Avenue (Montford), Memorial Stadium property, Moore Street (Sycamore Hollow), and Richmond Hill Drive (Richmond Hill). Locations evaluated included: Azalea Road, Buncombe County Landfill, Burney Mountain Road (Fairview), Houston Street and Courtland Avenue (Montford), Memorial Stadium property, Moore Street (Sycamore Hollow) and Richmond Hill Drive (Richmond Hill).

Mr. Grant explained the estimated yearly tonnage from the Street Division and from the Water Resources Department. He then went into detail on each one of the site locations mentioned above outlining the tangible costs (with and without recycling) which included: mileage costs, labor costs (transportation), operational costs, site costs, land costs and tip fees.

Mr. Grant then explained the site evaluation criteria used for the seven locations which included cost, capacity, homes in 500-foot buffer, and homes on route.

Mr. Combs explained that as a result of this detailed investigation, City staff recommends the Azalea Road site. It is City-owned property, has 20 + years life, has the least neighborhood impact, the feasibility study and operations plan have been completed, and it can be integrated with the Parks & Recreation Master Plan.

Mr. Combs and Mr. Grant answered various questions from Council, some being, but are not limited to: how does recycling come into play regarding the life of the particular sites; how many years will be added to the life of the site with recycling; what were the reasons why smaller sites where not investigated; what is the value of some of the smaller sites vs. what their value would be if they were filled in and built on; what is involved with building on sites once they are filled; and how was the viewshed factored into the criteria.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BROTHERTON SITE DEVELOPMENT CONTRACT

Community Development Director Charlotte Caplan said that this is the consideration of (1) the sale and development of the City-owned site on Brotherton Avenue; and (2) amendment of the City's 2001-02 Consolidated Action Plan to allocate program income from the sale of the site to site development

The City has allocated a total of $370,000 in Community Development Block Grant (CDBG) funds for the purchase and improvement of a 7.3 acre site at the intersection of Virginia and Brotherton Avenues, with the intention of developing it for affordable homeownership on the "cohousing" model. A cohousing development is characterized by:

- Resident involvement in the design process;
- Physical design that deliberately encourages a sense of community;
- Extensive common facilities, including a common house;
- Complete resident management when the development is complete.

An excellent example is the Westwood cohousing community on Vermont Place, about a mile to the west..

In September 2000, the City purchased the site from the Housing Authority for $120,000. In March 2001 the City issued a Request for Proposals (RFP) for a developer. Two proposals were received, but only one was fully responsive to the terms of the RFP. This proposal from Morse Properties, Inc. is for a mixed-income development of 38 homes, 26 of which would be subsidized to be affordable to families with incomes less than 80% of area median. The Housing and Community Development Committee has reviewed the proposal and recommends acceptance.

To comply with CDBG regulations, the $250,000 in CDBG funds already allocated for site improvements must be expended while the property is in public ownership. Additionally, to comply with State law, the property must be sold to the developer at not less than the current appraised value of $147,000. Staff therefore recommend the following steps for approval by Council at this time:

1. Entering into a contract for sale of the site to Morse Properties, subject to City approval of the final design for the development (including all necessary planning and technical approvals) and satisfactory completion of site improvements;
2. Amendment of the 2001-02 Action Plan to recognize the anticipated receipt of the sales proceeds and allocation of the same amount to site development.
3. Entering into a CDBG funding agreement with Morse Properties for a total of $397,000 CDBG subsidy for site improvements, to be passed on as subsidy to the 26 income-eligible homebuyers.

Steps 1 and 2 require a public hearing. As soon as these steps are implemented, the developer will develop a final site design which we expect will be submitted for approval as a Planned Unit Development early next year. Consultation with neighborhood residents will be an important part of this process.

Staff and the Housing and Community Development Committee recommend approval of the resolution for the sale of the property, the funding agreement, the amendment of the Action Plan, and a budget amendment regarding the increase in the CDBG budget to recognize receipt of program income from sale of land and allocation of sale proceeds to the Brotherton Avenue development project.

Ms. Caplan responded to several questions from Councilman Peterson regarding the infrastructure in the area.

Upon inquiry of Councilwoman Bellamy, Mr. Morse said that the estimated cost of the entire project is approximately $4.2 Million with infrastructure improvements totaling approximately $440,000.

Councilwoman Bellamy was concerned that the co-housing will not be filled by local residents.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

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AMENDMENT TO ASHEVILLE SMOKE CONTRACT

Civic Center David Pisha said that this is the consideration of a resolution authorizing the City Manager to enter into an amended lease agreement with Asheville Professional Hockey, Ltd., for the use of the Civic Center.

For several months, the Civic Center Department has been working with the Asheville Smoke Hockey to amend the lease for use of the Civic Center for their games. The purpose of these discussions was to simplify the lease for both parties. At the same time, the Civic Center wanted to ensure a greater rent payment through all levels of attendance. As negotiated, the primary changes in the agreement are essentially the terms that would automatically go into effect in the option years (years 6 and 7) of the contract with the following exceptions: (a) The rent per game is $250.00 higher than in the option years. Depending on attendance, this could be as much as $1,000 higher than is currently charged per game; (b) the City agrees to assume the payments on the ice rink cover for the remaining three years; (c) no further rink reimbursement would be required of the team.

The changes are as follows:

- A flat rent per game of $1,750. This replaces a floating rent that can vary between $750 per game up to $1,500 per game based on attendance.
- The City will assume the remaining payments on the ice rink cover.
- The City will cease collecting any ice rink reimbursement fees.
- The City will share concession revenues with the team after the first $200,000 in sales. After deducting taxes and food costs the team would receive 10% of the resulting net.

Mr. Pisha responded to several questions from Councilman Peterson regarding the projected financial results of these changes.

The Civic Center Department recommends that City Council authorize the City Manager to enter into an amended lease agreement with the Asheville Professional Hockey.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:29 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – November 27, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 27, 2001, AS "CITY PLANNING DAY"

Mayor Sitnick read the proclamation proclaiming November 27, 2001, as "City Planning Day" in the City of Asheville. She presented the proclamation to Mr. Jan Davis, Chairman of the Planning & Zoning Commission, who thanked City Council on their excellent staff and initiatives of smart growth.

B. PROCLAMATION PROCLAIMING DECEMBER 1, 2001, AS "WORLD AIDS DAY"

Mayor Sitnick read the proclamation proclaiming December 1, 2001, as "World AIDS Day" in the City of Asheville. She presented the proclamation to Ms. Amy Pruett who briefed City Council on some activities taking place during that day.

C. RESOLUTION OF APPRECIATION TO INDIVIDUALS FOR THEIR WORK REGARDING THE REVITALIZATION OF DOWNTOWN ASHEVILLE

Mayor Sitnick said that as a result of the death of Mr. Julian Price, this resolution will be postponed.

II. CONSENT:

Councilwoman Bellamy asked that Consent Agenda Item "F" be removed from the Consent Agenda due to her conflict of interest.

Mayor Sitnick asked that Consent Agenda Item "K" be removed from the Consent Agenda for comments from Mr. Dan Wilhelm, President/Owner of the Asheville Smoke.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 13, 2001, AND THE WORKSESSION HELD ON NOVEMBER 20, 2001

B. RESOLUTION NO. 01-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE PRESERVATION SOCIETY OF ASHEVILLE AND BUNCOMBE COUNTY FOR THE USE OF THE ROCK HOUSE AT GROVE PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease agreement with the Preservation Society of Asheville and Buncombe County for the use of the Rock House at Grove Park.

For several months, the Parks and Recreation Department has been working with the Preservation Society for the renovation and use of the Rock House at Grove Park on Charlotte Street. The Rock House was the original office building for E. W. Grove. This facility has been vacant for at least 10 years and has continued to deteriorate from lack of upkeep. The Preservation Society wishes to move their offices to the Rock House. This agreement calls for the Preservation Society to make all necessary renovations and improvements to the facility in order to obtain a Certificate of Occupancy. The rent will be deferred for a period of time in an effort to recoup their costs for this renovation. This lease will allow for the building to be brought back into a state of repair and will allow for a tenant in the facility that will continue to maintain the facility. The City of Asheville will not have any costs associated with this renovation and will maintain ownership of the facility. This agreement will greatly benefit both the Preservation Society and the City of Asheville.

The Parks and Recreation Department recommends that City Council authorize the City Manager to enter into a lease agreement with the Preservation Society of Asheville and Buncombe County for the use of the Rock House at Grove Park.

RESOLUTION BOOK NO. 27 – PAGE 5

C. RESOLUTION NO. 01-173 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE WESTERN NORTH CAROLINA SOCCER FOUNDATION AND BEN AND BECKY LEWIS FOR $350,000 FOR THE CONSTRUCTION OF THE JOHN B. LEWIS SOCCER COMPLEX AT AZALEA ROAD PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement amongst the Western North Carolina Soccer Foundation, Ben and Becky Lewis, and the City of Asheville for funding for the John B. Lewis Soccer Complex at Azalea Road.

Ben and Becky Lewis have donated $350,000 to the Western North Carolina Soccer Foundation for construction of a soccer complex at Azalea Road in memory of their son, John, and avid soccer player, who tragically lost his life in a car accident several years ago. The Western North Carolina Soccer Foundation, in turn, will make grant payments to the City of Asheville in the amount of $35,000 per year over a ten-year period to support construction of the soccer complex.

In order to begin construction within the next year, the City will need funding in advance of the $35,000 annual payments from the Soccer Foundation. To provide the necessary advance funding, staff plans to request from an appropriation of $350,000 from Council in the upcoming budget process. This amount will be reimbursed over a ten-year period as the Western North Carolina Soccer Foundation makes the annual grant payments to the City.

The agreement will allow the City, through communication with the Soccer Foundation, the right to use the soccer complex for other uses. We anticipate this funding will assist in securing additional funds in the future from both grants and corporate sponsorships.

The Parks and Recreation Department requests City Council to authorize the City Manager to enter into an agreement with Western North Carolina Soccer Foundation and Ben and Becky Lewis for $350,000 for the construction of the John B. Lewis Soccer Complex.

RESOLUTION BOOK NO. 27 – PAGE 6

D. RESOLUTION NO. 01-174 - RESOLUTION AUTHORIZING THE AMENDMENT TO THE LEASE WITH THE NORTH CAROLINA RSA #4 INC. (FORMERLY US CELLULAR) FOR TOWER AND GROUND SPACE AT WHITE FAWN RESERVOIR

Summary: The consideration of a resolution authorizing City Manager to execute Amendment #2 to the lease with North Carolina RSA #4, Inc. for tower and ground space at 36 Reservoir Road

The property at 36 Reservoir Road is the site of the former White Fawn Reservoir. In recent years the site was used as a beneficial fill site for the City of Asheville. Currently, three telecommunication towers are located on the property and the City leases antenna space on two of the towers and ground space for related equipment for a total of eight tenants. One tower is not in use. The property is the proposed future site of the "Sister Cities Park."

North Carolina RSA #4, Inc. (formerly U.S. Cellular "USC") has leased tower and ground space at the site since 1987. The site is the location of USC's primary mobile telephone switching office (MTSO) for Western North Carolina. Due to service demand, USC has requested an amendment to its lease in order to expand the MTSO facility and provide better all-weather access to the site. The proposed lease amendment will enable USC to expand the MTSO facility and separate the tower access from the proposed park access.

The lease currently is in a rent credit stage amortizing an original construction cost of $76,500. Over $20,000 construction cost remains to be credited at $400 per month. Under the current lease terms, beginning in 2006 when the construction cost is fully credited, building rent in the amount of $550 per month would begin making a total rent of $950 per month payable until 2017. The present value of the current lease is approximately $67,262. Under the proposed amendment both the rent credit and the building rent would be eliminated and a total monthly rent of $1,500 would begin no later than January 1, 2002. The rent would be adjusted annually based on the Consumer Price Index. The term of the lease would remain unchanged. The present value of the proposed amendment is approximately $228,507.

In addition to the above, USC will construct a separate access at a cost of approximately $50,000 and remove the abandoned tower and equipment shed on the site. The appearance of the building will be upgraded along with the expansion and buffer planting will be added.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 7

E. RESOLUTION NO. 01-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WEAVER COOKE CONSTRUCTION LLC TO CONSTRUCT SIDEWALKS AND BULB-OUTS ALONG BATTLE SQUARE, BATTERY PARK AVENUE, PAGE AVENUE, AND O.HENRY AVENUE ADJACENT TO THE GROVE ARCADE

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Weaver Cooke Construction, LLC, to construct sidewalks and bulb-outs located along Battle Square, Battery Park Avenue, Page Avenue, and O.Henry Avenue adjacent to the Grove Arcade in Asheville, N.C.

The City is in need of a contractor to provide sidewalk and bulb-out construction services for sidewalks and bulb-outs along Battle Square, Battery Park Avenue, Page Avenue, and O.Henry Avenue adjacent to the Grove Arcade. In accordance with N.C. Gen. Stat. sec. 143-

131, informal bids for sidewalk and bulb-out construction services were solicited and five responses were received, with two qualified bids received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Weaver Cooke Construction, LLC	0%	Yes	No	$ 71,000.00
Candler Concrete Works Inc.	0%	Yes	No	$136,868.60

Funding for this project has been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Weaver Cooke Construction LLC to construct sidewalks and bulb-outs along Battle Square, Battery Park Avenue, Page Avenue, and O.Henry Avenue adjacent to the Grove Arcade.

RESOLUTION BOOK NO. 27 – PAGE 8

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COST-SHARING AGREEMENT WITH MOUNTAIN HOUSING OPPORTUNITIES FOR RESURFACING HILLIARD AVENUE

This item was removed from the Consent Agenda due to a conflict of interest by Councilwoman Bellamy.

G. RESOLUTION NO. 01-176 - RESOLUTION FIXING DATE OF PUBLIC HEARING FOR DECEMBER 28, 2001, ON THE QUESTION OF VOLUNTARY ANNEXATION OF PROPERTY KNOWN AS OLMSTED, SECTION 2, OF BILTMORE PARK

RESOLUTION BOOK NO. 27 – PAGE 9

H. RESOLUTION NO. 01-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH COMPLUS DATA INNOVATIONS INC. FOR PARKING CITATIONS MANAGEMENT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Complus Data Innovations, Inc. for parking citations management services.

In April 1992 the City entered into an agreement with Complus Data Innovation, Inc. for parking citation management services. The agreement was for a period of three years with two additional automatic one year extensions. In June 1997 the original agreement was extended for two years with an option for two additional one-year extensions – through 2001. Complus provides the City with data automation equipment (handheld ticket writing devices, bar code reader, desktop computer with parking citation management software and modem), communications links with Complus' nationwide citation management system, nationwide research of vehicle owners and addresses and mailing of delinquent citation notices. In exchange for these services, the City reimburses Complus a percentage of the revenue received from citations issued through the Complus system (14.5% for tickets issued to North Carolina registered vehicles and 20% for out of state vehicles). Complus' equipment and delinquent citation follow-up services have been instrumental in improving the City's parking citation collection rates and increasing associated revenues.

The proposed new agreement is for a period of three years with an automatic option for one additional three year period unless either party gives sixty days notice of their intent not to enter into the option. Reimbursements to Complus in Fiscal Year '01-'02 are included in the Finance Department Collections Division Contracted Services budget.

City Council approve the proposed resolution which authorizes the City Manager to execute the agreement.

RESOLUTION BOOK NO. 27 – PAGE 12

I. RESOLUTION NO. 01-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE SALT LAKE ORGANIZING COMMITTEE TO PROVIDE SERVICES FOR THE OLYMPIC TORCH RELAY IN ASHEVILLE ON DECEMBER 5, 2001

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Salt Lake Organizing Committee (SLOC) to provide services for the Olympic Torch Relay in Asheville on December 5, 2001.

The SLOC for the Olympic Winter Games of 2002 approached the Mayor and City Manager and requested the City of Asheville's participation in the Olympic Torch Relay.

The Olympic Torch Relay is scheduled to come through Asheville on Wednesday, December 5, 2001, arriving at approximately 10:30 a.m. and departing at approximately 12:30 p.m. The Relay will begin in South Asheville on Hendersonville Road and depart from I-240. At approximately 12:15 p.m., the Relay will take an official break in downtown Asheville in City-County Plaza. Consultation with the Police Department for security and traffic procedures has been performed.

A Task Force was formed through the Parks and Recreation Department to coordinate this effort. Representatives from the City, the United Way of Asheville and Buncombe County, the Volunteer Center, Buncombe County Recreation Services, the Community Foundation of WNC, Henderson County, the Asheville Track Club, Asheville High School, and the Mayor's Committee on the Disabled serve on this Task Force.

The Parks and Recreation Department recommends the City of Asheville to enter into an agreement with the Salt Lake Organizing Committee for the Olympic Torch Relay for the Olympic Winter Games of 2002.

RESOLUTION BOOK NO. 27 – PAGE 13

J. ORDINANCE NO. 2870 - BUDGET AMENDMENT TO PROVIDE LEGAL AND PROFESSIONAL FEES

Summary: The consideration of an amendment to the Fiscal Year 2001-2002 Budget Ordinance to provide for legal and professional services.

The budget for fiscal year 2001-2002 provided $30,000 for legal services and $1,000 for other professional services in the City Attorney's Office. Due primarily to costs associated with the defense of the challenges to the annexation ordinances adopted by the City in 2000, these line items are nearly depleted.

Two more legal challenges to the 2000 annexations will be tried during the current fiscal year. Additionally, there will be other matters arising during the remainder of the fiscal year for which outside counsel and professional services are required or are typically used.

We estimate that an additional $40,000 will be needed for outside counsel to assist in our defense of annexation challenges and other matters and $10,000 will be needed for the other professional services. A proposed ordinance making a $50,000 appropriation from fund balance to cover these additional legal expenses has been prepared.

Adoption of the ordinance is recommended.

ORDINANCE BOOK NO. 19 – PAGE 331

K. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AMENDMENT WITH ASHEVILLE SMOKE PROFESSIONAL HOCKEY, LLC

This item was removed from the Consent Agenda to allow comments from Mr. Dan Wilhelm, President/Owner of the Asheville Smoke.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 01-179- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COST-SHARING AGREEMENT WITH MOUNTAIN HOUSING OPPORTUNITIES FOR RESURFACING HILLIARD AVENUE

Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Summary: The consideration of a resolution authorizing a cost sharing agreement between the City of Asheville and Mountain Housing Opportunities (MHO) to resurface and construct sidewalks located along Hilliard Avenue in Asheville, North Carolina.

In conjunction with the West End-Clingman Avenue Neighborhood (WE-CAN project, Mountain Housing Opportunities will resurface and install sidewalks along a portion of Hilliard Avenue. The City had previously identified Hilliard Avenue as a potential resurfacing project. The City and MHO wish to enter into an agreement for MHO to extend the limits of its project to resurface and install sidewalks along the entire length of West Hilliard Avenue. MHO will comply with all bidding laws as required of the City, specifically with N.C. Gen. Stat. sec. 143-129.

Funding for this project has been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into agreement with Mountain Housing Opportunities to resurface and construct sidewalks along West Hilliard Avenue.

Mayor Sitnick said that City Council has previously received a copy of the resolution and it will not be read.

Councilman Worley moved for the adoption of Resolution No. 01-179. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 14

RESOLUTION NO. 01-180 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AMENDMENT WITH ASHEVILLE SMOKE PROFESSIONAL HOCKEY, LLC

Summary: The consideration of a resolution authorizing the City Manager to enter into an amended lease agreement with Asheville Professional Hockey, Ltd., for the use of the Civic Center.

For several months, the Civic Center Department has been working with the Asheville Smoke Hockey to amend the lease for use of the Civic Center for their games. The purpose of these discussions was to simplify the lease for both parties. At the same time, the Civic Center wanted to ensure a greater rent payment through all levels of attendance. As negotiated, the primary changes in the agreement are essentially the terms that would automatically go into effect in the option years (years 6 and 7) of the contract with the following exceptions: (a) The rent per game is $250.00 higher than in the option years. Depending on attendance, this could be as much as $1,000 higher than is currently charged per game; (b) the City agrees to assume the payments on the ice rink cover for the remaining three years; (c) no further rink reimbursement would be required of the team.

The changes are as follows:

- A flat rent per game of $1,750.00. This replaces a floating rent that can vary between $750.00 per game up to $1,500.00 per game based on attendance.
- The City will assume the remaining payments on the ice rink cover.
- The City will cease collecting any ice rink reimbursement fees.
- The City will share concession revenues with the team after the first $200,000.00 in sales. After deducting taxes and food costs the team would receive 10% of the resulting net.

The Civic Center Department recommends that City Council authorize the City Manager to enter into an amended lease agreement with the Asheville Professional Hockey.

Mr. Dan Wilhelm, President/Owner of the Asheville Smoke, spoke in favor of the amended lease agreement.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Hay moved for the adoption of Resolution No. 01-180. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 21

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PROCESS FOR REVIEW OF ANCILLARY USE REQUESTS IN RESIDENTIAL DISTRICTS

ORDINANCE NO. 2871 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PROCESS FOR REVIEW OF ANCILLARY USE REQUESTS IN RESIDENTIAL DISTRICTS

Mayor Sitnick opened the public hearing at 5:22 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise the process for the review of requests for ancillary uses in residential districts. This public hearing was advertised on November 16 and 23, 2001.

The Planning and Zoning Commission is recommending adoption of an amendment to the UDO revising the process for reviewing requests for ancillary uses in residential districts and changing the name of this provision. The change in the review process is proposed in response to concerns regarding the current process voiced by citizens and Council members. This issue was discussed at a Planning and Zoning Commission meeting, with the changes proposed in the ordinance amendment identified by the Commission. The following revisions are proposed by the proposed wording amendment:

- The name of the use will be changed from "Ancillary Non-Residential Uses" to "Ancillary Commercial Uses in Residential Districts"; and
- The Technical Review Committee will have the authority to send, at its discretion, requests that are controversial to the Planning and Zoning Commission for review and recommendation, following a public hearing. The recommendation of the Commission will be forwarded with the request to City Council for final action. Currently all requests are sent directly to the City Council following TRC review.

The name change will clarify the types of uses permitted through this permitting process. By providing provide an opportunity for additional public input on controversial requests, the revised review process will provide time to resolve issues before requests are heard by City Council.

Staff has received no comments in opposition to the proposed revisions.

At their October 3, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

As a result of the November 7, 2001, worksession, the name of the use was changed to "Ancillary Non-Residential Uses in Residential Districts."

Councilman Peterson asked City Attorney Oast if he could make a motion to delete the entire ordinance that allows ancillary non-residential uses in residential districts. City Attorney Oast said that the ordinance before Council is limited in effect by only changing the name and tweaking the procedure. It was his opinion that to delete the entire ordinance is a substantial enough change which would require sending it back through the zoning amendment process. The Planning & Zoning Commission would review and make a recommendation and then it would be sent again to City Council for advertisement and a public hearing. He felt that the appropriate step would be to direct City staff to begin the process to revise the UDO to delete the entire ordinance that allows ancillary non-residential uses in residential districts.

Councilman Peterson then asked if a motion could be made to just delete parking as an ancillary non-residential use allowed in a residential district. City Attorney Oast explained that this would also require sending it back through the zoning amendment process because he felt it is going beyond the scope of what was advertised.

Upon inquiry of Mayor Sitnick, Mr. Green said that if the ancillary use provision is deleted from the ordinance, in order for a commercial entity to have a parking lot in a residential district they would need to have that property rezoned, which is a more intrusive type of procedure.

In response to Councilwoman Field, Mr. Green explained that ancillary non-residential uses in residential districts were introduced to improve the development review process and provide some flexibility in the use of property, especially transition properties between commercial and residential properties, to provide a way to make more effective use of that property without changing the zoning.

Mr. Walter Plaue questioned at what stages would public comments be taken. Mr. Green responded that public comment would be taken at the TRC meeting, Planning & Zoning Commission meeting and City Council meeting, however at the TRC meeting, comment would be limited to the technical requirements.

Mr. Roger James felt this entire issue needs to be revisited in that once a parking lot is built, even though the property is zoned residential, chances are that property will not be used as residential again.

Ms. Jane Mathews felt that once you allow ancillary non-residential uses in residential districts, it's basically zoning without some of the tools, such as protest petitions. The community is very limited in counteracting that impact. She also felt it was bad policy in terms of Council's smart growth agenda to allow parking to encroach into residential areas.

Mr. Scott Riviere felt since a parking lot is a commercial use, they should ask that the property be rezoned to a commercial use.

Mr. Mike Lewis felt that parking as an ancillary non-residential use should not be allowed in a residential district. He felt this ordinance sanctions commercial intrusion into neighborhoods.

Mr. and Mrs. Harry Kirby both spoke about the need to delete parking as an ancillary non-residential use in a residential district.

Mayor Sitnick closed the public hearing at 5:45 p.m.

Councilman Hay said the intent of this ordinance was for it to be a neighborhood friendly tool, but Council's experience has been different.

Councilwoman Field did not support the deletion of the entire ordinance in that landscaping and stormwater detention are also included as ancillary non-residential uses in residential districts. She did not feel those were being intrusive at all in neighborhoods. Since the concerns seem to be about parking, then the parking piece alone should be revisited.

Councilman Worley felt that trying to do away with this tool is short-sighted. He felt the problems will not go away, but you can make the problems worse if you make this tool go away.

He felt it is a valuable tool that Council should retain, but Council may want to look at some of the terms and conditions about how it is applied.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved to adopt Ordinance No. 2871 to (1) change the name of the use to "Ancillary Non-Residential Uses in Residential Districts;" (2) provide an opportunity for additional public input on controversial requests; and (3) delete parking as an ancillary non-residential use allowed in a residential district. This motion was seconded by Vice-Mayor Cloninger and carried on a 5-2 vote, with Councilwoman Field and Councilman Worley voting "no".

Councilman Hay felt this was an opportunity for a proposal to be brought back into the ordinance that does adopt parking in a way that people think is more appropriate.

ORDINANCE BOOK NO. 19 - PAGE 333

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE CERTAIN DEVELOPMENT STANDARDS IN THE CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2872 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE CERTAIN DEVELOPMENT STANDARDS IN THE CENTRAL BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 6:02 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise certain development standards in the Central Business District. This public hearing was advertised on November 16 and 23, 2001.

The Planning and Zoning Commission is recommending adoption of an amendment to the UDO revising certain development standards in the Central Business District (CBD). The proposed revisions address issues that were identified during the process of extending the CBD zoning to areas adjacent to the current CBD. With these revisions, the creation of non-conforming uses will be avoided and continuation of the historic urban development pattern in the CBD will be encouraged. The proposed revisions would make the following changes in the development standards in the CBD:

- Identify automobile sales as a conditional use in the CBD and establish standards for this use. The proposed standards include:
  - Minimum lot size of one acre;
  - In order to maintain an urban streetscape the number of automobiles that can be stored outside an enclosed building shall be limited to not more than 25% of the total offered for sale, or, alternately, the outdoor storage of automobiles for sale shall be screened by buildings occupying at least 75% of the street frontage of the property;
  - Prohibit outdoor storage of autos needing repair or, alternately, require autos needing repair to be screened from all public rights-of-way; and
  - New structures proposed within the Downtown Design Review Area must substantially comply with the Downtown Design Review Guidelines.

- Identify government buildings and uses as conditional uses and establish conditions for these buildings and uses. The proposed conditions include:
  - The proposed location of the building or use will not restrict the availability of key land for private development;
  - No alternative location for the building exists within areas previously developed for government buildings and/or uses; and
  - New structures proposed within the Downtown Design Review Area must substantially comply with the Downtown Design Review Guidelines.
- Clarifies the standard for a zero front setback and provides the Downtown Commission or the Planning and Development Director with the authority to allow greater setbacks if certain conditions are met.

The proposed revisions are designed to strengthen the development pattern in the CBD while providing for some flexibility in the standards for development. The need for the revisions was identified by staff and the Planning and Zoning Commission while listening to comments from the property owners during the discussion of the extension of the CBD boundaries.

Staff has received no comments in opposition to the proposed revisions.

At their October 3, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Upon inquiry of Councilman Peterson, Mr. Green said the definition of a government building is a building where the principle use or occupancy of the building is for governmental purposes.

Mr. Keith Thomson spoke in support of this UDO amendment.

Public hearing closed at 6:11 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 2872. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 339

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER TO BE LOCATED AT 740 TUNNEL ROAD, ASHEVILLE, N.C.

ORDINANCE NO. 2873 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A TELECOMMUNICATIONS TOWER TO BE LOCATED AT 740 TUNNEL ROAD, ASHEVILLE, N.C.

City Attorney Oast reviewed with Council the conditional use permit process. This process is the consideration of granting a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 6:14 p.m.

There was no disclosure by City Council members that they had any special knowledge of this issue that may affect their decision.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 11/27/01 with application packets), and City Exhibit 4 (Consultant's Technical Review Analysis dated October 1, 2001).

Mr. Green said that this is the consideration of a motion to issue a conditional use permit for a telecommunications tower in a Highway Business District to be located at 740 Tunnel Road, Asheville, N.C. (Charlie Aiken Used Car sales lot). This public hearing was advertised on November 16 and 23, 2001.

American Tower Corporation has submitted an application to the City of Asheville for a Conditional Use Permit to allow the construction of a telecommunications facility to be located at 740 Tunnel Road (City Exhibit 5). The property to be leased for the tower location contains 2500 square feet. The facility is proposed to be located at the rear of the Charlie Aiken Used Car sales lot (City Exhibit 6). The original submittal proposed the construction of a 100' tall monopole with the capacity to accommodate three carriers. A solid wood fence will surround this building, with trees buffering the sides facing adjacent properties (City Exhibit 7). A tower of that height would not be required to have lights on it. Due to concerns expressed by neighboring property owners and the City of Asheville regarding the aesthetic impact of the monopole, the applicant has revised their plan. They are now proposing the construction of a 100' tall flagpole. The telecommunications antennae will be concealed within the flagpole to minimize aesthetic impacts. A United States flag was going to be flown at all times, but because the United States flag has to be lighted at night there was fear that the light would disturb the neighborhood. Therefore, they decided to fly the North Carolina flag at all times. In addition to the telecommunications facility, an equipment building will also be located on the property (City Exhibit 8).

As required by the City of Asheville's Telecommunications Facility Ordinance, a balloon test was conducted at the site on June 18, 2001 from 7:00 a.m. until wind forced the balloon down. The purpose of the balloon test was to provide an indication of the visual and aesthetic impact of the proposed facility.

The City of Asheville's Telecommunications Facility Ordinance encourages co-location and the use of existing facilities rather than building new structures. A telecommunications tower is currently located at the NC Highway Patrol division headquarters approximately 1/4 mile from the project site. The applicant considered using this existing tower, but a structural analysis of the tower showed that it could not accommodate additional users. A review of the structural analysis by the City's consultant confirmed this finding. The applicant also investigated the feasibility of constructing a facility at the East Asheville Community Center/Library/ Fire Station. However there is insufficient ground space at that location for a tower and related equipment.

A consultant retained by the City reviewed the application submitted to the City for this telecommunications facility. The consultant found that this area does have insufficient service at this time, that the proposed facility would improve service in the area, and that the proposed location appears to be the best location for the facility. The City's Technical Review Committee at their May 21, 2001, meeting reviewed the application for compliance with the City's technical standards. The applicant has met all TRC conditions. No Traffic Impact Analysis is required for the project, as the only traffic generated by the use will be a monthly maintenance check.

The Conditional Use Permit findings and staff analysis for each finding is:

1. The proposed use of the land will not materially endanger the public health or safety. The radio frequency emissions are regulated by the Federal Communications Commission to protect the health and safety of the general public. The tower is designed to withstand forces of nature much more severe than those common in this area. In addition, a fall zone must be maintained around the tower to reduce the chance of damage to adjacent residential uses.
2. The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the region. The facility will enhance the level of telecommunication service to customers in the area.
3. The proposed use of the land will not substantially injure the value of adjoining or abutting property. Tunnel Road is a commercial corridor with a variety of land uses, none of which will be adversely impacted by the proposed use. The equipment building and other portions of the facility visible to adjacent residential properties will be screened with an 8' tall fence supplemented by vegetation, including hemlocks, white pine, and leyland cypress.
4. The proposed use of the land will be in harmony with the bulk, scale, coverage, density, and character of the area in which it is located. The proposed facility will be in harmony with the commercial character of the area. There is another tower 200' in height approximately ½ mile from the subject site.
5. The use of the land will generally conform with the comprehensive plan and other official plans adopted by the City. Telecommunications facilities are not addressed in any of the City's plans. The zoning district in which the site is located permits telecommunications facilities as a conditional use.
6. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. The plans for the proposed facility were reviewed by the Technical Review Committee, which found that all services and facilities were available to meet the needs of the proposed use.
7. The proposed use will not cause undue traffic congestion or create a traffic hazard. The only traffic to the use will be a service technician who will visit the site approximately once a month.

The request is for a conditional use permit to allow construction of a 100' tall telecommunications tower or flagpole on property located at 740 Tunnel Road. The applicant, American Tower, has complied with all the requirements established by the City of Asheville's Telecommunications Facilities Ordinance. A consultant retained by the City has confirmed that this is an area of poor service, that the proposed facility will result in improved service in the area, and that there are no other existing facilities in the area on which additional equipment could be co-located. The applicant has evaluated alternative sites, including the existing tower at the Highway Patrol station, and found them to be inadequate to meet their needs. The property on which the facility is proposed, the Charlie Aiken Used Car Sales lot, has been the subject on some concern from the neighboring residential property owners. These concerns are related to the use of an outdoor PA system, glare from outdoor lighting, and placement of automobiles near a street intersection making it difficult to see on-coming traffic. Staff is proposing conditions to address these concerns that may be attached to the issuance of a conditional use permit for the telecommunications facility. These recommended conditions are:

- The outdoor PA system be dismantled and not used in the future;
- All outdoor lights be replaced with light fixtures that are full cut-off and shielded so as not to cast light or glare onto residential uses; and
- The area at the intersection of Tunnel Road and Mountain View Road be maintained so as not to create a line of sight problem for traffic exiting Mountain View onto Tunnel Road.

The Asheville Planning and Zoning Commission did not review this request.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends approval with the conditions identified above.

Mr. Green said that City Attorney Oast has advised him that the three conditions recommended by City staff cannot be attached to the conditional use permit. These three concerns are not related to the application before City Council but that they relate to another use on the site. Therefore, Mr. Green said that the only condition recommended to be attached to the conditional use permit is that all antennas must be located (hidden) within the flagpole.

Mr. Don Nielsen, attorney representing American Tower Corporation, spoke in support of the telecommunications tower and showed some pictures of what they are proposing (Applicant Exhibits 1 and 2).

Mr. Dan Zorn, resident on Arco Road, appreciated the work the applicant has put into the design of the flagpole. He did note that the neighbors have a history with the owner of the lot and requested Council's assistance in getting Mr. Aiken to angle his lights in the back down.

Ms. Martha Lane, resident on Mountain View, spoke in support of this flagpole and thanked the developer for working on this compromise.

Mr. Mike Lewis felt that this is a stellar example of how businesses and neighborhoods should get along.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:54 p.m.

Mayor Sitnick thanked Vice-Mayor Cloninger for taking the lead on the telecommunication tower ordinance.

Councilman Peterson questioned if Council could include a condition that the outdoor lights fixtures at the back of the lot immediately adjacent to the telecommunication tower facility be shielded or have full cut-off features. City Attorney Oast felt that condition would be subject to a legal challenge if Council tried to address that concern through the conditional use permit process.

When Councilman Worley asked if Council could include in the motion a request that the property owner take these neighborhood concerns into consideration, City Attorney Oast did not see that as a problem. City Attorney Oast explained that as long as it's clear that failure to address the concerns adequately over matters that can't be controlled by the applicant would not result in revocation of the permit.

At the request of Mayor Sitnick, City Manager Westbrook said that City staff will act on the safety concern regarding the sight distance problem for traffic exiting from Mountain View onto Tunnel Road.

Vice-Mayor Cloninger moved to adopt Ordinance No. 2873 to approve the conditional use permit for a telecommunications tower to be located at 740 Tunnel Road with the condition that all antennas must be located (hidden) within the flagpole. Said motion is to include a request that the property owner take the three neighborhood concerns into consideration. In addition, said motion instructed the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Worley and carried unanimously.

Vice-Mayor Cloninger said this is an example of our new telecommunications tower ordinance working. The ordinance is stringent so as to protect the beauty of our area. He stated that with today's technology, there is no excuse for another conventional telecommunications tower to be erected inside the City limits again. He implored the Planning staff that when these requests come to them in the future that they go the extra mile and put in the extra time to make the companies use stealth technology and alternatives to protect the beauty of our area.

ORDINANCE BOOK NO. 19 – PAGE 343

D. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTIES LOCATED AT THE SOUTHERN SLOPE AREA, AND THE EAST AND WEST OF THE EXISTING CENTRAL BUSINESS DISTRICT FROM REGIONAL BUSINESS DISTRICT, HIGHWAY BUSINESS DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2874 - ORDINANCE TO REZONE PROPERTIES LOCATED AT THE SOUTHERN SLOPE AREA, AND THE EAST AND WEST OF THE EXISTING CENTRAL BUSINESS DISTRICT FROM REGIONAL BUSINESS DISTRICT, HIGHWAY BUSINESS DISTRICT AND COMMUNITY BUSINESS II DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 6:56 p.m.

Upon inquiry of Councilman Hay and Councilman Peterson about whether there is a conflict of interest for them in this matter due to their law firms owning property in this area, City Attorney Oast felt that they did not need to be excused due to a conflict of interest.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone property located south, east, and west of the current Central Business District from Regional Business District, Highway Business District and Community Business II District to Central Business District. This public hearing was advertised on November 16 and 23, 2001.

The City staff is requesting the extension of the Central Business District to approximately 175 properties located south, west, and east of the current CBD. Most of these properties are currently zoned Regional Business, with some properties zoned Highway Business and Community Business II. The development in these areas has historically followed more of a traditional urban pattern, with minimal setbacks and little off-street parking. When the properties were zoned as part of the UDO, a number of the existing uses would have been non-conforming in the CBD zone. Recent land use changes have almost entirely eliminated the concern that CBD zoning would create non-conforming uses. These land use changes and redevelopment activities have highlighted the need for zoning of these properties that will reinforce and preserve the historic urban development pattern of the areas. The current zoning of the properties, particularly the Regional Business zoning with its requirement for large lot size, setbacks, and significant off-street parking, makes many of the properties non-conforming and complicates redevelopment efforts. The proposed extension of the CBD zone to these properties will not only reinforce the historic development pattern of the areas, it will inspire redevelopment by lessening many of the development standards and by increasing the range of permitted uses.

A public meeting, to which owners of all properties in the affected areas were invited, was held in late August. The proposed rezoning was discussed at this meeting, with the pros and cons of the zoning change identified. No objections or concerns were voiced by the approximately 25 property owners who attended this meeting. The Downtown Commission unanimously endorsed the CBD extension at their September meeting.

Staff has received no comments in opposition to the requested rezoning. There have been requests for zoning to CBD of properties located in the areas for which the zoning change is proposed. City Council recently approved a rezoning to CBD for four properties located in one of the areas for which the change is proposed.

At their October 3, 2001, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the rezoning of the areas located south, east, and west of the current CBD from Regional Business District, Highway Business District and Community Business II District to Central Business District. The Planning and Development staff recommends approval of the requested rezoning.

Upon inquiry of Councilwoman Bellamy, Mr. Green said that this does not include any of the residential uses in the West End/Clingman Avenue neighborhood.

Upon inquiry of Mr. Jesse Ray, Mr. Green pointed out some negative impacts of extending this district, noting that the positives far outweigh the negatives.

Mayor Sitnick closed the public hearing at 7:05 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2874. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 348

E. PUBLIC HEARING TO CONSIDER THE PROPOSED SALE OF PROPERTY ON BROTHERTON AVENUE TO MORSE PROPERTIES INC. FOR AFFORDABLE HOUSING DEVELOPMENT AND THE AMENDMENT OF THE 2001 ACTION PLAN TO INCREASE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE PROJECT

RESOLUTION NO. 01-181 - RESOLUTION APPROVING SALE OF PROPERTY AND AN AMENDMENT TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM IN THE 2001 CONSOLIDATED ACTION PLAN

ORDINANCE NO. 2875 - BUDGET AMENDMENT REGARDING THE INCREASE IN THE CDBG BUDGET TO RECOGNIZE RECEIPT OF PROGRAM INCOME FROM SALE OF LAND AND ALLOCATION OF SALE PROCEEDS TO BROTHERTON AVENUE DEVELOPMENT PROJECT

Mayor Sitnick opened the public hearing at 7:06 p.m.

Planning & Development Director Scott Shuford said that this is a public hearing to consider the sale of property on Brotherton Avenue to a private developer for an affordable housing development site. Additionally, Council will be asked to consider an amendment to the 2001 Action Plan to provide Community Development Block Grant (CDBG) funding for the project. This public hearing was advertised on November 16 and 23, 2001.

When the City began this process, he was skeptical of our ability to attract a quality cohousing developer. However, he was pleased to say that we have attracted an award-winning cohousing developer, Mr. Jack Morse. Mr. Morse and his design team have built an outstanding, nationally and internationally recognized cohousing development in the Atlanta area called East

Lake Commons. He and Community Development Director Charlotte Caplan have visited this development and they were very impressed with both its quality and function.

The preliminary development proposal for the site incorporates a number of smart growth development features, such as clustering of development on the most buildable part of the property, promoting internal and external pedestrian access, providing for mix of incomes within the project, developing an infill site at a density and scale that is compatible with the surrounding neighborhood, and preserving a significant part of the property as open space. he submitted to Council that this is precisely the type of development that this city needs. As an added bonus, this project enables us to meet many of our affordable housing goals through a private sector initiative.

Should Council choose to follow the staff recommendation to allow this land sale to proceed, the developer will be required to submit a detailed site plan that will address such issues as water and sewer availability, fire flow, landscaping and buffering, site lighting, and similar technical issues, some of which are a particular concern to the surrounding neighborhood. This site plan will be brought back before City Council as part of a Planned Unit Development zoning overlay and Council will have an opportunity to consider the final development of this site at another public hearing.

Community Development Director Charlotte Caplan said that the City has allocated a total of $370,000 in Community Development Block Grant (CDBG) funds for the purchase and improvement of a 7.3 acre site at the intersection of Virginia and Brotherton Avenues, with the intention of developing it for affordable homeownership on the "cohousing" model. A cohousing development is characterized by:

- Resident involvement in the design process;
- Physical design that deliberately encourages a sense of community;
- Extensive common facilities, including a common house;
- Complete resident management when the development is complete.

An excellent example is the Westwood cohousing community on Vermont Place, about a mile to the west..

In September 2000, the City purchased the site from the Housing Authority for $120,000. In March 2001 the City issued a Request for Proposals (RFP) for a developer. Two proposals were received, but only one was fully responsive to the terms of the RFP. This proposal from Morse Properties, Inc. is for a mixed-income development of 38 homes, 26 of which would be subsidized to be affordable to families with incomes less than 80% of area median. The Housing and Community Development Committee has reviewed the proposal and recommends acceptance.

Ms. Caplan said that there will be a clustering of homes and the community building on the upper flat part provides a housing density of 5.5 units per acre while leaving the steeper half of the site as a natural wooded area with walking trails. It will be economical on infrastructure because of no new streets. This is an excellent example of smart growth on an in-fill site.

She said that the developer wants to make sure that the design fits in with the neighborhood. He will be meeting with the neighborhood residents to get their input. The City will upgrade the sewer line below the site. Area residents will be able to enjoy the woodland trails and very likely community activities in the common house.

The Housing & Community Development Committee recommends sale of land and award of $397,000 CDBG subsidy to Jack Morse Properties Inc. That's a subsidy of about

$15,000 per unit which compares well with other developments we have supported, like Habitat communities.

To comply with CDBG regulations, the $250,000 in CDBG funds already allocated for site improvements must be expended while the property is in public ownership. Additionally, to comply with State law, the property must be sold to the developer at not less than the current appraised value of $147,000. Staff therefore recommend the following steps for approval by Council at this time:

1. Entering into a contract for sale of the site to Morse Properties, subject to City approval of the final design for the development (including all necessary planning and technical approvals) and satisfactory completion of site improvements;
2. Amendment of the 2001-02 Action Plan to recognize the anticipated receipt of the sales proceeds and allocation of the same amount to site development.
3. Entering into a CDBG funding agreement with Morse Properties for a total of $397,000 CDBG subsidy for site improvements, to be passed on as subsidy to the 26 income-eligible homebuyers.

Steps 1 and 2 require a public hearing. As soon as these steps are implemented, the developer will develop a final site design which we expect will be submitted for approval as a Planned Unit Development early next year. Consultation with neighborhood residents will be an important part of this process.

Staff and the Housing and Community Development Committee recommend approval of the resolution for the sale of the property, the funding agreement, and the amendment of the Action Plan.

Ms. Caplan responded to several questions from City Council, some being, but are not limited to: will most of the units be duplexes, what comes with ownership of co-housing, how does co-housing differ from owning a condominium, what percentage of the entire project will be the common areas, what is the cost of construction of the common house, and how do these net unit prices compare with some of the other projects that CDBG funds have been used for.

Mr. Richard Nantelle, President of the West Asheville Community League, wanted to make sure that the potential owner has been accurately informed of the following: the present water supply available remains inadequate to support development of this nature and that upgrading of this aged and deteriorating system is not in the City's foreseeable future; the only access to this site is a highly congested traffic hazard producing facilities and personal injuries and these conditions have been ignored by the City for at least 30 years; the close proximity of this site to illegal 24 hour a day drug trafficking; over 200 neighbors surrounding this site joined together and had their property rezoned for the sole purpose of protecting the physical character of their neighborhood so that they could eliminate the possibility of any contradictory development at this location as this proposal, by its cloistering, depicts; the same 200 neighbors surrounding this site and along it's path have vehemently and rigidly opposed this site development on each of the past rising occasions for these very same reasons and they are prepared to continue doing so even to the point of seeking relief through further legal action in the courts if necessary to stop it; the proposal fails to meet at least three out of the seven requirements for a conditional use permit; and this proposal is completely out of financial character in this neighborhood and that the result will either be false inflation of tax values of surrounding properties causing them to become unaffordable or it will deflate the value of this proposed investment, making it unappreciable if not both. He said that these existing conditions, along with others not mentioned, are most definitely detrimental to the safe and successful development of this site.

Mr. Dick Rice, speaking on behalf of the West Asheville Business Association, briefed Council on the background of this site. He stressed that there is insufficient fire flow in the hydrants to effectively protect lives and property. Neighboring property owners want traditional single-family homes built on that property. He briefed Council on some specifics losses in the area due to inadequate water.

Mr. Fred English, resident in Haw Creek, said that he has low water pressure too and his sewer line needs to be repaired.

Mr. Carlos Montgomery felt that family housing development is good, but in this area it is not safe due to the insufficient fire flow in the hydrants.

Ms. Sharon Martin, resident on Virginia Avenue, felt that this is the right idea, but at the wrong place. She expressed concern about the speeding traffic on Virginia Avenue and bringing in multi-family housing will not help.

Ms. Rebecca Campbell, Southeast Network for Intentional Communities - West Asheville, felt there is a considerable infrastructure problem. She felt the proposal is excellent but perhaps at a different location. Creative ideas need to happen about how Asheville's infrastructure needs can be repaired so that any sustainable development can happen without major conflict.

Ms. Karen Keenan, Executive Director of the Affordable Housing Coalition, voiced her concern that there is the potential of compromising the opportunity to increase our tremendously needed affordable housing units due to a challenge around infrastructure.

Ms. Tonya Davis acknowledged that we do have a significant infrastructure problem in this City and the City needs to address both affordable housing and the infrastructure simultaneously.

Mr. Keith Thomson felt that this is a good project with good values, but at the wrong site. He too acknowledged that the City has serious infrastructure and affordable housing problems.

Mr. Walter Plaue agreed that this is an interesting proposal. He felt, however, that we need to give people safe housing and due to the inadequate fire flow in the hydrants, we would be placing peoples lives in jeopardy.

Ms. Kate O'Hara felt that if infrastructure is the only major concern with this proposal, then this matter should be continued until further research can be done. She stressed we need housing that people can afford.

Mr. Shuford explained that basically this is a first step of multi-step process and that is to recognize and commit funds to a project with the understanding that technical requirements have to be addressed - the same technical requirements that would be done for a project where the units would cost $500,000 a piece. Also a separate zoning action has to be taken. He urged Council to move forward to see if this project can be built on this site. The property is zoned RS-8 which allows 56 units on this 7 acre site but the proposal is for 38 units. The water supply is probably sufficient for domestic use, but for fire protection we know that we have a problem and there are multiple ways to solve that problem. One way would be to provide for a sprinkler system that would be on-site. Another possibility would be to fix the system for the entire neighborhood. Those are things that will have to be explored. He urged City Council to commit the funding with the understanding that other things have to be done before this can occur. The developer is committed to meeting with the neighborhood and to address their concerns. Mr. Shuford felt that the traffic issue may be solved with a traffic calming solution.

Mr. Jack Morse, developer, stated that he does live in co-housing in Atlanta and is looking forward to working with staff and the neighborhood.

When Councilwoman Field asked Mr. Morse if anything he heard at this meeting has deterred him from moving forward, Mr. Morse replied no and that there are many ways to solve issues.

Fire Chief Greg Grayson said that they performed eight different flows. They are trying to do flowing at night and in the day so there can be an average to represent a more realistic flow. When they cumulated two hydrants with four flows each, they came up with an average of 423 gallons per minute. In the Asheville Standard Specifications Manual the minimum flows begin at 500, so this is below the minimum flows. However, in that Manual it does allow for any property with the flow that is available to have an approved automatic sprinkler system. The system has to be engineered to work with what is available. Whether than can be done or not would require an engineer study. He noted that they apply those development standards to new construction, not existing.

Fire Chief Grayson responded to questions from Councilwoman Field on what the response would be if there was a fire in that area even if this development was not built.

Upon inquiry of Councilman Worley, Mr. Rice said that there is a five-inch line at Brotherton and Virginia Avenues.

Mayor Sitnick closed the public hearing at 8:26 p.m.

Councilwoman Field felt that this property is one site in which affordable housing can be built. We at least have a developer who is willing to proceed with a plan to see if the proposal of cohousing can work on that site.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and budget amendment and they would not be read.

Councilwoman Field moved to adopt Resolution No. 01-181. This motion was seconded by Councilman Hay.

Councilman Hay said that this will initiate what may result in development on that property. All the infrastructure problems have to be addressed or the project will not go forward.

Councilwoman Bellamy agreed with Councilwoman Field and Councilman Hay. She said that existing organizations, non-profit entities and for-profit entities provide affordable and regular housing and they do upgrade the infrastructure. The infrastructure improvements they provide just doesn't benefit their developments, but also benefits surrounding properties. Affordable housing sites are limited in our City and we do have to work with what we have. We have to deal with the infrastructure problems and see what we can do through some collaborations with MSD, the Water Authority and the developer. She believed that the infrastructure improvements can be made.

Councilman Worley supported the resolution but with reservations that center around the infrastructure problems, in particularly the fire flow. He pointed out that the resolution is not selling the property, it's a resolution that approves entering into a contract for sale, subject to City approval of the design for the development (and that means dealing with the infrastructure problems), satisfactory completion of site improvements, etc. City Council will have another opportunity to determine whether this contract for sale actually goes forward and that is when those design components come back to City Council for approval.

Mayor Sitnick stated that she is in favor of co-housing. However, she wants to be absolutely clear that if we approve this resolution in order to move forward and explore it further, that this project will not be built if the safety of the citizens who exist there now and the safety of the citizens who will buy these homes cannot be guaranteed, specifically having to do with fire protection. Mr. Shuford responded that this project will have to meet all of the same development standards as any other project would need to meet.

Mayor Sitnick said that if the responsibility of repairing water lines to the whole area, which might be necessary, is the Water Authority's responsibility and the Water Authority does not have it on their priority needs list, does that mean this project will not go forward. Mr. Shuford said that it depends upon who ends up needing to make the improvements and how extensive they are, but if we can't make it work, it won't go forward.

The motion made by Councilwoman Field and seconded by Councilman Hay carried on a 6-1 vote, with Councilman Peterson voting "no".

RESOLUTION BOOK NO. 27 – PAGE 16

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2875. This motion was seconded by Councilwoman Field and carried on a 6-1 vote, with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 19 – PAGE 351

At 8:45 p.m., Mayor Sitnick announced a 15 minute break.

F. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY KNOWN AS GARDEN HOMES AT BILTMORE PARK

ORDINANCE NO. 2876 - ORDINANCE TO EXTEND THE CORPORATE LIMITS TO INCLUDE GARDEN HOMES AT BILTMORE PARK

Mayor Sitnick opened the public hearing at 9:02 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to property located north of Long Shoals Road and identified as Garden Homes at Biltmore Park. This public hearing was advertised on November 16, 2001.

Biltmore Farms, Inc. and 14 other property owners have submitted annexation petitions for Garden Homes at Biltmore Park. This area is contiguous to the existing corporate limits, being bordered to the north, south and west by sections of Biltmore Park that have been previously annexed

The area proposed for annexation consists of 10.0 acres and is platted for 45 single-family residential lots. The area will be accessed by White Ash Drive East. This area is within the extraterritorial jurisdiction area and is currently zoned RS-8.

Biltmore Farms Inc. is developing utilities and streets. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

This would be the 23rd section of the Biltmore Park development to be annexed. Tax valuation of the area annexed to date is $106, 608,100.

City staff recommends City Council adopt an ordinance extending the corporate limits of the City of Asheville to property located north of Long Shoals Road and identified as Garden Homes at Biltmore Park.

Mayor Sitnick closed the public hearing at 9:03 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2876. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 353

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 01-186 - RESOLUTION AUTHORIZING THE CITY MANAGER TO PROCEED WITH THE OPERATIONAL PLAN FOR THE AZALEA ROAD BENEFICIAL FILL SITE

Public Works Director Mark Combs said that in June City Council directed staff to investigate practicable sites for the long term disposal of beneficial fill materials.

The Public Works and Water Departments dispose of approximately 11,000 tons of old concrete, asphalt and dirt each year. In February the City's White Fawn Reservoir fill site reached maximum capacity, which necessitated disposal at the Buncombe County landfill.

In October of 1997 staff instituted a site selection team for the purpose of finding a new disposal/fill site. In June of 1998 staff selected a site on Azalea Road and started negotiations with the property owner. After numerous public hearings, a citizen/staff task force developed a request for proposal (RFP) to conduct a feasibility study of this site. In January 2001, Woolpert LLC (Engineering Firm who conducted feasibility study) presented their report to City Council and advised further development and subsequent operations.

On May 15, 2001, staff requested and received a $75,000 appropriation to pay for anticipated tip fees due to the closing of White Fawn. Through October, 19, 2001, the City has paid tip fees of $234,329.28. In the same meeting Council directed staff to conduct a thorough investigation into all potential sites and report their findings when completed.

In the current fiscal year (4 months), Public Works spent $52,341 for tip fees, which is $22,341 more than the $30,000 originally budgeted. Staff had anticipated the final site selection would be completed by the second quarter.

Mr. Combs then explained that a beneficial fill is defined as including only used asphalt and inert debris such as concrete, brick, concrete block, uncontaminated soil, rock and gravel. No permit is required so long as (1) fill activity involves no excavation; and (2) the purpose is to improve land use potential.

A letter received on June 15, 2001, from Mr. Dan LaMontagne, Head of the State's Superfund, stated that "no hazardous substances can be associated with the Azalea Road landfill and no release of hazardous substances from the landfill have been documented ..."

He explained that the following sites were investigated: Azalea Road, Bartlett Street (Murray Hill), Beaverdam Baptist Church, Buncombe County Landfill, Burney Mountain Road Fairview, Gaston Street, Hawthorne Drive (Beverly Hills), Houston Street and Courtland Avenue (Montford), Memorial Stadium property, Moore Street (Sycamore Hollow), and Richmond Hill Drive (Richmond Hill). Locations evaluated included: Azalea Road, Buncombe County Landfill, Burney Mountain Road (Fairview), Houston Street and Courtland Avenue (Montford), Memorial Stadium property, Moore Street (Sycamore Hollow) and Richmond Hill Drive (Richmond Hill).

Mr. Combs explained the estimated yearly tonnage from the Street Division and from the Water Resources Department. He then went into detail about the tangible costs which included: mileage costs, labor costs (transportation), operational costs, site costs, land costs and tip fees.

He then explained the site evaluation criteria used for the seven locations which included cost, capacity, homes in 500-foot buffer, and homes on route. He reviewed with Council on each of the seven locations evaluated their costs per ton, their estimated life capacity (in years), the number of homes on route and the number of homes in the 500 foot buffer.

Mr. Combs said that as a result of this detailed investigation, City staff recommends the Azalea Road site. It is City-owned property, has 20 + years life, has the least neighborhood impact, the feasibility study and operations plan have been completed, and it can be integrated with the Parks & Recreation Master Plan.

At the request of Councilman Worley at the November 20, 2001, worksession, Mr. Combs provided information from an architect, structural engineer, soils engineer and code enforcement officer regarding housing construction on a beneficial fill.

Mr. Mike Moody presented Council with a memo dated November 27, 2001, which reads that "we petition the Asheville City Council to postpone any decision related to the location of a specific beneficial landfill site for the following reasons: (1) All of the consultant's reports and NC DENR requirements, related to the Azalea Road site, have not been thoroughly reviewed by the Staff and made accessible to the public; (2) Public affirmation has not been presented, such that, the City has secured the indisputable right for access to the site and use of the existing bridge; (3) The total cost of all site preparations, together with sedimentation and erosion control plans has not been made public; and (4) We request further review of the proposal, presented by the Public Works Department, as it relates to revising weighting of criteria."

The report read "A review of the study, prepared by the Public Works Department and presented at a recent work session of the Asheville City Council, leaves several issues unresolved: (1) A January 2001 study of the Azalea Road site, prepared by Woolpert LLP, indicated that the '...existing fill area must be further defined by geotechnical testing to be sure that it will support additional material.' Of particular interest is the consultant's finding that '...measures must be installed to protect the side slopes' to prepare for additional fill material. If this involves excavation, it would be contrary to the statutory conditions for a beneficial fill. Additional required studies, indicated by Woolpert LLP, included a wetland review and BFE changes related to bridge construction; (2) Some months ago, the City Council approved a second study for the Azalea Road site termed 'An Operational Analysis'. However, the public, and perhaps the City Council, have not seen the study results or been given a chance to review the document(s). In fact, the study was sent to NC DENR for approval on Tuesday, November 20, 2001. This approval process could take as long as 30 days; and (3) At the City Council work session, November 21, 2001, the Public Works Department presented an evaluation of seven (7) sites for a proposed beneficial fill. The 'Evaluation Summary' seems to be weighted in such a way as to make the findings difficult to understand. The following table is the same data, without subjective weighing: (overall evaluation summary table shown). If the more tangible criteria are considered, namely cost and capacity, then the following chart is applicable: (cost and capacity

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evaluation table shown). In both evaluations, Azalea Road does not appear to be the location of choice. The most obvious detriment to Azalea Road is the cost. To date, we the taxpayers, have spent almost $90,000 for a feasibility study at Azalea and another $40,000 for an operational plan at Azalea. The Public Works Department now estimates that the annual operating cost for Azalea is $140,000. This brings the total for this 'money pit,' or should it be called a 'money mound,' to $3,112,000. The consultant indicates that most of this amount will need to be spent up front before the first load of debris is dumped. By the way, the taxpayers have bought an additional 131 acres around this site, for a park at a cost of $1,400,000. The total investment, if nothing has been overlooked (such as requirements from NC DENR) is just under $5,000,000. Can, or should, the taxpayers carry this burden when less costly options have been presented?

"Any alternative does not absolve the City of Asheville of its responsibility to recycle all materials as permitted. The residents of the City are mandated to recycle household refuse – the City staff should be equally obligated. It is apparent that the cost to recycle inert debris will decrease as the supply of natural resources diminishes. In fact, the data from Public Works indicates present savings of $7.64 per ton if material is recycled while utilizing the Buncombe County landfill. In retrospect, the City of Asheville could have saved $70,033 of taxpayer money, just since the closing of White Fawn in February of this year (or $84,040 per year). This amount would pay for the estimated $80,000 to purchase equipment that separates these materials in preparation for recycling.

"A final observation is that the proposed Azalea Road park/soccer complex and a landfill do not seem to be compatible uses for the site. A very real hazard exists when vans full of soccer players mix with City trucks on a narrow road. Unfortunately, safe access, for children and their families, to these facilities was not considered as criteria for any of the sites. To upgrade Azalea Road and associated intersections would be another unbearable expense to taxpayers. Again, until we have all of the facts and know all of the cost, your vote today may be 'out of order.'"

Mr. Combs passed out his responses to Mr. Moody's report. Regarding Concern No. 1 Mr. Combs said that the operational plan will specify the working and final grade slope. The "measures" that must be installed involve competent heavy equipment operation, the moving and re-moving of new and/or existing material and landscaping. In addition he said "excavation" for the purpose of re-filling with beneficial fill is indeed contrary to statutory definitions; however, re-contouring a site to improvement and/or prepare an old existing site is appropriate.

With regard to Concern No. 2, Mr. Combs said that on May 22, 2001, City Council appropriated $39,500 to Woolpert, LLC to prepare an operation plan which consists of drilling services, laboratory testing (of soils), professional services (labor) and miscellaneous/contingency. The soil analysis is to best determine how to implement operations and not to determine the feasibility of the site, which was reported by Woolpert (presented January 23, 2001) as feasible for beneficial fill use.

Mr. Combs said that regarding Concern No. 3, staff assigned a scale of 0 to 10 as a proportion to percentages in order to more fairly "weigh" the four areas of concern. Simple ranking is not accurate. For example, Mr. Moody assigned a rank of "2" ("homes on route") for two (2) homes on the route to Azalea, and a rank of "3" for five (5) homes on the route to Moore Street, which represents a 150% increase. Richmond Hill has 26 times more homes than Azalea but only received a "7" rank from Mr. Moody, which obviously is not in proportion to the difference of the data compiled. Regard cost, Azalea's cost ($140,030) is 30% of Buncombe County's $461,120. By assigning a 0-10 scale proportion, Azalea's score of "6" (compared to Buncombe County) is a conservative interpretation of the proportions.

Mr. Combs addressed another concern in the report. Going to Buncombe County to dispose of 11,000 tons costs $461,120/year or $41.92/ton. To Buncombe County with recycling costs $377,080/year or $34.28 ton. Going to Azalea Road to dispose of 11,000 tons costs $140,030/year or $12.73/ton. To Azalea Road with recycling costs $16,380/year or $14.58/ton. The potential savings per year utilizing Azalea Road compared to Buncombe County is $321,090 without recycling and $216,700/year with recycling.

Mr. Combs said that Mr. Moody's report mentioned the hazard of children and their families with City trucks on a narrow road. He said that there are narrow roads throughout the City and he hoped that could be solved at a later date.

Mr. John Richardson, President of the Land-of-Sky Chapter of Trout Unlimited, said they are concerned about the siting of a beneficial landfill on Azalea Road. They have looked forward to working with the City on the in-stream rehabilitation of Swannanoa River as it flows through the park. Having examined the Public Works Department site investigation report, they have many reservations about the methods and their final recommendation to Council. First of all, using a strict cost benefit analysis, homes in the 500-foot buffer and homes on the route are not valid site criteria. Moreover, even if they are included, they should not be given the same equal weight as cost and capacity. To give them equal weight is to manage by conflict avoidance. If one had used the strict cost benefit analysis, then the Memorial Stadium site would have been the clear winner. It has the lowest cost and it has a capacity greater than all but Burney Mountain Road (Fairview) site and the Buncombe County landfill. Secondly, he felt that staff was not consistent in it's evaluation ratings. For example, the Burney Mountain Road/Fairview site was given a weight of 7 for it's capacity. By contract, the Azalea Road site was given a weight of 9. However, the Burney Mountain Road site has an estimated life, according to Mr. Combs, of 30 + years without recycling. Whereas, Azalea Road has only 21.3 year life without recycling. Similarly, the way City staff applied the rankings to homes in the buffer and homes on the route showed a lack of consistency. Thirdly, the analysis of landfill capacity is flawed. City staff came up with a fairly precise capacity of 21.3 years for the Azalea Road site. They then compared this fairly precise estimate with all the other sites. Some of the other sites were given the life span of 10-30 years or 10-20 years. Comparing the favorite site, whose life span was determined fairly precisely with other sites whose life spans were determined by a sophisticated guess does not serve public policy. Fourth, there are other criteria that should have been included. Primary among those would be the environmental impact. This landfill is within the viewshed of the Blue Ridge Parkway, which is not an enhancement for the Parkway. Nor should putting a landfill next to a park and greenspace be considered an enhancement. Along with the environmental impact is the safety issue. Kids play in parks and they are not watching where they are going. Having large dump trucks accessing the landfill by going through part of the Park is a greater safety hazard than the number of homes along the route of the trucks. He urged Council to postpone any decision on the Azalea Road site and send it back to City staff for further review. The current recommendation is based upon a flawed analysis, incomplete data, inconsistent evaluation weightings, and narrow criteria that were primarily designed to favor this site and this site alone.

Ms. Laura Rotegard, representing the Blue Ridge Parkway, said that the Blue Ridge Parkway has been working with the City fairly continuously since this came up six years ago as a flea market proposal. We have been working with you to resolve the issues that we think this land use will pose to being adjacent to a national park. We feel that we have been successful in defining the extent of the impact to the visual resource but not sure an agreement has been reached on how to mitigate that impact. She was confident, however, that we will find a solution. However, they are very concerned they have reached an impasse on the issue about the access. In January of 1999 after the flea market issue, we did research and discovered that the history on that road segment had been abandoned. We then sent a letter to the Mayor explaining what we had found suggesting that that road segment and the bridge does not have a public use on it and stating that in that case, when you were preparing for a bond referendum that we suggested that public use not be encouraged on that road -- since there was no legal right to the use on that road. The only reserved right was for the Cove Ministries, which was deeded at the time of the abandonment. The City responded in a letter suggesting that our research was inaccurate and a meeting was agreed upon. Prior to that meeting, we had a meeting with Parks and Recreation and they asked us about what sort of instruments could be used for a special permitting process and we showed willingness to explore that with the City. In March of this year, the staff and the City staff attorney and our staff and our solicitor from Atlanta met to discuss why we have a difference of opinion about this. We left that meeting not changed in our positions but requested that the solicitor and your attorney continue to talk about the different approaches to the research that the Parkway pursued. To date we haven't had any continuing conversation and that concerns us. We thought we had asked that fairly clearly of the City to continue that conversation with our solicitor. In the meantime a number of other small things happened that are important to share. We found that our locks had been changed on the road access to the gate. We found out how and where those were changed and they were City locks. We had a meeting with City staff and come to a courtesy agreement as to how to use that road system temporarily and in an intermittent process to further the designs and studies requirements to pursue the information on this site. Through the summer we have experienced some management problems with that gate being a shared process. We've had a violent crime committed on lands that would normally be locked behind that gate. We've had park lands accidentally bush-hogged when someone was in bush-hogging City property. And we've had other uses that we didn't necessarily verbally agree to in the luncheon meeting. To date we are perplexed and puzzled and in a very awkward situation. She said there are still two key points that their position rests on and we are open to continue conversations on this. One is that our solicitor's position is that the road and the roadway was appropriately abandoned in the 1970's and by state law that ownership reverts back to the National Park Service. We own the bridge and we own the road. There is no public use on that road allowed. Park Service policies and public laws that establish the National Park prohibit us from giving uses to individual or specialized entities, the City being one of those. We have the authority to grant a special use permit in this case for a temporary, short-term use that cannot exceed five years. But in doing that we have to abide by all the laws that govern us regarding the National Environmental Policy Act. We have to take that permitting process through an environmental assessment or an environmental impact statement. That process will take anywhere from six months to eighteen months depending on whether it's elevated to an EIS. To date we have received four comments requesting that it go to an EIS, asking us to hold this study to the highest test of compliance that we can. We may have the authority to permit this use, but we are not, at this point in time, able to commit to giving that use. We have to go through that environmental assessment process before we can legally do anything. And that is going to take some time. We realize that in previous conversations we have indicated our willingness to explore all these possibilities and we are concerned that we will do this only through the need for process. While we share your concern that we all find very expeditious and economical disposal for this inert waste, we just want to be noted that this process, for doing this through National Park lands, is not easy, convenient, nor at this point legally clean.

Mr. Combs said that the City is more than willing to work with the Park Service and they hope we can come to some agreement. Mr. Combs also explained the instance with the locks.

City Attorney Oast said that it's the City's contention that the road has not been abandoned the way it should have been and that access would be available. Resolving that situation will take some time and we are working cooperatively with the Parkway to use some short-term access. This is the first he has heard of a special use permit being available and that is something that we will want to explore. He is continuing to gather information on the status of the bridge.

Councilman Peterson asked what will the City do if the Parkway closes the bridge and it takes up to a year to get access to the bridge. Mr. Combs replied that we do have some alternatives in mind for some other sites until we can develop this one. Building a low water bridge is also something that can be constructed in 5-10 days after a permit is obtained from the Corp of Engineers, which is not a very lengthy process because it is a short-term permit.

The following individuals spoke against the beneficial fill in the Azalea Road area for various reasons, some being, but are not limited to: a beneficial fill cannot be placed in the middle of a river channel; land should be preserved for its highest and best use; use of bridge and road is being contested; environmental concerns; viewshed from the Parkway is a concern; floodplain insurance issue and safety concerns:

Mr. Robert Born, Registered Civil Engineer and Vice-Chairman of the View Pointe Homeowners Association
Mr. Michael Miller, representing RiverLink
Mr. Frank Hankey, resident in View Pointe
Ms. Rebecca Campbell

Mr. Combs responded to questions from Councilman Peterson with regard to using other smaller sites.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-186. This motion was seconded by Councilwoman Field.

Vice-Mayor Cloninger stated that Azalea Road is the most cost effective site for the City and will save taxpayers money. He's confident City staff will maintain the site to meet environmental requirements and that City staff will work with the Blue Ridge Parkway regarding the viewshed issue. He would rather have this located on land that the City owns and controls so that we can better ensure and control what goes on there.

Councilman Worley agreed with Vice-Mayor Cloninger and understood the concerns of the Beverly Hills and View Pointe residents, however, he didn't see how this will impact those communities. He supported this site on the condition that truck traffic using the site will be from Tunnel Road and not from Swannanoa River Road.

Councilman Peterson didn't believe Azalea Road is the best site. He felt there will be extra expenses and those expenses will not make the site as cost effective. He was concerned about mixing City truck traffic with the Park traffic. He felt a better approach would be to have smaller scattered sites, thereby reducing transportation costs.

Mayor Sitnick personally felt she did not have enough answers to the questions raised and was not comfortable in voting in favor of this site.

The motion made by Vice-Mayor Cloninger and seconded by Councilwoman Field carried on a 5-2 vote with Mayor Sitnick and Councilman Peterson voting "no".

RESOLUTION BOOK NO. 27 – PAGE 21

VI. OTHER BUSINESS:

A. COMMENTS BY COUNCILWOMAN BELLAMY

Councilwoman Bellamy said that she will be travelling to Charlotte, N. C., tomorrow to hear a presentation regarding the introduction of the Rehab Code concept, focusing on its impact

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on adaptive reuse and the preservation of housing stock. She felt this will be very good for our community.

B. LAWSUIT

The City was served with the following Complaint on December 16, 2001: Michael James Gosnell v. City of Asheville. The nature of the proceeding is a Complaint for compensation for conspiracy to murder. This matter will be handled in-house.

C. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 9, 2001 GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 6, 2001

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 9, 2001. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 6, 2001.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English commented about downtown Asheville being a dangerous place.

B. COMMENTS BY REBECCA CAMPBELL

Ms. Rebecca Campbell spoke farewell words to the outgoing City Council members.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 10:28 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Exhibit A

STATE OF NORTH CAROLINA – BUNCOMBE COUNTY
PRIMARY ELECTION--CITY OF ASHEVILLE
OFFICE OF MAYOR AND CITY COUNCIL

OCTOBER 9, 2001

The Buncombe County Board of Elections, having opened, and judicially determined the original returns of the Primary Election in the precincts of this city, do hereby certify that the attached is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, and the number of votes given for each person for the office named.

This 12th day of October 2001

Penny Squires

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my notary seal, this 12th day of October 2001.

Notary Public

My commission expires 6/14/05

City of Asheville Primary Election

October 9, 2001

Election Returns

Buncombe County

Precincts Reporting 31

Asheville Mayor																
Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Terry M. Bellamy	82	196	137	27	43	13	77	159	30	146	104	21	41	72	35	35
William E. Boyd	1	2	2	0	1	1	0	1	1	1	1	0	1	2	0	0
Chuck Cloninger	35	75	61	143	217	60	90	37	54	26	10	9	23	20	43	20
H.K. Edgerton	11	12	7	9	7	6	7	3	12	5	2	5	12	11	13	16
Dave Goree	2	7	3	10	9	23	9	9	13	2	2	9	6	9	9	11
Mickey Mahaffey	45	193	119	25	38	14	90	16	20	12	23	36	18	54	44	21
Brian Peterson	48	105	103	111	137	150	161	118	130	23	21	146	143	177	273	244
Bill Porter	5	8	9	15	95	35	13	31	24	3	1	21	9	22	21	35
Charlie Worley	40	54	54	134	287	103	72	102	88	17	12	29	49	56	74	77

Asheville Mayor																
Precinct Reporting	17	18	19	20	21	22	23	24	25	26	27	28	29	72	73	74
Terry M. Bellamy	27	24	7	26	41	24	13	9	23	15	26	37	10	1	12	1
William E. Boyd	0	2	0	2	1	2	1	5	2	0	1	1	0	0	0	0
Chuck Cloninger	134	132	13	29	65	107	46	26	57	24	72	91	81	10	24	1
H.K. Edgerton	5	11	4	4	13	8	2	7	11	5	8	8	14	1	3	0
Dave Goree	10	8	0	7	7	7	3	5	21	5	8	18	3	0	1	0
Mickey Mahaffey	43	4	5	7	19	14	6	12	23	14	21	49	1	1	10	4
Brian Peterson	130	180	50	67	155	70	57	162	172	163	67	91	153	4	26	2
Bill Porter	34	51	20	18	46	30	18	30	47	9	21	19	30	2	3	2
Charlie Worley	149	230	46	32	100	132	82	80	142	72	130	65	117	10	31	0

Asheville Mayor		Total	%
Precinct Reporting	75	11,906	100.00%
Terry M. Bellamy	4	1,518	12.75%
William E. Boyd	0	31	0.26%
Chuck Cloninger	3	1,838	15.44%
H.K. Edgerton	0	242	2.03%
Dave Goree	0	236	1.98%
Mickey Mahaffey	1	1,002	8.41%
Brian Peterson	6	3,646	30.61%
Bill Porter	1	728	6.11%
Charlie Worley	2	2,668	22.41%

City of Ashevi ıary Election

October 9, 2001

Election Returns

Buncombe County

Precincts Reporting 31

Asheville City Council																
Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
George Bancroft	7	10	9	9	15	6	7	9	15	7	11	15	25	11	29	25
Harold (Cicada) Brokaw	14	46	57	11	9	9	11	7	9	10	9	12	5	22	14	8
Bernard B. Carman	5	20	13	11	18	26	12	9	13	4	5	12	10	17	16	22
Joe Dunn	71	49	95	184	497	233	192	190	209	53	19	120	147	205	270	301
Jim Ellis	52	58	68	166	325	138	138	113	179	60	43	67	81	99	125	160
Fred J. English	3	4	5	6	6	7	4	11	6	0	5	6	8	14	9	14
Barbara Field	67	146	117	97	142	59	126	74	66	64	44	42	65	67	91	47
Edward Hay	51	100	72	164	255	86	139	64	76	24	28	30	56	55	106	69
Holly Jones	106	492	304	228	311	137	249	167	105	78	84	114	95	147	205	141
Sharon K. Martin	28	70	63	11	19	31	36	17	22	23	27	21	26	32	35	25
Carl Mumpower	74	67	88	144	381	182	138	157	179	54	17	100	109	157	194	196
Brownie Newman	87	458	287	197	233	121	257	187	94	53	57	125	111	142	193	140
Susan O'Neil	21	62	44	18	14	27	25	26	15	13	11	20	17	35	33	26
Kevin Douglas Rollins	7	10	8	12	19	26	8	17	18	2	5	12	16	26	19	35
Sam Webb	3	8	8	3	40	11	17	6	10	6	2	15	16	12	21	17
Rod A. Whiteside	103	145	110	53	61	52	85	202	48	132	65	50	53	79	69	71

Asheville City Council																
Precinct Reporting	17	18	19	20	21	22	23	24	25	26	27	28	29	72	73	74
George Bancroft	8	13	4	6	12	4	9	18	17	9	4	3	9	1	2	0
Harold (Cicada) Brokaw	18	4	1	5	6	5	2	4	14	8	7	18	2	1	1	1
Bernard B. Carman	18	11	5	3	19	7	1	8	23	17	8	14	7	1	1	0
Joe Dunn	213	422	103	87	252	207	138	260	311	180	179	122	282	14	39	3
Jim Ellis	174	284	61	65	167	150	96	139	174	93	143	94	166	11	43	1
Fred J. English	5	8	1	3	11	5	3	8	21	8	2	5	4	1	1	0
Barbara Field	73	77	26	38	77	64	28	26	64	41	64	67	77	7	20	2
Edward Hay	190	168	39	38	112	145	76	54	118	73	95	112	112	12	28	1
Holly Jones	237	193	35	74	125	145	63	76	131	98	147	200	118	8	55	5
Sharon K. Martin	18	28	9	13	20	15	8	16	29	19	8	25	14	2	7	2
Carl Mumpower	204	335	71	78	211	169	103	190	238	116	160	122	193	12	35	0
Brownie Newman	216	136	24	69	121	117	60	63	138	96	114	195	65	8	54	6
Susan O'Neil	18	16	5	16	27	14	14	22	26	17	9	17	11	5	1	2
Kevin Douglas Rollins	14	13	4	8	22	4	3	17	31	28	11	14	11	0	1	2
Sam Webb	3	6	3	6	20	8	4	22	16	15	6	7	8	1	0	0
Rod A. Whiteside	56	85	22	30	68	40	29	24	44	42	34	55	40	1	13	2

Asheville City Council		Total	%
Precinct Reporting	75	32,893	100.00%

ober 12, 2001 10:58 AM

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City of Asheville's Primary Election

October 9, 2001

Election Returns

Buncombe County

Precincts Reporting 31

George Bancroft	0	329	1.00%
Harold (Cicada) Brokaw	0	350	1.06%
Bernard B. Carman	1	357	1.09%
Joe Dunn	9	5,656	17.20%
Jim Ellis	7	3,742	11.38%
Fred J. English	0	194	0.59%
Barbara Field	2	2,067	6.28%
Edward Hay	7	2,755	8.38%
Holly Jones	4	4,677	14.22%
Sharon K. Martin	1	720	2.19%
Carl Mumpower	6	4,480	13.62%
Brownie Newman	4	4,228	12.85%
Susan O'Neil	3	630	1.92%
Kevin Douglas Rollins	0	423	1.29%
Sam Webb	0	320	0.97%
Rod A. Whiteside	2	1,965	5.97%

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Exhibit B

STATE OF NORTH CAROLINA – BUNCOMBE COUNTY
GENERAL ELECTION, CITY OF ASHEVILLE
OFFICE OF MAYOR AND CITY COUNCIL

NOVEMBER 6, 2001

The Buncombe County Board of Elections, having opened, and judicially determined the original returns of the General Election for the City of Asheville, do hereby certify that the attached is a true abstract thereof, and contains the number of legal votes cast the City of Asheville for each office named, and the number of votes given for each person for the office named.

This 9th day of November, 2001

Joe P. Byrd
CHAIR

Winona McDonald
SECRETARY

Penny Squires
MEMBER

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my notary seal, this 9th day of November 2001.

Notary Public Dera D. Parker

My commission expires 6/14/05

BUNCOMBE COUNTY BOARD OF ELECTIONS

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2001 November General

November 6, 2001

Election Returns

Buncombe County

Precincts Reporting 31

Asheville Mayor

Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Brian Peterson	181	459	353	210	304	290	345	377	295	195	119	231	216	300	391	353
Charlie Worley	152	244	209	400	771	297	249	253	257	78	58	135	162	248	258	275
Write-In	2	18	18	2	4	1	7	1	2	1	8	7	6	10	7	2

Asheville Mayor

Precinct Reporting	17	18	19	20	21	22	23	24	25	26	27	28	29	72	73	74
Brian Peterson	281	320	70	127	317	140	90	226	268	223	150	235	236	37	125	0
Charlie Worley	388	604	122	102	303	337	209	254	382	167	310	269	337	54	136	3
Write-In	5	0	0	1	1	2	1	1	5	3	1	6	0	0	0	0

Asheville Mayor

Precinct Reporting	75	Total	%
		15,629	100.00%
Brian Peterson	9	7,473	47.81%
Charlie Worley	11	8,034	51.40%
Write-In	0	122	0.78%

2001 November General
November 6, 2001
Election Returns
Buncombe County

Precincts Reporting 31

Asheville City Council

Precinct Reporting	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Joe Dunn	136	129	151	286	664	295	258	326	360	93	55	216	240	340	395	468
Jim Ellis	112	116	133	253	578	252	231	255	321	101	61	163	182	250	291	347
Edward Hay	140	364	277	287	468	240	283	165	159	83	69	119	113	147	212	153
Holly Jones	227	637	493	364	523	340	387	394	236	204	143	191	196	307	340	270
Carl Mumpower	122	140	150	246	539	270	224	279	330	114	45	174	189	265	312	346
Brownie Newman	199	613	444	282	358	287	347	332	176	145	114	172	167	238	299	224
Write-In	6	4	3	2	3	1	5	3	5	0	2	2	5	2	3	1
Write-In	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0
Write-In	0	1	0	0	0	0	1	2	0	0	0	0	0	0	0	0

Asheville City Council

Precinct Reporting	17.	18	19	20	21	22	23	24	25	26	27	28	29	72	73	74
Joe Dunn	293	627	137	124	376	298	200	391	433	262	248	183	416	56	122	0
Jim Ellis	280	506	108	94	282	256	186	305	367	215	237	186	316	54	125	0
Edward Hay	322	397	78	77	229	200	113	110	183	123	210	269	192	37	93	2
Holly Jones	398	370	75	136	326	232	118	141	295	164	243	335	249	40	145	3
Carl Mumpower	287	539	105	111	315	265	160	319	363	220	224	181	335	45	118	0
Brownie Newman	330	245	49	111	272	152	94	102	230	147	176	297	125	33	117	3
Write-In	1	1	0	0	2	0	0	1	2	1	0	4	2	0	0	0
Write-In	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Write-In	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0

Asheville City Council

		Total	%
Precinct Reporting	75	44,541	100.00%
Joe Dunn	9	8,589	19.28%
Jim Ellis	8	7,171	16.10%
Edward Hay	14	5,928	13.31%
Holly Jones	13	8,535	19.16%
Carl Mumpower	9	7,361	16.53%
Brownie Newman	9	6,889	15.47%
Write-In	0	61	0.14%
Write-In	0	2	0.00%
Write-In	0	5	0.01%

2001 November General
11/06/2001
Write-in Detail
Buncombe County
Asheville Mayor

Write-in	Votes
Terry Whitmire	2
William Moore	1
Mahaffey	3
John-Hayes	1
Mickey Maferty	1
Mickey Mahaffey	27
Terry Bellamy	7
Mchaffy	1
Sitnick	2
Tom Brokow	1
Carey Jefferson	1
Mickey Mahaffy	1
Mickey Mchaffy	1
John Boyle	8
Tom-Williams	1
Sitnik	1
Leni Sitnick	11
Mickey-Mehaffy	1
Mickey Mcafee	3
Anyone But	1
Keith V. Blankenship	2
Cloninger	1
Micky Mahaffey	4
Dunn	1
Bellamy	1
J. Smith	1
Chuck. Cloninger	5
Charlie Worley	1
Goree	1
Mickey Mahan	1
Doyle-	1
Carl Mumpower	2
H.K.Eggerton	1
Leni	1
MickeyMchaffey	2
Mike Mchafey	1
Hacksaw-Jackson	1
M.Mcaffey	1
Terrie-Bellam	1
Michael Danner	1
Mickey Mchafey	1
Mickey Mahafey	1

Mcahefy	1
H.K. Edgerton	1
Mike Mccaffey	1
Chuck Clonger	2
John Doyle	1
Mr Mahafey	1
Catherine Ball	1
Isaac Stanford	1
Ron Ainspan	1
Anyone'else	1
Godzilla	1
Osamabinladen	1
Mickey Maheffy	1
Daffy Duck	1
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Tuesday - December 4, 2001 - 4:00 p.m.

ORGANIZATIONAL SESSION:

Mayor-Elect Charles R. Worley welcomed everyone to the organizational session. He then asked that everyone stand and recite the Pledge of Allegiance. Mayor-Elect Worley then introduced Rev. Kimberly Richter from Grace Covenant Presbyterian Church who gave the invocation.

Mayor-Elect Worley stated that he submitted his letter of resignation as a Council member of the Asheville City Council effective December 4, 2001, in order to take his position as Mayor of the City of Asheville. This resignation results in an unexpired term until December of 2003.

The Honorable Robert F. Orr, Associate Justice, Supreme Court of North Carolina, administered the Oath of Office to the following:

Mayor Charles R. Worley
Councilman Joseph C. Dunn
Councilwoman Diana Hollis Jones
Councilman R. Carl Mumpower

RESOLUTION NO. 01-182 - RESOLUTION OF APPRECIATION FOR MAYOR LENI SITNICK

Mayor Worley read the resolution.

Resolution No. 01-182 was adopted by acclamation.

Mayor Worley presented Ms. Sitnick with the resolution, a plaque, her name plates and a City pen.

RESOLUTION BOOK NO. 27 - PAGE 17

RESOLUTION NO. 01-183 - RESOLUTION OF APPRECIATION FOR VICE-MAYOR M. CHARLES "CHUCK" CLONINGER

Mayor Worley read the resolution.

Resolution No. 01-183 was adopted by acclamation.

Mayor Worley presented Mr. Cloninger with the resolution, a plaque, his name plates and a City pen.

RESOLUTION BOOK NO. 27 - PAGE 18

RESOLUTION NO. 01-184 - RESOLUTION OF APPRECIATION FOR COUNCILWOMAN BARBARA FIELD

Mayor Worley read the resolution.

Resolution No. 01-184 was adopted by acclamation.

Mayor Worley presented Ms. Field with the resolution, a plaque, her name plates and a City pen.

RESOLUTION BOOK NO. 27 - PAGE 19

RESOLUTION NO. 01-185 - RESOLUTION OF APPRECIATION FOR COUNCILMAN EDWARD C. HAY JR.

Mayor Worley read the resolution.

Resolution No. 01-185 was adopted by acclamation.

Mayor Worley presented Mr. Hay with the resolution, a plaque, his name plates and a City pen.

RESOLUTION BOOK NO. 27 - PAGE 20

ELECTION AND OATH OF OFFICE OF THE SEVENTH MEMBER OF THE ASHEVILLE CITY COUNCIL

Councilwoman Jones nominated James E. Ellis to fill the unexpired City Council term left vacant by Mayor Worley, as Mr. Ellis received the 4th highest votes from the November 6, 2001, General Election. Councilman Peterson seconded the nomination.

After hearing no more nominations, Mayor Worley closed the floor for nominations.

Councilwoman Bellamy said that over the course of the last few months, the former Council had informally decided not to address this issue because they did want to leave it up to the incoming Council. They have just been sworn in and are now faced with a decision without the opportunity for discussion. She didn't feel that the entire community is comfortable with this process. With that, she would not support the motion. She felt Council should discuss this matter in detail with public input and possibly change the process so this will not occur again.

Councilman Peterson agreed that the process needs to be addressed. He suggested the City Attorney review possible options that might be available to the City Council if this situation were to arise again.

Councilwoman Jones felt that this is a way City Council can recognize what many people in this community wanted to see happen. Mr. Ellis has shared with the community his ideas and his love for this community. She said she would be privileged to work with him.

Councilman Dunn felt that Mr. Ellis has served his country and community well as seen by his repertoire of service and would be an excellent addition to City Council.

Councilman Mumpower was glad Mr. Ellis was willing to serve.

By a show of hands, James E. Ellis was appointed to serve the unexpired term until December, 2003, on a 5-1 vote, with Councilwoman Bellamy voting "no."

The Honorable Robert F. Orr, Associate Justice, Supreme Court of North Carolina, administered the Oath of Office to Councilman James E. Ellis.

ELECTION OF VICE-MAYOR

Councilman Peterson nominated Councilwoman Bellamy as Vice-Mayor of the City of Asheville. Councilman Mumpower seconded the nomination.

After hearing no more nominations, Mayor Worley closed the floor for nominations.

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Councilman Peterson then moved to appoint Councilwoman Bellamy as Vice-Mayor by acclamation. This motion was seconded by Councilman Mumpower and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 11, 2001 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Appointment to the Minority Business Commission

Summary: The consideration of a resolution confirming the appointment of one member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan (subsequent amendments to the Minority Business Plan were adopted by City Council in November 1998 and December 1999).

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Mr. Marvin Vierra has been named by the Asheville Business Development Center to represent them on the Minority Business Commission. Mr. Vierra has been nominated to fill the position left vacant by Mr. Ronnie Blythe and his term will run through August, 2002.

City staff recommends City Council adopt a resolution confirming the appointment of one member of the Minority Business Commission.

Vice-Mayor Bellamy wanted to thank Ronald Blythe for his many years of service on the Commission.

Minority Business Commission Annual Report

Summary: Presentation of the Minority Business Program Annual Report for Fiscal Year 2000 - 2001.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998 and December 1999, to clarify provisions of the Plan and to expand participation in the Mentor-Protégé Program.

The Plan requires the Office of Minority Affairs to present to the City Council and County Commissioners an Annual Report on the effectiveness of implementation of the Plan. The Report shall include, but not be limited to: the number of minority businesses; percentage of minority businesses contracting with the County and City either as a prime contractor or as a subcontractor; percentage of overall reported contracts awarded to minority businesses; percentage of contractors complying with good faith efforts; percentage of goals achieved and goals waived. The City of Asheville improved by 170% from last year's 1.4% to 3.8% this year.

The Annual Report for Fiscal Year 2000 – 2001 has been reviewed by the Minority Business Commission and approved at its meeting on October 19, 2001.

No formal action is required.

Revisions to the Minority Business Plan

Summary: The consideration of a resolution to amend the Minority Business Plan in order to further enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program; and again in December 1999 to clarify the provisions of the Plan.

At their meeting on August 16, 2001, the Minority Business Commission recommended that the Plan be amended to further enhance and clarify provisions of the Plan. (A copy of the Plan with recommended changes shown in blue is attached hereto.) The most significant change is the requirement of certification renewal every two years instead of annually (page 13). In addition, the options to meet the annual training requirement have been expanded and the complete list is now included in the Plan.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

Intent to Enter into License Agreement with Circle Net Inc.

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed License Agreement with Circle Net, Inc. for antennas at 36 Reservoir Road.

The property at 36 Reservoir Road is the site of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

Circle Net, Inc. has offered to enter into a license agreement for space on the tower known as the "U. S. Cellular Tower". The proposed License Agreement will enable Circle Net to operate antennas and related equipment at the site. There is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Circle Net will pay a License Fee of $7,800 for the first term with a 5% increase annually thereafter. In addition to the License Fee, Circle Net will pay a Utility Fee of $150.00 per annum.

Planning Department staff recommends adoption of the resolution.

Mr. Ed Vess, Field Services Coordinator, responded to questions from Council regarding how the license fee and utility fees were determined.

Budget Amendment re: Grant for Van for Senior Citizen Program

Summary: The consideration of a budget amendment, in the amount of $19,000, from the annual appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging, and private donations via the Asheville Parks and Greenway

Foundation to establish a budget for the purchase of a 15-passenger van for Parks and Recreation's Senior Citizen Program.

The City of Asheville received approval for $11,364 in October 2001 for the 2001 Senior Center General Purpose Funding from the State of North Carolina, Department of Health and Human Services, Division on Aging. Donations totaling $7,636 is available via the Asheville Parks and Greenway Foundation. The funds will be used to purchase a 15-passenger van to transport senior citizens to five senior centers and community centers to participate in nutrition programs and recreation activities. The van will serve 30% more seniors, thus allowing them to benefit from the senior citizen services of Parks and Recreation.

The Parks and Recreation Department recommends City Council approve the budget amendment to establish a budget for the purchase of a 15-passenger van.

NC Local Government Debt Setoff Program

Summary: The consideration of a resolution authorizing the Mayor and the City Manager to execute documents and agreements necessary to participate in the NC Local Government Debt Setoff Program and designating both William L. Schaefer, Jr., Finance Director, and Cynthia A. Miller, Finance Operations Manager, and their successors as the persons to conduct necessary proceedings.

During the 1997 General Assembly session, the North Carolina Association of County Commissioners (NCACC) and the North Carolina League of Municipalities (NCLM) were successful in having enacted a legislative goal enabling counties and cities to participate in the state's income tax debt setoff program. The program permits counties and cities to submit any outstanding delinquent debt ($50 or more) through a local government clearinghouse to the NC Department of Revenue, to attempt to match these debts against individual income tax refunds. The local government clearinghouse is also charged with disbursing offset funds back to the receiving county and/or city. NCACC and NCLM have organized a joint NC Local Government Debt Setoff Clearinghouse to make this program available to all North Carolina counties and cities. N. C. Gen. Stat. sec. 105A authorizes county and city participation in the debt setoff program through a clearinghouse function, and limits clearinghouse participation to only counties and cities.

Delinquent debt is a sum that is at least $50 owed to a county or city (claimant agency) that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum. A full 60 days must lapse after a local government labels the debt as delinquent before the debt can be submitted to the clearinghouse. The county or city must furnish the full name and social security number of each debtor. Costs of participation will be $15 for each successful match of debt against an individual debtor's tax refund. No charges will accrue unless a successful tax refund setoff is made. The $15 cannot be charged to the debtor but must be paid by the participating agency. Procedures are in place to notify a debtor of a proposed setoff, to allow a debtor who decides to contest a proposed setoff to receive a hearing with the designated hearing officer and, further, to file a petition with the Courts if desired. No debt can be submitted to the clearinghouse until the entire notification and appeals process is completed for that debt.

NCACC and NCLM have contracted with Five Star Computing, Inc. of Columbia, S.C., to administer the program. Five Star has managed the South Carolina Association of Counties debt setoff program since its inception five years ago.

City staff recommends City Council adopt the resolution.

Agreement with NC DOT for Reimbursement of Light Transit Vehicles

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for funding the three light transit vehicles recently purchased by the Transit Services Department.

The NC DOT requires an agreement between the City and the NC DOT for reimbursement of up to $26,250.00 for purchase of three Light Transit Vehicles and associated equipment. The state will reimburse the City up to 10% of the total expended amount. All funds must be expended by June 30, 2003. Most, but not all, funds have been expended and the remainder will be expended for radios and tires by June 30, 2002.

City staff recommends adoption of the resolution.

Adoption of Budget Schedule

Summary: The consideration of a motion approving the Fiscal Year 2002/2003 budget schedule.

The proposed Fiscal Year 2002/2003 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e., City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2002/2003 budget is scheduled for June 25, 2002.

City staff recommends City Council to adopt the Fiscal Year 2002/2003 budget schedule.

Budget Amendment re: Transit State and Federal Grant Funds

Summary: The consideration of a budget amendment, in the amount of $633,062, to reflect additional and appropriated revenue and offsetting expenses in the Transit Services Department.

The City of Asheville expects to receive $317,447 in additional state grant funds during the current fiscal year which are earmarked for transit operations in Fiscal Year 2001-2002. Additionally, the Transit Services Department is requesting the re-appropriation of unspent federal and state grant funds from Fiscal Year 2000-2001 in the amount of $315,615. These are funds earmarked for operations and capital project funds. Staff is requesting that these funds be appropriated in the current fiscal year to further enhance transit service.

Transit Service Enhancements include:

- the revision of service delivery to address scheduling and capacity problems,
- an increase in marketing capability
- an increased ability to implement the capital portions of the Transit Improvement Plan, including
  - Radios and tires for new Light Transit Vehicles
  - Insulation of wash tunnel
  - the purchase and installation of additional shelters
  - budget for additional Cross Walks on city streets
  - security enhancements
  - other capital projects

City staff recommends City Council adopt a budget amendment to reflect additional revenue and offsetting expenses in the Transit Services Department.

Budget Amendment for Outdoor Recreation Program

Summary: The consideration of a budget amendment, in the amount of $6,774.00, to allow the Outdoor Recreation Program to collect fees and expend these fees to pay for a weekend snow skiing trip to Snowshoe, West Virginia.

The Outdoor Recreation Program of the Parks and Recreation Department offers a variety of opportunities for all ages and abilities to enjoy the outdoors. Attached to this staff report is a partial listing of these opportunities. One of the most successful activities offered through this program is the learn-to-ski snow skiing instructional program offered each winter in conjunction with the French Swiss Ski College at Appalachian ski Mountain. This learn-to-ski program is celebrating its 30th year in 2002. During the past 30 years, the program has offered participants from time to time an opportunity to travel to a more advanced skiing destination. This year, participants have requested that staff organize a trip to Snowshoe, West Virginia. The cost of the activity, including charter bus transportation, lodging, lift tickets and taxes/fees will be paid by the participants. It is estimated that the total cost of this activity is $6,774.00, which is based on a minimum of 30 participants. Revenue from the participants will cover the expenses of the trip with no cost to the City of Asheville.

City staff recommends City Council adopt the budget amendment.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

TRANSPORTATION PRIORITY NEEDS LIST

Mr. Dan Baechtold, Metropolitan Planning Organization Coordinator, said that this is a presentation to City Council on the Transportation Priority Needs List for the 2004-2010 Transportation Improvement Program.

On December 11, the Council will appoint two council members to the Transportation Advisory Committee (TAC) of the Asheville Area Metropolitan Planning Organization (MPO). Those two members will be asked to adopt the Transportation Priority Needs List at the regularly scheduled TAC meeting to be held on December 20, 2001.

The Asheville Area MPO is the transportation decision-making body for the urbanized areas of Buncombe County, including Asheville, Biltmore Forest, Black Mountain, Weaverville, Woodfin, and the Town of Fletcher in Henderson County. The City of Asheville serves as the lead planning agency for the MPO, and receives federal funding to conduct transportation planning and provide staff services.

The MPO is made up of two primary committees. The policy-making committee is the Transportation Advisory Committee (TAC), which is made up of two members of the Asheville City Council, one elected official from each of the other member governments, and the North Carolina Board of Transportation representative for a total of ten members. The other committee is the Technical Coordinating Committee, which is a staff level committee that provides recommendations to the TAC concerning transportation decisions.

One of the duties of the MPO is the development of a list of the top transportation priorities for the Asheville area, known as the Priority Needs List. The list is then submitted to the North Carolina Department of Transportation for their consideration as they develop the draft Transportation Improvement program (TIP) for North Carolina.

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The Transportation Advisory Committee will be asked to approve this list at their regularly scheduled meeting on December 20, 2001. It is important that the list is adopted on this date in order to meet the deadlines set by the North Carolina Department of Transportation (NC DOT). Listed below are the key dates associated with the development of the Priority Needs List (PNL).

Priority Needs List Key Dates

November 18, 2001	Technical Coordinating Committee develops draft PNL
November 19, 2001	Beginning of 30-day public comment period for PNL
December 17, 2001	End of public comment period
December 20, 2001	Transportation Advisory Committee adopts PNL
January 1, 2001	Deadline to submit the PNL to NCDOT
June, 2002	NCDOT produces draft Transportation Improvement Program

The Technical Coordinating Committee for the MPO developed the Draft Priority Needs List that is now in the public comment period. Copies are available at all Buncombe County libraries, the Asheville City Building, and the town hall buildings at each of the other municipalities. In addition, the document can be viewed on the City's web site.

The Priority Needs List outlines transportation needs in several categories including roadway improvements, pedestrian and bicycle projects, and public transit. The document includes a balance of transportation needs from Asheville, Biltmore Forest, Black Mountain, Fletcher, Weaverville, Woodfin, and unincorporated Buncombe County. Listed below are the top transportation priorities in the City of Asheville's jurisdiction:

Existing Project Priorities
I-26 Connector
Sweeten Creek Road Improvements
Traffic Signal System Upgrade

New Project Priorities
Merrimon Avenue
Mill's Gap Road
Riverside Parkway (entire river corridor)
I-240/Merrimon Avenue Interchange
New Haw Creek Road (upgrade only)
Overlook Road (upgrade only)
Beaverdam Road (upgrade only)

Pedestrian Priorities
Patton Avenue Sidewalk
Hendersonville Road Sidewalk
Oakley to River Ridge Sidewalk
Merrimon Avenue Sidewalk
Haw Creek Road Sidewalk
Beaverdam Road
Brevard Road Sidewalk

Bicycle Priorities
Amboy Road Extension
Swannanoa River Road Route
Railroad Crossing Improvements

Greenway Priorities (Transportation Enhancements)
French Broad River Park Phase IV Greenway
Azalea Road Greenway

Transit Priorities
Traffic Signal Priority for Transit Vehicles (and Emergency Vehicles)
Super Stops for Nodal Transit System
Compressed Natural Gas Fueling Station
Purchase of Trolley Bus

Upon inquiry of Councilwoman Jones, Mr. Baechtold said that none of the new project priorities two years ago actually advanced to the TIP by the NC DOT. However, some projects are being completed so there may be some opportunities for some of these projects to make the list.

Councilman Peterson asked who did the rankings. Mr. Baechtold responded that they are done by the Technical Coordinating Commission by consensus. Some of the projects that did not rank high are having some improvements made even if they don't get in the TIP.

City Manager Westbrook said that it is our challenge in this year's budget to develop a revenue source to be able to go to the NC DOT and say that we have local funds we can contribute to this project. Then, perhaps, the NC DOT may feel that the City is really committed in completing this project and it will get on the priority list of funding. He also recommended City Council establish a relationship with our local NC DOT representatives who can carry the City's needs to the Raleigh office.

When Councilman Peterson asked about certain districts receiving a sum of money, Mr. Baechtold did say that a certain amount of money is allocated to DOT districts, but their funding process is hard to understand. Therefore, we just prioritize our list and hope that some of our projects makes it to the TIP for funding.

Upon inquiry of Councilman Peterson about the transit priorities, Mr. Baechtold said that these come out of a separate funding source. City Manager Westbrook said that the compressed natural gas fueling station was awarded funding, but that grant was frozen. However, the City has now applied to another state agency for funding of that station and it looks promising at this point.

ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that this is the presentation of the City of Asheville annual audit report for the Fiscal Year Ended June 30, 2001.

City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, N.C., to perform an audit of the City of Asheville for the fiscal year ended June 30, 2001, as required by North Carolina General Statute 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City is not modified by reservations or restrictions.)

Mr. Brian Broom, Director of Crisp, Hughes Evans LLP, gave a brief presentation of their findings. He said their report for the 2001 audit expresses and unqualified opinion (clean) on the fair representation of the general purpose financial statements in all material respects, in conformity with generally accepted accounting principles. The Local Government Commission recommends governmental entities maintain, at a minimum fund balance equal to 8% of expenditures. The City's fund balance for 2001 is about 12-13%.

Mr. Schaefer answered various questions from Council regarding the financial report.

Upon inquiry of Councilwoman Jones, Mr. Schaefer updated Council on the Governmental Accounting Standards Board's new reporting standard.

NEXT COMMUNITY MEETING LOCATION ON JANUARY 29, 2002

At the suggestion of City Manager Westbrook, it was the consensus of City Council to hold the January 29, 2002, City Council community meeting at Skyland Volunteer Fire Department, if available, beginning at 7:00 p.m.

Councilman Peterson suggested coordinating the City neighborhood walks with a couple of weeks from a City Council's community meeting in the same area.

WATER AUTHORITY APPOINTMENT

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Mayor Worley to fill the position on the Water Authority left vacant by Tommy Sellers, term to expire September 11, 2004, or until his successor has been appointed.

CITY COUNCIL LIAISON ASSIGNMENTS

City Council members were assigned various liaison and member positions on it's various boards and commissions.

DISCUSSION ON LAST QUARTERLY APPOINTMENT PROCESS

It was the consensus of City Council to discuss the last quarterly appointment process at the January 15, 2002, worksession with the intent to give City Clerk Burleson instructions for interviews or appointments. In addition, the City Clerk was instructed to re-advertise for all board vacancies until January 4, 2002.

Councilman Dunn requested City Council consider amending it's rules to allow only American citizens be appointed to their boards.

Vice-Mayor Bellamy asked City Council to consider appointment Buncombe County residents to the Film Commission.

After discussion, it was the consensus of City Council for the City Council Boards/Commissions Committee review these requests, and more mentioned during the discussion, at an upcoming date and report back to the full Council with their recommendations.

MEETING TIME CHANGE

Due to a recent Institute of Government class being held for newly elected Council Members, Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting to change the time of the formal meeting on Tuesday, January 8, 2002, from 5:00 p.m. to 6:00 p.m. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Mumpower moved to change the time of the formal meeting on Tuesday, January 8, 2002, from 5:00 p.m. to 6:00 p.m. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:15 p.m. p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 18, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; and Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brian L. Peterson

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. **APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON NOVEMBER 27, 2001, THE ORGANIZATIONAL MEETING HELD ON DECEMBER 4, 2001, AND THE WORKSESSION HELD ON DECEMBER 11, 2001**

B. **RESOLUTION NO. 01-187 - RESOLUTION ADOPTING THE 2002 SCHEDULED CITY COUNCIL MEETINGS**

RESOLUTION BOOK NO. 27 – PAGE [illegible] 22

C. **RESOLUTION NO. 01-188 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO ENTER INTO A LICENSE AGREEMENT WITH CIRCLE NET INC. FOR ANTENNAS AND RELATED EQUIPMENT AT 36 RESERVOIR ROAD (FORMERLY WHITE FAWN RESERVOIR)**

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed License Agreement with Circle Net, Inc. for antennas at 36 Reservoir Road.

The property at 36 Reservoir Road is the site of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

Circle Net, Inc. has offered to enter into a license agreement for space on the tower known as the "U. S. Cellular Tower". The proposed License Agreement will enable Circle Net to operate antennas and related equipment at the site. There is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Circle Net will pay a License Fee of $7,800 for the first term with a 5% increase annually thereafter. In addition to the License Fee, Circle Net will pay a Utility Fee of $150.00 per annum.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE ~~22~~ 23

D. RESOLUTION NO. 01-189 - RESOLUTION CONFIRMING A MEMBER TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of one member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan (subsequent amendments to the Minority Business Plan were adopted by City Council in November 1998 and December 1999).

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Mr. Marvin Vierra has been named by the Asheville Business Development Center to represent them on the Minority Business Commission. Mr. Vierra has been nominated to fill the position left vacant by Mr. Ronnie Blythe and his term will run through August, 2002.

City staff recommends City Council adopt a resolution confirming the appointment of one member of the Minority Business Commission.

RESOLUTION BOOK NO. 27 – PAGE 24

E. RESOLUTION NO. 01-190 - RESOLUTION AMENDING THE MINORITY BUSINESS PLAN

Summary: The consideration of a resolution to amend the Minority Business Plan in order to further enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, to expand participation in the Mentor-Protégé Program; and again in December 1999 to clarify the provisions of the Plan.

At their meeting on August 16, 2001, the Minority Business Commission recommended that the Plan be amended to further enhance and clarify provisions of the Plan. The most significant change is the requirement of certification renewal every two years instead of annually. In addition, the options to meet the annual training requirement have been expanded and the complete list is now included in the Plan.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

RESOLUTION BOOK NO. 27 – PAGE 25

F. ORDINANCE NO. 2877 - BUDGET AMENDMENT FOR THE PURCHASE OF A 15-PASSENGER VAN FOR THE SENIOR CITIZEN PROGRAM

Summary: The consideration of a budget amendment, in the amount of $19,000, from the annual appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging, and private donations via the Asheville Parks and Greenway Foundation to establish a budget for the purchase of a 15-passenger van for Parks and Recreation's Senior Citizen Program.

The City of Asheville received approval for $11,364 in October 2001 for the 2001 Senior Center General Purpose Funding from the State of North Carolina, Department of Health and Human Services, Division on Aging. Donations totaling $7,636 is available via the Asheville Parks and Greenway Foundation. The funds will be used to purchase a 15-passenger van to transport senior citizens to five senior centers and community centers to participate in nutrition programs and recreation activities. The van will serve 30% more seniors, thus allowing them to benefit from the senior citizen services of Parks and Recreation.

The Parks and Recreation Department recommends City Council approve the budget amendment to establish a budget for the purchase of a 15-passenger van.

ORDINANCE BOOK NO. 19 – PAGE 355

G. RESOLUTION NO. 01-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS AND AGREEMENTS NECESSARY TO PARTICIPATE IN THE N.C. LOCAL GOVERNMENT DEBT SETOFF PROGRAM

Summary: The consideration of a resolution authorizing the Mayor and the City Manager to execute documents and agreements necessary to participate in the NC Local Government Debt Setoff Program and designating both William L. Schaefer, Jr., Finance Director, and Cynthia A. Miller, Finance Operations Manager, and their successors as the persons to conduct necessary proceedings.

During the 1997 General Assembly session, the North Carolina Association of County Commissioners (NCACC) and the North Carolina League of Municipalities (NCLM) were successful in having enacted a legislative goal enabling counties and cities to participate in the state's income tax debt setoff program. The program permits counties and cities to submit any outstanding delinquent debt ($50 or more) through a local government clearinghouse to the NC Department of Revenue, to attempt to match these debts against individual income tax refunds. The local government clearinghouse is also charged with disbursing offset funds back to the receiving county and/or city. NCACC and NCLM have organized a joint NC Local Government Debt Setoff Clearinghouse to make this program available to all North Carolina counties and cities. N. C. Gen. Stat. sec. 105A authorizes county and city participation in the debt setoff program through a clearinghouse function, and limits clearinghouse participation to only counties and cities.

Delinquent debt is a sum that is at least $50 owed to a county or city (claimant agency) that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum. A full 60 days must lapse after a local government labels the debt as delinquent before the debt can be submitted to the clearinghouse. The county or city must furnish the full name and social security number of each debtor. Costs of participation will be $15 for each successful match of debt against an individual debtor's tax refund. No charges will accrue unless a successful tax refund setoff is made. The $15 cannot be charged to the debtor but must be paid by the participating agency. Procedures are in place to notify a debtor of a proposed setoff, to allow a debtor who decides to contest a proposed setoff to receive a hearing with the designated hearing officer and, further, to file a petition with the Courts if desired. No debt can be submitted to the clearinghouse until the entire notification and appeals process is completed for that debt.

NCACC and NCLM have contracted with Five Star Computing, Inc. of Columbia, S.C., to administer the program. Five Star has managed the South Carolina Association of Counties debt setoff program since its inception five years ago.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 27 – PAGE ~~25~~ 26

H. RESOLUTION NO. 01-192 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF THREE LIGHT TRANSIT VEHICLES

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for funding the three light transit vehicles recently purchased by the Transit Services Department.

The NC DOT requires an agreement between the City and the NC DOT for reimbursement of up to $26,250.00 for purchase of three Light Transit Vehicles and associated equipment. The state will reimburse the City up to 10% of the total expended amount. All funds must be expended by June 30, 2003. Most, but not all, funds have been expended and the remainder will be expended for radios and tires by June 30, 2002.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE ~~26~~ 27

I. MOTION ADOPTING THE 2002-03 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2002/2003 budget schedule.

The proposed Fiscal Year 2002/2003 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e., City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2002/2003 budget is scheduled for June 25, 2002.

City staff recommends City Council to adopt the Fiscal Year 2002/2003 budget schedule.

J. ORDINANCE NO. 2878 - BUDGET AMENDMENT TO APPROPRIATE ADDITIONAL STATE AND FEDERAL GRANT FUNDS FOR TRANSIT SERVICES

Summary: The consideration of a budget amendment, in the amount of $633,062, to reflect additional and appropriated revenue and offsetting expenses in the Transit Services Department.

The City of Asheville expects to receive $317,447 in additional state grant funds during the current fiscal year which are earmarked for transit operations in Fiscal Year 2001-2002. Additionally, the Transit Services Department is requesting the re-appropriation of unspent federal and state grant funds from Fiscal Year 2000-2001 in the amount of $315,615. These are funds earmarked for operations and capital project funds. Staff is requesting that these funds be appropriated in the current fiscal year to further enhance transit service.

Transit Service Enhancements include:

- the revision of service delivery to address scheduling and capacity problems,
- an increase in marketing capability
- an increased ability to implement the capital portions of the Transit Improvement Plan, including
  - Radios and tires for new Light Transit Vehicles
  - Insulation of wash tunnel
  - the purchase and installation of additional shelters
  - budget for additional Cross Walks on city streets
  - security enhancements
  - other capital projects

City staff recommends City Council adopt a budget amendment to reflect additional revenue and offsetting expenses in the Transit Services Department.

ORDINANCE BOOK NO. 19 – PAGE 357

K. ORDINANCE NO. 2879 - BUDGET AMENDMENT FOR THE OUTDOOR RECREATION PROGRAM

Summary: The consideration of a budget amendment, in the amount of $6,774.00, to allow the Outdoor Recreation Program to collect fees and expend these fees to pay for a weekend snow skiing trip to Snowshoe, West Virginia.

The Outdoor Recreation Program of the Parks and Recreation Department offers a variety of opportunities for all ages and abilities to enjoy the outdoors. One of the most successful activities offered through this program is the learn-to-ski snow skiing instructional program offered each winter in conjunction with the French Swiss Ski College at Appalachian ski Mountain. This learn-to-ski program is celebrating its 30th year in 2002. During the past 30 years, the program has offered participants from time to time an opportunity to travel to a more advanced skiing destination. This year, participants have requested that staff organize a trip to Snowshoe, West Virginia. The cost of the activity, including charter bus transportation, lodging, lift tickets and taxes/fees will be paid by the participants. It is estimated that the total cost of this activity is $6,774.00, which is based on a minimum of 30 participants. Revenue from the participants will cover the expenses of the trip with no cost to the City of Asheville.

City staff recommends City Council adopt the budget amendment.

ORDINANCE BOOK NO. 19 – PAGE 359

L. RESOLUTION NO. 01-193 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY

Summary: The consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

The term of Tommy Sellers, as a member on the Regional Water Authority, expired on September 30, 2001.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Mayor Charles Worley to serve a three year term, term to expire September 30, 2004, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 17

M. RESOLUTION NO. 01-194 - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The consideration of appointing a member to the ADA Compliance Committee.

Councilman Peterson has resigned from the ADA Compliance Committee, thus creating a vacancy.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Carl Mumpower as the elected representative to the ADA Compliance Committee to serve a term according to his Council term of office.

RESOLUTION BOOK NO. 27 – PAGE ~~28~~ 29

N. RESOLUTION NO. 01-195 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: The consideration of appointing a member to the Citizens/Police Advisory Committee.

Councilman Peterson has resigned as the City Council representative on the Citizens/Police Advisory Committee thus leaving a vacancy.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Joe Dunn as the non-voting City Council member on the Citizens/Police Advisory Committee to serve a term according to his Council term of office.

RESOLUTION BOOK NO. 27 – PAGE ~~29~~ 30

O. RESOLUTION NO. 01-196 - RESOLUTION APPOINTING A MEMBER TO THE CRIME STOPPERS BOARD OF DIRECTORS

Summary: The consideration of appointing a member to the Asheville-Buncombe Crime Stoppers Board of Directors.

Vice-Mayor Bellamy has resigned as the City Council representative on the Asheville-Buncombe Crime Stoppers Board of Directors.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Joe Dunn as the City Council representative on the Asheville-Buncombe Crime Stoppers Board of Directors to serve the unexpired term of Vice-Mayor Bellamy, term to expire June 30, 2002, and then to serve a full three year term, term to expire June 30, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE ~~30~~ 31

P. RESOLUTION NO. 01-197 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: The consideration of appointing a member to the Asheville Downtown Commission.

The terms of Barbara Field and Chuck Cloninger, as City Council representatives on the Downtown Commission have expired.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilman Jim Ellis as the City Council representative on the Asheville Downtown Commission to serve a term according to his Council term of office.

RESOLUTION BOOK NO. 27 – PAGE 32

Q. RESOLUTION NO. 01-198 - RESOLUTION APPOINTING AN EX-OFFICIO MEMBER TO THE TOURISM DEVELOPMENT AUTHORITY

Summary: The consideration of appointing a member to the Buncombe County Tourism Development Authority.

Due to the Barbara Field's term ending as a City Council member, there exists a need to appoint a City Council representative as the ex-officio non-voting member on the Buncombe County Tourism Development Authority.

On December 11, 2001, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Vice-Mayor Terry Bellamy as the ex-officio non-voting City Council representative on the Buncombe County Tourism Development Authority to serve a term according to her Council term of office.

RESOLUTION BOOK NO. 27 – PAGE 33

R. RESOLUTION NO. 01-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN EASEMENT FOR RELOCATION OF A POWER LINE AT THE ASHEVILLE REGIONAL AIRPORT

Summary: The consideration of a resolution authorizing the City Manager to execute an easement for relocation of a power line at the Asheville Regional Airport.

In connection with some other work currently being done at the Asheville Regional Airport, Carolina Power & Light plans to relocate an existing overhead power line and put most of it underground. The Airport's engineer has reviewed and approved the plans. The City owns the property, and Council approval is required for this easement.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 27 – PAGE 34

S. RESOLUTION NO. 01-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE ASHEVILLE CITIZEN-TIMES FOR RETAIL ADVERTISING

Summary: The consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. Last year all departments in the City ran a total of 32 column inches per week in the Asheville Citizen-Times. This qualifies the City to take advantage of a weekly frequency rate running 16 to 31 column inches per week.

The open rate for advertising in the Asheville Citizen-Times is $47.02 per column inch daily and $62.18 per column inch on Sunday. This contract will allow the City to advertise for $29.85 per column inch daily and $39.84 per column inch on Sunday. Based on the amount of advertising placed in 2001, the City saves $29,618 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

RESOLUTION BOOK NO. 27 – PAGE [illegible] 36

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

At the request of the petitioner, Councilwoman Jones moved to continue this public hearing until January 22, 2002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY KNOWN AS OLMSTED, SECTION 2 OF BILTMORE PARK

ORDINANCE NO. 2880 - ORDINANCE TO EXTEND THE CORPORATE LIMITS TO INCLUDE OLMSTED, SECTION 2 AT BILTMORE PARK

Mayor Worley opened the public hearing at 5:03 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to property located north of Long Shoals Road and identified as Olmsted, Section 2 of Biltmore Park. This public hearing was advertised on December 7, 2001.

Biltmore Farms, Inc. and seven other property owners have submitted annexation petitions for Olmsted, Section 2 at Biltmore Park. This area is contiguous to the existing corporate limits, being bordered to the north, south and east by sections of Biltmore Park that have been previously annexed

The area proposed for annexation consists of 30 acres and is platted for 26 single-family residential lots, and a common area. The area will be accessed by primarily by Olmsted Drive. This area is within the ETJ and is currently zoned RS-8.

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Biltmore Farms Inc. is developing utilities and streets. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance.

This would be the 24th section of the Biltmore Park development to be annexed. Tax valuation of the area annexed to date is $106, 608,100.

City staff recommends City Council adopt a resolution fixing the date of a public hearing on December 18, 2001, on the question of annexation of property located north of Long Shoals Road and identified as Olmsted, Section 2 at Biltmore Park.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook explained the Biltmore Park development.

When Councilman Dunn said that there is an area in the City that has been annexed and is not receiving City garbage service. City Manager Westbrook asked for that information in order to make sure that this service is provided.

Mayor Worley closed the public hearing at 5:13 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2880. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 361

C. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF 2360 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2881 - ORDINANCE TO REZONE A PORTION OF 2360 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:13 p.m.

Urban Planner Stacy Merten said that this is the consideration of an ordinance to rezone a portion of 2360 Sweeten Creek Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on December 7 and 14, 2001.

On September 28, 2001, the Givens Estates submitted an application for the rezoning of the eastern portion of the property identified as 2360 Sweeten Creek Road from RS-8 to RM-16 (PIN No. 9655.07-58-3386). The property is located on the east side of Sweeten Creek Road, between the existing Givens Estate property and Park Avenue. The entire parcel is 72 acres, but the rezoning request is only for the 55 acre portion of the property fronting on Sweeten Creek Road.

The RM-16 District, which allows up to 16 units per acre, is established to permit a full range of high density multi-family housing types along with limited public, institutional and commercial uses. It is intended that this district be located near employment centers, shopping, roads and other urban infrastructure capable of supporting the demand generated by higher density residential development. The maximum height in the RM-16 District is 40 feet as is the existing RS-8 District.

The RS-8 District is a higher density single family district allowing up to eight units per acre and is established where public infrastructure is sufficient to support such development, while providing the necessary stability to protect the district's residential character.

Givens Estates, an existing multi-family retirement community, is planning an expansion that will encompass this parcel, which lies to the north of the existing development. The requested zoning will allow the expansion to continue as planned. The topography and urban infrastructure are capable of accommodating the increased density. The proposed parcel area to be rezoned is over 50 acres and continues an existing zoning pattern, thus it would not constitute spot zoning. The 2010 Plan indicates residential uses for this area. Any high density residential development that is built adjacent to existing single family development will require a full landscaped buffer up to 25 ft. in width per the Unified Development Ordinance.

Ms. Merten said that the maximum height of any building would be 40 feet as in the existing district, the buffer would depend on the density of the use but would be between 20-25 feet, and the setback would depend on the size of the building, but a maximum of 50 feet.

Planning & Development staff recommend approval of the rezoning request. The Planning & Zoning Commission reviewed this at their meeting on November 7, 2001, and unanimously recommended that the parcel be rezoned to RM-16 Residential Multi-Family High Density District

Mr. W. Louis Bissette Jr., attorney representing the Givens Estate, explained the project to Council.

City Attorney Oast reminded Council that if Council rezones this property, they will be rezoning it for any uses allowed in the RM-16 district classification.

Mayor Worley closed the public hearing at 5:17 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2881. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 364

D. PUBLIC HEARING TO CLOSE A PORTION OF PORTER STREET FROM POND AVENUE TO ROSSCRAGGON ROAD AND THE 15-FOOT ALLEYWAY FROM PORTER STREET TO LEE STREET

RESOLUTION NO. 01-201 - RESOLUTION TO CLOSE A PORTION OF PORTER STREET FROM POND AVENUE TO ROSSCRAGGON ROAD AND THE 15-FOOT ALLEYWAY FROM PORTER STREET TO LEE STREET

Mayor Worley opened the public hearing at 5:21 p.m.

Mr. David Foster, Public Works Project Coordinator, said that this is the consideration of a resolution to close a portion of Porter Street from Pond Avenue to Rosscraggon Road and the fifteen foot alleyway from Porter Street to Lee Street. This public hearing was advertised on November 23, 30, December 7 and 14, 2001.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, McGuire, Wood and Bissette, Law Firm, on behalf of Balus and Margaret Chastain, has requested to close a portion of Porter Street from Pond Avenue to Rosscraggon Road and the fifteen-foot alleyway from Porter Street to Lee Street.

Public Works Department staff has determined that the right-of-way known as Porter Street, beginning at Pond Avenue, and ending at Rosscraggon Road and the fifteen foot alleyway, beginning at Porter Street and ending at Lee Street as shown in Plat Book 1771, Page 0552 is not part of an adopted street plan and is not a City maintained Right of Way.

City staff recommends City Council adopt the resolution closing a portion of Porter Street from Pond Avenue to Rosscraggon Road and the fifteen foot alleyway from Porter Street to Lee Street, subject to retaining a sewer easement for MSD.

Mayor Worley closed the public hearing at 5:25 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 01-201. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE ~~35~~ 36

E. PUBLIC HEARING TO CONSIDER THE REZONING OF 14 FOREST RIDGE DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT, AND ISSUANCE OF A CONDITIONAL USE PERMIT (CONDITIONAL USE ZONING)

ORDINANCE NO. 2882 - ORDINANCE TO REZONE 14 FOREST RIDGE DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2883 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 14 FOREST RIDGE DRIVE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:27 p.m.

Chief Planner Gerald Green submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 12/18/01). This public hearing was advertised on December 7 and 14, 2001.

Mr. Green said that this is the consideration of an ordinance to conditionally rezone property located on at 14 Forest Ridge Drive from RM-6 Residential Multi-Family Low Density District to Community Business II District/ Conditional Use, and issuance of a conditional use permit for an automobile and motorcycle repair business.

At their November 7, 2001, meeting, the Planning and Zoning Commission recommended rezoning of property located at 14 Forest Ridge Drive from RM-6 to Community Business II. Paul Carroll is the owner and applicant. The one acre site is located on Forest Ridge Drive, just off Old County Home Road in the City's extraterritorial jurisdiction area (Location Map – attached to City Exhibit 3). The site is bounded by Smith Mill Creek and a portion of the site is located within a designated flood hazard area. Forest Ridge Drive provides access to the site. A variety of land uses are located along Old County Home Road, but the uses in the immediate vicinity of the site are residential. Surrounding zoning is RM-6. Properties fronting on Leicester Highway east of Old County Home Road are zoned CB II.

The request is to conditionally zone the property as Community Business II/Conditional Use to allow the owner to operate an automobile and motorcycle repair business on the property in addition to the owner's home, which is currently located on the property. The owner's home is approximately 1200 square feet and would continue to be used as a residence. A building, not to exceed 1200 square feet initially, would be constructed on the property to house the auto repair business. The owner has asked that he be permitted to expand the building at a later date up to 2,200 square feet. The proposed building would be buffered from adjacent residential properties by a wood privacy fence and vegetation (Site Plan – attached to City Exhibit 3). Most of the repair work would take place inside the proposed building, although cars needing and/or undergoing repair would be parked outside the building on a gravel lot.

The Technical Review Committee has not reviewed this project. A Transportation Impact Analysis was not required for this project.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary opinion, absent the benefit of public input, is that all seven standards appear to be met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed use will require the construction of a building on the property to house the repair of automobiles and motorcycles. The operation of an automobile and motorcycle repair business on this site will not materially endanger the public health or safety if the site is developed in accordance with the approved site plan and applicable regulations.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The proposed development of the land is compatible with natural and topographic features on the site and within the immediate vicinity. Some fill will be required adjacent to the designated flood hazard area, but the fill will not be located within the flood area.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

Mr. Green pointed out that staff's initial recommendation was for denial of this project. The Planning & Zoning Commission unanimously recommended approval of the project based on public input and the feeling that this use would be compatible with adjacent properties. Some of these standards and findings have changed in light of the Planning & Zoning Commission's recommendations from those first presented by the Planning & Development staff. The revised response is that:

The project will be screened from abutting property to mitigate the potential adverse impact associated with the automobile/motorcycle repair business.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The structure to be constructed on the site is in harmony with the scale and bulk of other structures in the area. The proposed 1200 square foot structure will be located on a one acre lot on which only one other structure, a single family home, is located. The development will be in harmony with the coverage and density found in the area. The area in which the site is located has a mixture of uses, from what appear to be junkyards to nice single family homes.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City.

The Comprehensive Plan appears to indicate low density residential uses for this area. A home would continue to be located on the property under this proposal. The operation of an automobile repair business in a residential area is not addressed in any of the City's official plans.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

All services and facilities are available to meet the needs of the proposed use.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed use will be a small-scale automobile/motorcycle repair business with one employee. Traffic generation will be minimal. A Traffic Impact Analysis is not required for the proposed use.

To recap, the proposed project is a 1200 square foot building that will house an automobile/motorcycle repair business. Future plans call for the expansion of the building up to 2,200 square feet. The 1.0 acre site also contains the home of the property owner/applicant. Construction of the building in accordance with the site plan and adherence to the conditions recommended for the approval of the conditional use permit for this project would ensure that the impacts on surrounding property owners are mitigated.

The Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their November 7, 2001, meeting. No one spoke in opposition to the requested rezoning or the proposed use during the public hearing held by the Planning and Zoning Commission. After reviewing the request and the site plans, the Planning and Zoning Commission voted unanimously (6 – 0) to recommend approval of the conditional use rezoning, subject to the conditions identified by staff. The Commission's recommendation for approval included the future expansion of the building up to 2,200 square feet.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the conditional use permit with the following conditions: (1) The owner of the automobile/motorcycle repair business must live on the site; and (2) Inoperable automobiles cannot be stored on the property.

Mr. Green entered into the record a note from William B. Simpson, 16 Forest Ridge Drive (City Exhibit 4). He also stated that he received a call from a neighbor about the noise from the motorcycles.

There was considerable discussion amongst Council members regarding the noise from testing engines in the evening hours.

Vice-Mayor Bellamy recommended hours of operation be included as a condition in this permit.

Vice-Mayor Bellamy questioned the condition recommended by staff that no automobiles be stored on the property and what would happen if a vehicle could not be repaired in one day. Mr. Green suggested a definition of inoperable be included, e.g., a vehicle that remains on the site unable to be operated for a period of two weeks. City Attorney Oast felt, however, that it may be easier to enforce a limit on the number of vehicles that can be stored on the property, whether they are operable or not.

Councilman Mumpower was hesitant to add more restrictions on this property owner since the City currently has a noise ordinance and a junked vehicle ordinance.

Councilman Dunn was also concerned about the Council putting restrictions on a small businessman and telling him when he can and can't work at his trade. He felt the owner should be allowed to work anytime, day or night, as long as his noise at night does not negatively impact his neighbors.

Mr. Green entered into the record City Exhibit 5 which was a petition signed by 17 area residents who had "no objections to Paul & Lisa Carroll to rezoning their property … from RM-6 to CBII."

Mr. Paul Carroll, petitioner, did not want Council to restrict his working hours in that he had every intention of being respectful of his neighbors with regard to noise. He said that he does have a building and he will work in the building at night. He said that he did go door to door and talked to everyone in the neighborhood about this proposed change.

Upon inquiry of Councilwoman Jones, Mr. Carroll said that he usually does not do any business after 7:00 p.m.

Vice-Mayor Bellamy suggested a condition that there will be no testing of engines outside of the building before 7:00 a.m. or after 7:00 p.m.

There being no request for rebuttal, Mayor Worley closed the public hearing at 6:00 p.m.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2882 to rezone property at 14 Forest Ridge Drive from RM-6 Residential Multi-Family Low Density District to Community Business II District/Conditional Use. This motion was seconded by Councilman Mumpower and carried unanimously.

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When Mr. Carroll said that he would be happy to abide by the City's noise ordinance, it was determined that this property lies in the extraterritorial jurisdiction area and is not subject to the City's noise ordinance. However, Buncombe County does have a noise ordinance that would apply.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2883 granting the conditional use permit for 14 Forest Ridge Drive with the following conditions: (1) the owner of the automobile/motorcycle repair business must live on the site; (2) inoperable automobiles cannot be stored on the property; and (3) that there will be no testing of engines outside of the building before 7:00 a.m. or after 7:00 p.m.; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Jones.

Councilman Mumpower said that on the basis that the City cannot enforce it's noise ordinance on this property, he would be willing to support the motion.

Councilman Ellis agreed with Councilman Mumpower but felt it was not fair to put restrictions on property that is stronger than if that property were in the City.

Upon inquiry of Vice-Mayor Bellamy, Mr. Green said that Leicester Highway is about 800-1,000 feet from this property and about 100 feet from the residential areas.

Councilman Mumpower didn't think the Council should set up a special noise standard for Mr. Carroll's neighborhood than is different than other neighbors in the City of Asheville.

Vice-Mayor Bellamy amended the third condition in her motion to read "that the applicant will adhere to the City's noise ordinance between 7:00 a.m. and 10:00 p.m. Councilwoman Jones accepted the amendment to the motion. Said amended motion carried on a 5-1 vote, with Councilman Dunn voting "no".

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COMMISSION

As discussed at the December 11, 2001, worksession, Councilman Ellis moved to appoint Councilman Dunn as the City representative to the Buncombe County Economic Development Commission. This motion was seconded by Councilman Mumpower and carried unanimously.

B. UPDATE ON NATIONAL LEAGUE OF CITIES CONFERENCE

Vice-Mayor Bellamy updated City Council on her recent trip to the National League of Cities Conference held in Atlanta, Georgia. The following are three issues she briefed Council on: (1) the need to call our legislators for home security funds; (2) during the water agreement negotiations, City Council should limit their agreement for five years; and (3) need to make sure our boards and commissions reflect our City make-up.

C. CLAIMS

The following claims were received by the City of Asheville during the period of November 9 – 29, 2001: Greg Northrup (Streets), Lindsey Miguelez (Sanitation), Robert Mirabal (Civic Center), Dianna Smith (Streets), Nickie Ballard (Parks & Recreation), BellSouth (Water), BellSouth (Water), Ken Myrick (Water), Laurel Frick (Fire) and Slade Smith (Transit Services).

The following claims were received by the City during the period of November 30-December 6, 2001: Albert Spack (Streets), Herman Brown (Water), Natasha Watkins (Police) and Earl Stuckenbruck (Water).

The following claims were received by the City during the period of December 7-13, 2001: Robin Elliott (Water), James Lanstra (Transit Services), Paul Thomas (Streets) and Rachel Eunice (Finance).

These claims have been referred to Asheville Claims Corporation for investigation.

D. LAWSUIT

The City was served with the following Complaint from Ronald L. Levitan on November 1, 2001: Complaint for money owed for damage to automobile due to negligent maintenance of city-owned manhole cover. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English commented on various issues ranging from the appointment of the seventh member of City Council on December 4, 2001, to urging City Council not to allow football.

B. COMMENTS BY MIKE MORGAN

Mr. Mike Morgan asked City Council to investigate the strong sewer order from a small restaurant in West Asheville.

C. COMMENTS FROM KEVIN NUTTELL

Mr. Kevin P. Nuttell, advocate for people living with HIV and AIDS and Director of Public Policy in Government Relations for the North Carolina AIDS Policy Center, questioned Councilwoman Jones's seat on the Western North Carolina HIV AIDS Consortium.

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D. COMMENTS FROM WALTER PLAUE

Mr. Walter Plaue suggested City Council look to the Hispanic and Native American communities for additional representation on City boards and commissions. He also felt that more information should be on the agenda regarding impacts to the City's budget.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:43 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 8, 2002 - 6:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 18, 2001

B. RESOLUTION NO. 02-1 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO INCLUDE A COMMUNITY MEETING ON TUESDAY, JANUARY 29, 2002, BEGINNING AT 7:00 P.M. AT THE SKYLAND VOLUNTEER FIRE DEPARTMENT LOCATED AT 9 MILLER ROAD, ASHEVILLE, NC

RESOLUTION BOOK NO. 27 – PAGE 38

C. RESOLUTION NO. 02-2 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The consideration of appointing a member to the Educational Access Channel Commission.

Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On December 12, 2001, Superintendent of Asheville City Schools Robert L. Logan recommended Mr. Charlie Glazener be appointed as one of the representatives of Asheville City Schools to replace Dr. Patti Cutspec. Mr. Glazener will be filling the unexpired term of Dr. Cutspec, whose term will expire on June 1, 2005, or until his successor is appointed.

Staff recommends City Council adopt the resolution appointing Mr. Charlie Glazener to the Educational Access Channel Commission.

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D. RESOLUTION NO. 01-3 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH CIRCLE NET INC. FOR ANTENNAS AND RELATED EQUIPMENT AT 36 RESERVOIR ROAD (FORMERLY WHITE FAWN RESERVOIR)

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Circle Net, Inc. for an antenna at 36 Reservoir Road.

On December 28, 2001, pursuant to City Council Resolution No.01-188 the City Clerk published a public notice of City Council's intent to consider a license agreement with Circle Net, Inc.

Circle Net, Inc. has offered to enter into a license agreement for space on the tower owned by the City and known as the "U. S. Cellular Tower". The proposed License Agreement will enable Circle Net to operate antennas and related equipment at the site. There is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 3 years with 2 renewal periods of 3 years. Circle Net will pay a License Fee of $7,800 for the first term with a 5% increase annually thereafter. In addition to the License Fee, Circle Net will pay a Utility Fee of $150.00 per annum.

Planning Department staff recommends adoption of the Resolution.

RESOLUTION BOOK NO. 27 – PAGE [illegible] 46

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING OF THREE LOTS LOCATED AT YORKSHIRE STREET AND REED STREET (BILTMORE HEIGHTS PROFESSIONAL PARK) FROM OFFICE DISTRICT TO OFFICE II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2884 - ORDINANCE TO REZONE THREE LOTS LOCATED AT YORKSHIRE STREET AND REED STREET (BILTMORE HEIGHTS PROFESSIONAL PARK) FROM OFFICE DISTRICT TO OFFICE II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2885 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THREE LOTS LOCATED AT YORKSHIRE STREET AND REED STREET (BILTMORE HEIGHTS PROFESSIONAL PARK

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:03 p.m.

Urban Planner Stacy Merten submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 1/8/02). This public hearing was advertised on December 28, 2001, and January 4, 2002.

Ms. Merten said that this is the consideration of an ordinance to conditionally rezone three lots on Yorkshire Street and Reed Street (Biltmore Heights Professional Park) from Office District to Office II District/Conditional Use, and issuance of a conditional use permit.

On October 26, 2001, Dr. William Chambers submitted an application for conditional use rezoning from Office District to Office II District/Conditional Use for the Biltmore Heights Professional Park (PIN Nos. 9647.12-85-2947, 9647.12-86-3084 and 9647.12-86-3131). The 2.92 acre site is located at the corner of Reed and Yorkshire Streets (Location Map – Attached to City Exhibit 3). The site has undergone Level I review and been approved for the construction of three, 2 story office buildings (Site Plan – Attached to City Exhibit 2). Two of the buildings (B & C) have been completed.

The proposal is to conditionally zone the property as Office II District/Conditional Use to allow the construction of a 13,000 square ft., 2 story building, which is 5,000 square ft. larger than the 8,000 square ft. maximum allowed for multi-story buildings in the Office zoning district. The reason for the request is to accommodate a more marketable building that works better with the existing site conditions for the construction of building A. Both buildings B & C received variances from the Zoning Board of Adjustment and are larger than the underlying Office zoning allows.

The Technical Review Committee reviewed this project at their meeting on December 3, 2001, and recommended that the project be forwarded to the Planning & Zoning Commission with the conditions that the size of the project be limited to 13, 000 sq. ft. and that a revised landscape plan be submitted showing both existing and proposed landscaping. A Transportation Impact Analysis was not required for this project.

City Council must take formal action as set forth in section 7-9-9(c) (4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary review, absent the benefit of public input, indicates that all seven standards appear to be met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed use is for an office building which is allowed in the existing zoning district and as such would not materially endanger the public health or safety if developed in accordance with the approved site plans and applicable regulations.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The building design makes maximum use of the property given the amount of grading that would be necessary regardless of the size of the building, thus the proposed project will be better able to work with the exiting site conditions.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The larger building will be located on the site uphill and away from the adjacent residential property and adequate buffers will be provided. It is not anticipated that the use would have a negative affect on the value of adjoining or abutting property.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed use will be similar in size, scale and materials to the existing buildings on the site. The surrounding properties to the north and east are zoned Institutional and Highway Business respectively and are developed with higher intensity uses. The project will be adequately buffered from the adjacent residential uses and landscaped in accordance with the UDO, thus it will be in keeping with the existing character, scale and density of the neighborhood.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Comprehensive Plan indicates commercial uses for this area. The proposed use will be in keeping with smart growth policies in that it is promoting compatible higher density commercial development. It is also encouraging the expansion of medical services in keeping with the economic development strategic plan.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located in an existing developed area. The original project, with a smaller building, received informal approval from the City's Technical Review Committee, including the Water Resources Department, the Fire Department, Engineering and Public Works.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed building is 5,000 sq. ft. larger than would be allowed under the current zoning. A transportation impact analysis is not required as traffic generation will be minimal.

The Planning & Zoning Commission reviewed this project at their December 5, 2001, meeting and voted unanimously to recommend approval of the project with conditions. Planning & Development staff recommend approval of the conditional use rezoning with the following conditions: (1) The size of the building should be limited to 13,000 sq. ft.; and (2) The revised site plan should include the landscaping, existing and proposed.

There was a brief discussion about why the Board of Adjustment approved variances for Buildings B and C, but denied the variance for Building A. Mr. Carroll Hughes, President of Spaceplan, gave his recollection of the Board of Adjustment decision to Council stating that his rationale for the variance was the same for Building A as it was for Buildings B and C. He did not quite understand why the Board of Adjustment denied the variance petition for Building A. City Attorney Oast stated that the conditional use zoning of this property is the appropriate way to get the use out of the property that Mr. Hughes is seeking. Ms. Merten also noted that when the first building variance was applied for, the City did not have the conditional use process in place.

There being no request for rebuttal, Mayor Worley closed the public hearing at 6:17 p.m.

Councilman Ellis moved to adopt Ordinance No. 2884 to rezone three properties at Yorkshire Street and Reed Street from Office District to Office II District/Conditional Use. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 372

Vice-Mayor Bellamy moved to adopt Ordinance No. 2885 granting the conditional use permit for Biltmore Heights Professional Park with the following conditions: (1) The size of the building should be limited to 13,000 sq. ft.; and (2) The revised site plan should include the landscaping, existing and proposed; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 374

B. PUBLIC HEARING RELATIVE TO REZONING 669 BREVARD ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2886 - ORDINANCE TO REZONE 669 BREVARD ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 6:18 p.m.

Urban Planner Alan Glines said that this is the consideration of the rezoning of property located at 669 Brevard Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on December 28, 2001, and January 4, 2002.

This proposal is to consider the rezoning of property located at 669 Brevard Road from Commercial Industrial District to Highway Business District. The PIN No. is 9627-20-92-8325 and is located within the City limits. The parcel is the site of an older single story brick house located on Brevard Road which is becoming a commercial corridor. The parcels immediately to the north and west of the parcel are zoned Commercial Industrial. The contiguous parcels to the south which have frontage along Brevard Road are zoned Highway Business. The parcel is approximately .69 acre. The parcel is an ideal location for a small business and would follow a similar pattern in the area of changes in use from residential to business uses along this important corridor between I-26 and I-40.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the rezoning of the property located at 669 Brevard Road from Commercial Industrial District to Highway Business District. The Planning and Development staff recommend the approval of the requested rezoning.

Mayor Worley closed the public hearing at 6:21 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2886. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 379

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 02-4 - RESOLUTION ACKNOWLEDGING REPAYMENT OF DEBT OWED BY EAGLE/MARKET STREETS DEVELOPMENT CORPORATION TO THE CITY OF ASHEVILLE

Ms. Heather Dickens, Community Development Analyst, said that this is the consideration of a resolution to accept the value of space provided free of charge to the Asheville Police Department by Eagle/Market Streets Development Corporation at 70 South Market Street as repayment in-kind of the $14,000 debt owed to the City.

Eagle/Market Streets Development Corporation (EMSDC) has submitted a request to the City of Asheville for forgiveness of the $14,000 debt owed to the City in exchange for rental space provided at no cost to the Asheville Police Department (APD) from August 1999 through December 2001. From August 1999 to present, the APD has operated a substation and occupied the north half of the building, Suite A, of 70 S. Market Street. Suite A includes 1200 square feet of office and meeting space, valued at an area market rate of $750 a month. The total value of in-kind rent provided by EMSDC to APD is $21,750.

The initial debt arose in 1998 when EMSDC purchased 70 S. Market Street for $14,000 more than the appraised value. Community Development Block Grant (CDBG) funds were used to pay for the property acquisition. After review, the Dept. of Housing and Urban Development disallowed the $14,000 excess payment and required the City to repay the difference from general fund to the CDBG fund. As a result EMSDC agreed to repay $14,000 to the City.

The request from EMSDC is for the City to accept the value of space provided for APD as full and satisfactory repayment of the $14,000 owed to the City. EMSDC plans to continue partnering with the APD and will establish a new lease agreement for the terms of the space beginning January 1, 2002, where services will be provided in lieu of rent.

City staff recommends approval of the resolution and that the $14,000 owed to the City by EMSDC be regarded as paid in full.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook said that City does not pay rent in facilities where we have a substation because usually those facilities are City-owned.

When Councilman Dunn asked why EMSDC purchased the property more than the appraised value, Ms. Dickens explained that when CDBG funds were used for the purchase of 70 S. Market Street, an appraisal did not accompany the payment for that purchase. When later reviewed, the appraisal price was for less than the purchase price. Therefore, CDBG funds could only be used for the full appraisal value. The City does not now pay out CDBG funds without a full appraisal.

Councilman Peterson and Mayor Worley both agreed that a police substation at this location is a big benefit and good partnership for the area.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 02-4. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 41

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of December 14, 2001 – January 3, 2002: Kenneth Faulkner (Sanitation), Werner Ent. (Streets), Santas L. Jackson (Water) and Terry Smathers (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City was served with the following Complaint on December 21, 2001, which is generally described as follows: Connie C. Jones. The nature of proceeding is ESC claim for unemployment insurance denial. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttell, representing NC AIDS Policy Center, talked about his involvement in exposing the integrity of the AIDS industry. He stressed the need for consumer and public involvement in the oversight of AIDS service organizations at the local level. It is his goal to work in partnership with the Mayor's Office to develop language expanding Asheville's "sunshine ordinance," thereby ensuring the taxpayer has a specific right to participate in local oversight functions of any corporation which is registered in the City of Asheville, in particular local AIDS Service Organizations.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:33 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 15, 2002 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Street Milling Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asphalt Unlimited to prepare for pavement resurfacing of various streets in Asheville, North Carolina.

The City is in need of a contractor to provide milling services to city streets in the Asheville city limits. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for milling services were solicited and one qualified response was received. The bidders are as follows: Asphalt Unlimited at $85,085.09 and no response from Slurry Pavers.

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution to authorize the City Manager to enter into a contract with Asphalt Unlimited to mill streets in the Asheville area.

Upon inquiry of Councilman Peterson, Mr. David Foster, Public Works Project Coordinator, said that the contractor is responsible for disposing the material.

Security Enhancements at Water Resource Facilities

Summary: The consideration of a resolution authorizing execution of a contract with Sentry Alert Security Service Inc. for adequate security and protection for the Mills River Water Treatment Plant, the Water Maintenance Facility and the North Fork Water Treatment Plant and watershed.

Increased security measures are needed to provide adequate security and protection of the water system. Specifications and security needs were identified for each Water Resources Facility, with the exception of the Bee Tree Water Treatment Plant which is off-line due to spillway modifications. This area will be looked at approximately 60 days prior to completion of the spillway project in August 2003 for security requirements.

Requests for bids were sent to local security firms with only two firms responding. The bids received were $137,642.00 (low bid) from Sentry Alert Security Services, Inc. and $436,600.00 from Haynes Technologies. Bids were not received from Carolina System and Services, Inc. and Hayes and Lunsford Technologies.

Facility entry will be by card control (same system now used at City Hall). Controlled entry at all Water Resources Facilities will be tracked at the various facilities using the same security software that is currently in use in City Hall. Controlled gate entrance/exit will enable staff to limit access to possible vulnerable areas of the water plants and maintenance facility. All gates and other key points will have closed-circuit television monitoring. All entry/exit doors will have limited card control access. All Water Resources Facilities have been on heightened security since the September 11, 2001, terrorist attacks. Installation of the requested security equipment will provide the added security measures required to protect our water sources, facilities and employees. The Regional Water Authority of Asheville, Buncombe and Henderson approved increased security measures at its October 2001 meeting. Funds have been allocated from the Water Maintenance operational budget to fund these security enhancements.

Staff recommends the Council approve the contracts to Sentry Alert Security Service, Inc. in the amounts of $39,840.00 for the Mills River Water Treatment Plant, $10,652.00 for the Water Maintenance Facility, and $87,150.00 for the North Fork Water Treatment Plant.

Interim Water Resources Director David Hanks responded to Council's questions regarding what now is being done for security.

Grant Application for Azalea Road Park Phase I

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation for funds through the North Carolina Parks and Recreation Trust Fund, to assist with the development of parks and greenways.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road in east Asheville. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise $3 million to build the first phase of the park.

If the grant funds are received, they will be used to assist with the construction of the first phase of Azalea Road Park.

The Parks and Recreation Department is requesting $250,000 in grant funds from the N. C. Parks and Recreation Trust Fund, which requires a 50% cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation via the John B. Lewis Family Foundation.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds with the North Carolina Parks and Recreation Trust Fund to assist with the construction of Azalea Road Park Phase I.

Clerk to Advertise for Upset Bids for Lot in East Riverside – Tract 2 on Choctaw Street

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase property on Choctaw Street (Tract 2) in the East Riverside Redevelopment Project.

Choctaw Street Tract 2 is a residential zoned lot near the corner of Choctaw Street and Congress Street comprising 0.224 acre. A bid has been received from Tilman and Sabrina Jackson in the amount of $11,800.00 to purchase said property, which bid is not less than the appraisal of $11,800.00. The bid from the Jackson's includes the proposal to construct a single family residence on the property.

The sale of the property has been through Interdepartmental Review and all respondents concurred with no exceptions.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Donation from Haw Creek Neighborhood Association for Haw Creek Park Interpretive Signs

Summary: The consideration of a budget amendment to appropriate an additional $8,712.00 to the Haw Creek Park Project from the Haw Creek Neighborhood Association for interpretive signs.

The City of Asheville is continuing its development of a passive park in the Haw Creek community which includes a restroom/picnic shelter, gazebo, playground area, paved woodland trails, landscaping, and a parking lot. The last feature, interpretive signage, will be implemented through the City of Asheville Capital Improvement Budget, Parks & Recreation's Trust Fund, Adopt-A-Trail, and the Haw Creek Neighborhood Association. A budget amendment is necessary to appropriate an additional $8,712.00 to this project from the Haw Creek Neighborhood Association. The Association's commitment of these funds will enable the project to be completed.

The Parks and Recreation Department recommend approval of the budget amendment in the amount of $8,712.00 for the Haw Creek Park Interpretive Sign Project.

Sale of Right-of-Way on Brevard Road to the N. C. Dept. of Transportation

Summary: The consideration of a resolution to convey land on Brevard Road to the N. C. Dept. of Transportation.

The N. C. Dept. of Transportation (NC DOT) has offered to purchase a portion of land owned by the City on Brevard Road. The land is located approximately 300 feet north of the Blue Ridge Parkway entrance and lies between the existing east right-of-way line of Brevard Road and the west bank of the French Broad River.

The NC DOT has agreed to pay $14,550.00 for .12 acre of right-of-way, .14 acre temporary construction easement and .05 acre utility easement over the portion of the property which abuts Brevard Road. Brevard Road will be widened to four lanes with a center median in front of the property. The temporary construction easement would expire upon completion of construction. The utility easement would render the portion of land encumbered by the easement useless for any other purpose. The NC DOT's offer to purchase is subject to its authority to exercise eminent domain.

The entire parcel has an area of 1.784 acre. Compensation for the right-of-way and easements was determined by an appraisal of the portion of the property being taken in the amount of $14,550.00

Approval of the resolution will authorize conveyance of the right-of-way and easements to the NC DOT for the amount of $14,550.00.

Planning Department staff recommends adoption of the resolution.

Municipal Agreement with the NC Dept. of Transportation

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NC DOT) for the replacement of a permanent bridge at East Oakview Road over Hominy Creek.

East Oakview Road is a City maintained street located off Brevard Road near the Farmers Market. Bridge #52 is located on East Oakview Road over Hominy Creek. This bridge recently collapsed due to the weight of an oversized truck. This agreement will require the NC DOT to pay 80% of the replacement of a permanent bridge. The City will be required to pay 20% of the cost of the permanent replacement bridge.

The cost of the permanent bridge was not been determined. It will most likely range from $300,000 to $500,000. The City's portion of the cost will range from $60,000 to $100,000.

This agreement costs 80% of the cost to replace a permanent bridge with two lanes of travel and a pedestrian crossing. It will not cover cost associated with a temporary bridge. Staff is currently working with the NC DOT to borrow and install a temporary bridge across Hominy Creek until the permanent structure is operational.

Staff recommends the consideration of a resolution authorizing the City Manager to sign a municipal agreement with NC DOT for the replacement of a permanent bridge at East Oakview Road over Hominy Creek.

City Manager Westbrook said that it will take approximately 3 weeks for a temporary bridge to be installed and approximately two years for a permanent bridge to be built.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PUBLIC ACCESS CHANNEL COMMISSION UPDATE

Ms. Beth Lazer, Chair of the Public Access Channel Commission, gave Council an overview of what is public access, public access for Asheville and their progress to date. Their progress to date includes monthly meetings, planning sessions, ACM conference, visits to channels and research. She explained that public access is television by and for the people, an electronic forum for sharing information and ideas and entertainment. Public access benefits include: building community, connecting people with government and improving the quality of life. In December of 2000, the Commission presented the following recommendations to Council: (1) form a nonprofit organization ; (2) develop a management and operational plan for the station; (3) identify sources of operational funding; (4) locate a facility; and (5) enlist community groups to produce programs for public access television. Forming a nonprofit has a proven track record in other community and limits the City's liability and have the potential for funding. They have already filed Articles of Incorporation and are currently working on a 501 (c) (3) application. With regard to the operational plan they have contracted with a consultant, held a 3-day working retreat and have reviewed draft documents relating to by-laws, policies, procedures and budgets. With regard to the operational funding, they have met with Buncombe County Manager, appeared at Buncombe County's public hearing and have served on the Buncombe County Cable Franchise Agreement Task Force. They also have enlisted community groups to produce

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programs. What they have learned to date is that the public access channel is a laboratory for skills training and that it contributes to the area's economic development.

Since this would be a win-win situation for the City and County to join forces by having one public access channel, they have been working with the County to include an operational funding request as they negotiate with Charter Communications on a new franchise agreement.

She asked for City Council's continued support and their help in finding a City-owned site for their facility.

Ms. Lazer responded to several questions from Council, some being, but are not limited to, how much is the Commission asking for in the County's franchise agreement, how many square feet are needed for their facility, who decides on programming, will the City Council still have a representative on the Board of Directors of the 501 (c) 3, how will the Board of Directors of the non-profit be selected, why does the City only provide funds for capital funds vs. operational funds, has anyone approached UNC-Asheville or A-B Tech to see if they would be interested in sharing space with the Commission,

At Vice-Mayor Bellamy's request, Ms. Lazer said that she would provide City Council with additional information on how other cities handled their development of the Public Access Channel.

Mayor Worley thanked Ms. Lazer and the Commission members for their hard work and the information presented.

UDO AMENDMENT REVIEW

Revisions to the Flexible Development Standards

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled for Tuesday, February 12, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify front setbacks as a category for modification using flexible development standards and to clarify the provisions regarding variances and flexible development standards.

Flexible development standards allow City staff to make administrative exceptions to certain parts of the UDO under specific circumstances. We have identified a new dimensional category for the application of flexible development standards - front setbacks.

To a great extent, front setbacks determine the character of most subdivisions. Front setbacks are generally measured from the right-of-way and, in Asheville, street pavement and right-of-way widths have not been consistent. Consequently, subdivisions in the same zoning classification may have front setbacks that measure different distances from the edge of pavement due to this variety. Additionally, in our mountainous terrain, some lots in a subdivision are differently situated than other lots due to topography. These circumstances, among others, warrant some flexibility in establishing the front setbacks for both entire subdivisions and for individual lots within subdivisions.

The ordinance provides for the application of flexible development standards in order to make adjustments to front setbacks in such circumstances. Staff believes that this ordinance will provide the needed flexibility to evaluate and approve reasonable adjustments to front setbacks in a number of cases where such flexibility is needed. The ordinance amendment also clarifies the relationship between flexible development standards and variances.

Staff has received no comments in opposition to the proposed revisions.

At their January 2, 2002, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mr. Green responded to various questions from Council but felt that this ordinance amendment is a good effort in providing flexibility.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on February 12, 2002.

NEW STATE FIRE CODE

Alignment of Fire Code with N.C. State Building Code

Fire Chief Greg Grayson said that this is the consideration of an ordinance deleting Chapter 6 of the Code of Ordinances and replacing it with an ordinance to align the Asheville Fire Code with the new North Carolina State Fire Code.

The North Carolina State Building Code Council has adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina. The new Fire Code for North Carolina went into effect January 1, 2002. Chapter 6 of the Code of Ordinances is the Fire Code for the City of Asheville. N. C. Gen. Stat. secs. 160A-174 and 160A-76 (b) authorizes the cities to adopt such codes under their general ordinance making power.

The deletion and replacement of Chapter 6 allows the Asheville Fire and Rescue Division to enforce the State Fire Code, adopts sections of the Code that are optional to locations in the State and meets the requirements of the North Carolina General Statutes. Fire Chief Grayson said that two new items include a section on violations and a section on nuisance fire alarms.

Fire protection water supply requirements for the City of Asheville were addressed by Council in the fall of 2001. These requirements are now found as Section 10 of the Asheville Standard Specifications and Details Manual.

City staff recommends City Council adopt the ordinance deleting Chapter 6 of the Code of Ordinances in its entirety and replacing it with an ordinance to align the Fire Code with the new North Carolina State Building Code.

Amendment to Fees & Charges Manual to be Consistent with new State Fire Code

Fire Chief Greg Grayson said that this is the consideration of a resolution amending the Fees and Charges Manual establishing Fire Code Permit Fees to be consistent with the new State Fire Code.

The North Carolina State Building Code Council has adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective

January 1, 2002. The Fees and Charges Manual establishes Fire Code Permit Fees that coordinate with Chapter 6 of the Code of Ordinances, the Fire Code for the City of Asheville.

City staff recommends City Council adopt the resolution amending the Fees and Charges Manual for Fire Code Permit Fees.

Modification to the Fire Code Violations to be Consistent with new State Fire Code

Fire Chief Greg Grayson said that this is the consideration of an ordinance revising Section C of the Code of Ordinances (Schedule of Civil Penalties) establishing Fire Code violations in order to be consistent with the new State Fire Code.

The North Carolina State Building Code Council has adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective January 1, 2002. Section C of the Schedule of Civil Penalties establishes Fire Code violations that coordinate with Chapter 6 of the Code of Ordinances, the Fire Code for the City of Asheville.

City staff recommends City Council adopt the ordinance amending Section C of the Schedule of Civil Penalties.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REPORT FROM BOARDS AND COMMISSIONS COMMITTEE

City Council instructed the City Clerk to arrange interviews for the following Boards: Board of Adjustment, Community Relations Council, Fair Housing Commission, Transit Commission and Tree Commission.

City Council instructed the City Clerk to prepare the proper paperwork to reappoint Bill Schaefer to the Firemen's Relief Fund; Paula Robbins and Pauline Kaltsunis to the Greenway Commission; Brady Blackburn to the Metropolitan Sewerage District Board of Directors; and Betty Clark, Pamela Myers and Kenn Kotara to the Public Art Board.

It was the consensus of City Council that appointments to the Film Commission be opened to Buncombe County residents and that each board that is opened to County residents be reviewed on a case by case basis.

It was the consensus of City Council to advertise for two vacancies on the Civic Center Commission. Said vacancies are for former Civic Center Chair Carl Mumpower's position and also Dan Breneman's position.

After a brief discussion, it was the consensus of City Council to place on the February 26, 2002, agenda an amendment to the Rules for Appointments to Boards and Commissions. Said amendment would add the following sentence to the qualifications "in addition, appointees to boards or commissions that perform quasi-judicial functions or that have direct responsibility for governmental matters must be United States citizens." Said boards that apply will be noted in the Talent Scout: Airport Authority, Alcoholic Beverage Control Board, Board of Adjustment, Board of Electrical Examiners, Civil Service Board, Asheville-Buncombe Community Relations Council, Asheville-Buncombe Fair Housing Commission, Firemen's Relief Fund Board of Trustees, Asheville-Buncombe Historic Resources Commission, Metropolitan Sewerage District Board, Minority Business Commission, Planning & Zoning Commission, Regional Water Authority of Asheville, Buncombe and Henderson, School Board, Tourism Development Authority and WNC Regional Air Quality Agency Board.

RESOLUTION NO. 02-5 – RESOLUTION RECOGNIZING MONDAY, JANUARY 21, 2002, AS "DR. MARTIN LUTHER KING JR DAY"

Vice-Mayor Bellamy requested City Council adopt Resolution No. 02-5 recognizing Monday, January 21, 2002, as "Dr. Martin Luther King Jr. Day" in the City of Asheville, and urging citizens to commend this observance at 11:00 a.m. on that day by ringing bells for peace, nonviolence, and racial, ethnic and religious harmony.

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Peterson and carried unanimously.

Vice-Mayor Bellamy moved to adopt Resolution No. 02-5. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 42

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:05 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 22, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Joseph C. Dunn

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 8, 2002, AND THE WORKSESSION HELD ON JANUARY 15, 2002

B. RESOLUTION NO. 02-6 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ASPHALT UNLIMITED TO MILL VARIOUS STREETS FOR RESURFACING

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Asphalt Unlimited to prepare for pavement resurfacing of various streets in Asheville, North Carolina.

The City is in need of a contractor to provide milling services to city streets in the Asheville city limits. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for milling services were solicited and one qualified response was received. The bidders are as follows: Asphalt Unlimited at $85,085.09 and no response from Slurry Pavers.

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution to authorize the City Manager to enter into a contract with Asphalt Unlimited to mill streets in the Asheville area.

RESOLUTION BOOK NO. 27 – PAGE 43

C. RESOLUTION NO. 02-7 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SENTRY ALERT SECURITY SERVICE INC. FOR ADEQUATE SECURITY AND PROTECTION FOR THE MILLS RIVER WATER TREATMENT PLANT, THE WATER MAINTENANCE FACILITY AND THE NORTH FORK WATER TREATMENT PLANT AND WATERSHED

Summary: The consideration of a resolution authorizing execution of a contract with Sentry Alert Security Service Inc. for adequate security and protection for the Mills River Water Treatment Plant, the Water Maintenance Facility and the North Fork Water Treatment Plant and watershed.

Increased security measures are needed to provide adequate security and protection of the water system. Specifications and security needs were identified for each Water Resources Facility, with the exception of the Bee Tree Water Treatment Plant which is off-line due to spillway modifications. This area will be looked at approximately 60 days prior to completion of the spillway project in August 2003 for security requirements.

Requests for bids were sent to local security firms with only two firms responding. The bids received were $137,642.00 (low bid) from Sentry Alert Security Services, Inc. and $436,600.00 from Haynes Technologies. Bids were not received from Carolina System and Services, Inc. and Hayes and Lunsford Technologies.

Facility entry will be by card control (same system now used at City Hall). Controlled entry at all Water Resources Facilities will be tracked at the various facilities using the same security software that is currently in use in City Hall. Controlled gate entrance/exit will enable staff to limit access to possible vulnerable areas of the water plants and maintenance facility. All gates and other key points will have closed-circuit television monitoring. All entry/exit doors will have limited card control access. All Water Resources Facilities have been on heightened security since the September 11, 2001, terrorist attacks. Installation of the requested security equipment will provide the added security measures required to protect our water sources, facilities and employees. The Regional Water Authority of Asheville, Buncombe and Henderson approved increased security measures at its October 2001 meeting. Funds have been allocated from the Water Maintenance operational budget to fund these security enhancements.

Staff recommends the Council approve the contracts to Sentry Alert Security Service, Inc. in the amounts of $39,840.00 for the Mills River Water Treatment Plant, $10,652.00 for the Water Maintenance Facility, and $87,150.00 for the North Fork Water Treatment Plant.

RESOLUTION BOOK NO. 27 – PAGE 44

D. RESOLUTION NO. 02-8 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF AZALEA ROAD PARK PHASE I

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation for funds through the North Carolina Parks and Recreation Trust Fund, to assist with the development of parks and greenways.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road in east Asheville. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise $3 million to build the first phase of the park.

If the grant funds are received, they will be used to assist with the construction of the first phase of Azalea Road Park.

The Parks and Recreation Department is requesting $250,000 in grant funds from the N. C. Parks and Recreation Trust Fund, which requires a 50% cash or in-kind match. The cash

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match is available through the Western North Carolina Soccer Foundation via the John B. Lewis Family Foundation.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds with the North Carolina Parks and Recreation Trust Fund to assist with the construction of Azalea Road Park Phase I.

RESOLUTION BOOK NO. 27 – PAGE 48

E. RESOLUTION NO. 02-9 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR PROPERTY ON CHOCTAW STREET IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase property on Choctaw Street (Tract 2) in the East Riverside Redevelopment Project.

Choctaw Street Tract 2 is a residential zoned lot near the corner of Choctaw Street and Congress Street comprising 0..224 acre. A bid has been received from Tilman and Sabrina Jackson in the amount of $11,800.00 to purchase said property, which bid is not less than the appraisal of $11,800.00. The bid from the Jackson's includes the proposal to construct a single family residence on the property.

The sale of the property has been through Interdepartmental Review and all respondents concurred with no exceptions.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

RESOLUTION BOOK NO. 27 – PAGE 40

F. RESOLUTION NO. 02-10 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON BREVARD ROAD TO THE N.C. DEPT. OF TRANSPORTATION FOR RIGHT-OF-WAY AND EASEMENTS

Summary: The consideration of a resolution to convey land on Brevard Road to the N. C. Dept. of Transportation.

The N. C. Dept. of Transportation (NC DOT) has offered to purchase a portion of land owned by the City on Brevard Road. The land is located approximately 300 feet north of the Blue Ridge Parkway entrance and lies between the existing east right-of-way line of Brevard Road and the west bank of the French Broad River.

The NC DOT has agreed to pay $14,550.00 for .12 acre of right-of-way, .14 acre temporary construction easement and .05 acre utility easement over the portion of the property which abuts Brevard Road. Brevard Road will be widened to four lanes with a center median in front of the property. The temporary construction easement would expire upon completion of construction. The utility easement would render the portion of land encumbered by the easement useless for any other purpose. The NC DOT's offer to purchase is subject to its authority to exercise eminent domain.

The entire parcel has an area of 1.784 acre. Compensation for the right-of-way and easements was determined by an appraisal of the portion of the property being taken in the amount of $14,550.00

Approval of the resolution will authorize conveyance of the right-of-way and easements to the NC DOT for the amount of $14,550.00.

Planning Department staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 50

G. ORDINANCE NO. 2887 - BUDGET AMENDMENT TO ACCEPT DONATION FROM HAW CREEK NEIGHBORHOOD ASSOCIATION FOR HAW CREEK PARK INTERPRETIVE SIGNS

Summary: The consideration of a budget amendment to appropriate an additional $8,712.00 to the Haw Creek Park Project from the Haw Creek Neighborhood Association for interpretive signs.

The City of Asheville is continuing its development of a passive park in the Haw Creek community which includes a restroom/picnic shelter, gazebo, playground area, paved woodland trails, landscaping, and a parking lot. The last feature, interpretive signage, will be implemented through the City of Asheville Capital Improvement Budget, Parks & Recreation's Trust Fund, Adopt-A-Trail, and the Haw Creek Neighborhood Association. A budget amendment is necessary to appropriate an additional $8,712.00 to this project from the Haw Creek Neighborhood Association. The Association's commitment of these funds will enable the project to be completed.

The Parks and Recreation Department recommend approval of the budget amendment in the amount of $8,712.00 for the Haw Creek Park Interpretive Sign Project.

ORDINANCE BOOK NO. 19 – PAGE 381

H. ORDINANCE NO. 2888 - ORDINANCE DELETING CHAPTER 6 OF THE CODE OF ORDINANCES AND REPLACING IT WITH A NEW CHAPTER 6 TO ALIGN THE ASHEVILLE FIRE CODE WITH THE NEW N.C. STATE FIRE CODE

Summary: The consideration of an ordinance deleting Chapter 6 of the Code of Ordinances and replacing it with an ordinance to align the Asheville Fire Code with the new North Carolina State Fire Code.

The North Carolina State Building Code Council has adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina. The new Fire Code for North Carolina went into effect January 1, 2002. Chapter 6 of the Code of Ordinances is the Fire Code for the City of Asheville. N. C. Gen. Stat. secs. 160A-174 and 160A-76 (b) authorizes the cities to adopt such codes under their general ordinance making power.

The deletion and replacement of Chapter 6 allows the Asheville Fire and Rescue Division to enforce the State Fire Code, adopts sections of the Code that are optional to locations in the State and meets the requirements of the North Carolina General Statutes.

Fire protection water supply requirements for the City of Asheville were addressed by Council in the fall of 2001. These requirements are now found as Section 10 of the Asheville Standard Specifications and Details Manual.

City staff recommends City Council adopt the ordinance deleting Chapter 6 of the Code of Ordinances in its entirety and replacing it with an ordinance to align the Fire Code with the new North Carolina State Building Code.

ORDINANCE BOOK NO. 19 – PAGE 383

I. RESOLUTION NO. 02-11 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL ESTABLISHING FIRE CODE PERMIT FEES TO BE CONSISTENT WITH THE NEW STATE FIRE CODE

Summary: The consideration of a resolution amending the Fees and Charges Manual establishing Fire Code Permit Fees to be consistent with the new State Fire Code.

The North Carolina State Building Code Council has adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective January 1, 2002. The Fees and Charges Manual establishes Fire Code Permit Fees that coordinate with Chapter 6 of the Code of Ordinances, the Fire Code for the City of Asheville.

City staff recommends City Council adopt the resolution amending the Fees and Charges Manual for Fire Code Permit Fees.

RESOLUTION BOOK NO. 27 – PAGE 51

J. ORDINANCE NO. 2889 - ORDINANCE AMENDING SECTION C OF THE CODE OF ORDINANCES (SCHEDULE OF CIVIL PENALTIES) ESTABLISH FIRE CODE VIOLATIONS IN ORDER TO BE CONSISTENT WITH THE NEW STATE FIRE CODE

Summary: The consideration of an ordinance revising Section C of the Code of Ordinances (Schedule of Civil Penalties) establishing Fire Code violations in order to be consistent with the new State Fire Code.

The North Carolina State Building Code Council has adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective January 1, 2002. Section C of the Schedule of Civil Penalties establishes Fire Code violations that coordinate with Chapter 6 of the Code of Ordinances, the Fire Code for the City of Asheville.

City staff recommends City Council adopt the ordinance amending Section C of the Schedule of Civil Penalties.

ORDINANCE BOOK NO. 19 – PAGE 392

K. RESOLUTION NO. 02-12 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR BRIDGE #52 – EAST OAKVIEW ROAD OVER HOMINY CREEK

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NC DOT) for the replacement of a permanent bridge at East Oakview Road over Hominy Creek.

East Oakview Road is a City maintained street located off Brevard Road near the Farmers Market. Bridge #52 is located on East Oakview Road over Hominy Creek. This bridge recently collapsed due to the weight of an oversized truck. This agreement will require the NC

DOT to pay 80% of the replacement of a permanent bridge. The City will be required to pay 20% of the cost of the permanent replacement bridge.

The cost of the permanent bridge was not been determined. It will most likely range from $300,000 to $500,000. The City's portion of the cost will range from $60,000 to $100,000.

This agreement costs 80% of the cost to replace a permanent bridge with two lanes of travel and a pedestrian crossing. It will not cover cost associated with a temporary bridge. Staff is currently working with the NC DOT to borrow and install a temporary bridge across Hominy Creek until the permanent structure is operational.

Staff recommends the consideration of a resolution authorizing the City Manager to sign a municipal agreement with NC DOT for the replacement of a permanent bridge at East Oakview Road over Hominy Creek.

RESOLUTION BOOK NO. 27 – PAGE 53

L. RESOLUTION NO. 02-13 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Firemen's Relief Fund to serve a two year term.

The term of Bill Schaefer, as a member of the Firemen's Relief Fund, expired on January 1, 2002.

This resolution will reappoint Bill Schaefer to serve an additional two year term, term to expire January 1, 2004, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 54

M. RESOLUTION NO. 02-14 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing two members to the Greenway Commission.

The terms of Paula Robbins and Pauline Kaltsunis, as members on the Greenway Commission, expired on December 31, 2001.

This resolution will reappoint Paula Robbins and Pauline Kaltsunis to each serve a three year term respectively, terms to expire December 31, 2004, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 55

N. RESOLUTION NO. 02-15 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Metropolitan Sewerage District Board to serve a three year term.

The term of Brady Blackburn, as a member on the Metropolitan Sewerage District Board, expires on January 19, 2002.

This resolution will reappoint Brady Blackburn to serve an additional thee year term, term to expire January 19, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 56

O. RESOLUTION NO. 02-16 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Bellamy said that this is the consideration of appointing three members to the Public Art Board.

The terms of Betty Clark, Pamela Myers and Kenn Kotara, as members on the Public Art Board, expired on December 31, 2001.

This resolution will reappoint Betty Clark, Pamela Myers and Kenn Kotara to each serve a four year term respectively, terms to expire December 31, 2005, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 57

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley said that this public hearing was opened on October 23, 2001, and continued until December 18, 2001, in order to give staff time to work with the property owner and his realtor to refine the uses and at the same time to work with the neighborhood to coordinate the uses through them.

On December 18, 2001, the petitioner requested a continuance of this public hearing until January 22, 2002.

On January 16, 2002, a letter was received from Ms. Diane Smoak from Coldwell Banker, requesting that this public hearing be continued until February 26, 2002. "We met with citizens of the Shiloh community January 14th to discuss the seller's request that the rear portion of this property be rezoned to Commercial Industrial so the total property will have the same zoning. Mrs. Norma Baynes has been working together with us to coordinate informing the surrounding community why we are requesting this particular zoning and trying to work out with them what they find offensive. We hope we can achieve something that will be agreeable for all concerned to create a win-win situation for everyone. At the January 14th meeting in Shiloh (the January 7th meeting was rescheduled due to icy weather) Mrs. Baynes and others in attendance requested that we have another meeting on February 4th as some that had planned to attend on the 7th was not able to come on the 14th. I realize that this is an inconvenience for the council but we feel that it is better to work with the community to see if we can find a mutually agreeable plan for the owner of the property and the surrounding community. Just to keep you informed we are going to mail another package to the fifteen members that regularly attend the Shiloh community meeting as well as the names on the list that Stacy Martin faxed to us. The community in attendance this past Monday night voiced concerns about the potential for drugs (in RS-8 zoning) that have been a problem and homeowners hope that whatever future development of the property will bring pride to their neighborhood. We hope to be able to get more of the community to see if we can agree on zoning that will be agreeable. We would appreciate you rescheduling us in February so we may try to work out a satisfactory solution."

Councilman Peterson wanted to make sure that both parties were agreeable to this continuance in order to avoid unnecessary trips to the Council meeting for those who were prepared to speak on this issue.

Councilman Mumpower moved to continue this public hearing until February 26, 2002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE REZONING OF 123 ACTON CIRCLE FROM NEIGHBORHOOD BUSINESS DISTRICT TO OFFICE II DISTRICT

ORDINANCE NO. 2890 - ORDINANCE REZONING 123 ACTON CIRCLE FROM NEIGHBORHOOD BUSINESS DISTRICT TO OFFICE II DISTRICT

Mayor Worley opened the public hearing at 5:11 p.m.

Mr. Jeff Tacy, Urban Planner, said that this is the consideration of an ordinance to rezone 123 Acton Circle from Neighborhood Business District to Office II District. This public hearing was advertised on January 11 and 18, 2002.

The City has received a rezoning petition requesting the rezoning of property located at 123 Acton Circle (PIN No. 9617-11-67-5257) from Neighborhood Business District to Office II District. The site is located on the southwest corner of Acton Circle and Sand Hill School Road. It is bounded on the east by RM-6 Residential Multi-Family Low Density District zoning, Neighborhood Business District to the south and Highway Business District to the west and north. A Home Depot building supply store is located north of the site and there are other relatively intense commercial uses in the immediate area. These developments have resulted in a change in the character of the area. The requested Office II zoning would provide a good transition from the Highway Business zoning to the residential zoning to the west of the site. Development standards for the Office II zoning district would assure that any development of the site would be compatible with the surrounding area. The Office II development standards permit structures of 16,000 square feet of floor area or less and allows for a variety of office, commercial, and retail uses. The site currently has a two-story 6,000 square foot structure with offices, retail and apartments.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at 123 Acton Circle from Neighborhood Business District to Office II District. The Planning and Development staff recommends approval of the requested rezoning.

Councilman Peterson asked if this would be considered spot zoning. City Attorney Oast said that that if it were surrounded along all sides by residential zoning, it would be different, than it being surrounded on all sides by non-residential zoning. He felt the Office II classification is not significantly different from Neighborhood Business and the way the lot is situated, it may actually be a good transition from Neighborhood Business from the south to Highway Business to the north. That kind of step by step increase in intensity seems to work well in the area that it is.

Upon inquiry of Councilman Mumpower, Mr. Tacy said that they built this building in 1999 and they are only requesting the rezoning in order to change the use on the second floor from apartments to office space, due to their inability to finding tenants.

Ms. Lynn Johnson was concerned about taking the mixed use aspect (residential apartments) out of this building.

Vice-Mayor Bellamy felt that the City needs to look at the bigger issue of whether people want to live on major corridors or in residential neighborhoods. Council needs to keep that issue in mind when they think of housing in general and when they ask people to develop housing.

City Attorney Oast noted that among the uses that are permitted in the Office II District are residential uses, so there is nothing that would prohibit that use, other than economics.

Dr. Il Sung Lee, applicant, explained that due to the commercialized development in the area he has a problem in finding tenants for the upstairs residential level and thus requested the rezoning.

Mayor Worley closed the public hearing at 5:26 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2890. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 393

C. PUBLIC HEARING TO CONSIDER REZONING STONE RIDGE CONDOS LOCATED ON PINEY MOUNTAIN DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT

ORDINANCE NO. 2891 - ORDINANCE REZONING STONE RIDGE CONDOS LOCATED ON PINEY MOUNTAIN DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2892 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR STONE RIDGE CONDOS LOCATED ON PINEY MOUNTAIN DRIVE

On January 17, 2002, a letter was received from the President of Pinecliff Condominiums Association Inc. Jennette O'Conner and the President of Pinecliff Villas Association Larry Traber requesting this public hearing be continued to a date after February 16, 2002. Said letter read: "Pinecliff Condominium Association and Pinecliff Villas Association is a residential community of 67 homeowners located on just over eleven aces of land (approx. 6 units per acre) next to the proposed Stone Ridge Condominium Project south of Chunns Cove Road. We do not object to the proposed Stone Ridge project and welcome a new neighbor with the following requests: (1) The Stone Ridge project will require wholesale destruction of existing trees and vegetation to accomplish placement of eighty homes and detached garages. The developers pretty pictures depict vegetation only as it will look twenty years after construction. We strongly recommend approval of less density necessitated by the steepness of the site; (2) The developer has purchased acreage on the opposite side of the ridge contiguous with the property but not scheduled for development; this purchase of property was approved by Planning and Zoning to meet UDO requirements. We question the legality of this additional land if it is not to be developed as part the of 'development'.; (3) Rezoning the property from RM6 to RM8 would not be in the best interest of the neighborhood from the standpoint of the topography, visual destruction of the site from Tunnel Rd, increase in vehicular traffic and accommodation of sewage discharge, etc. We strongly urge City Council to deny any increase to RM8 zoning. Due to key members of our association being unavailable for three weeks and due to the fact that notification of this agenda was not received until 01.16.02, we respectfully request that this agenda be postponed to a date after February 16, 02 to allow us to prepare and voice our opinions."

On January 17, 2001, a letter was received from Stephen D. Saleed, Executive Vice President of Saleed Construction Systems, to Mr. Gerald Green which read: "Based on our conversation today, I understand that a neighbor is requesting that the City Council meeting be delayed for an additional 30 days. Based on our 22-month involvement with the City of Asheville working closely with your staff and our construction schedule to begin construction in April, a 30-day set back would be detrimental at this time. We plan to start our road construction in April so the building foundation can start in June and have units available in the fall before bad weather sets in again. Also, our construction loan with Wachovia Bank is supposed to close next week to begin this project. Please consider our request and call with any questions."

Ms. Patricia Harvey, Treasurer of Pinecliff Condominium Association, reiterated the letter received from Jennette O'Conner and Larry Traber requesting the continuance.

Mr. Clay Mooney, landscape architect and land planner for Stone Ridge Condos, said that this project has been going on for 1-1/2 years and as a result of the numerous meetings and correspondence with Pinecliff Condominium Association, the project has now evolved into a condominium project instead of a townhouse villa concept as first was proposed. He said that since the hillside ordinance limits the amount of area that can be disturbed on a project, additional acreage was purchased. It did not change any density and that additional property will not be developed.

Mr. Terry Peterson, with Beverly Hanks and Associates, said that he has been working with the developer on this project for over two years. He said that the existing residents in Pinecliff community have had the knowledge that this was an 80 unit project for over a year. He said that Mr. Saleed initiated a meeting in April of 2000, when they met with Ms. O'Conner and presented the first set of plans. Another meeting, initiated by Mr. Saleed, was held on June 8. He said that the fourth meeting was March 30, 2001, at which time a site plan was presented to Pinecliff Condo Association. A revised site plan dated November 29, 2001, noted the only difference between the revised plan and the original plan was that the parking in front of the clubhouse changed from 12 parking spaces to 9 parking spaces. Nothing else changed on the plan. They have had this plan. He contacted Ms. O'Conner in Florida and advised her of the Technical Review Committee (TRC) meeting on December 17, 2001, and she said that Pinecliff would be represented at that meeting and Mr. Traber would probably also be there. Mr. Traber was not. At the January 2, 2002, Planning & Zoning hearing there were two people from Pinecliff but Mr. Traber did not attend that meeting either. He stressed that this project has remained the same over a year that it was going to be an 80 unit condominium development.

Ms. Sally Cheney, resident of Pinecliff, said that Larry Traber is not part of Pinecliff and his objection is separate from Pinecliff Condominium Association. She wanted to know if they are going to build on the additional property they purchased.

Upon inquiry of Councilman Peterson, Urban Planner Jeff Tacy said that the additional 15 acres was added on November 2, 2001. The site plan went through the TRC meeting and the Planning & Zoning Commission meeting with the additional acreage.

When Mayor Worley asked if there was a motion to continue the public hearing, no motion was made. After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:42 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

Mr. Tacy submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 1/22/02). This public hearing was advertised on January 11 and 18, 2002.

Mr. Tacy said that this is the consideration of an ordinance to conditionally rezone Stone Ridge Condos located on Piney Mountain Drive from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use, and issuance of a conditional use permit for the proposed use of the property as an 80 unit condominium development.

At their January 2, 2002, meeting the Planning and Zoning Commission recommended rezoning of property located on Piney Mountain Drive (PIN Nos. 9658-05-29-1232, 9658-05-28-1774, and 9658-06-28-895) from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District. Piney Mountain Adventures, LLC, is the owner and applicant. The 32.71-acre site is located on the east side of Piney Mountain Drive immediately adjacent to the north side of the Pinecliff Condominium site (City Exhibit 3 –Location Map). The entire project site lies within the zoning jurisdiction of the City. The site is surrounded by mixed multi-family residential, single-family residential, and vacant land. A single entrance from Piney Mountain Drive will access the project site. Surrounding zoning is RM-6 and RS-2. The development density allowed by the RM-8 zoning is consistent with the 2010 City Plan.

He said the initial application was for 15.27 acres and then it was discovered that due to the Hillside Development Standards they would have to acquire additional acreage to get the density they needed for 80 units. They did acquire an additional 17 acres in order to get the 80 units and still meet the hillside development standards.

The request is to conditionally zone the property as RM-8 Conditional Use to allow the owner to develop the project site with 80 residential condominium units, along with a clubhouse and network of pedestrian pathways. The underlying zoning district allows for a maximum density of 8 units per acre for total of 262 units. However, because of the slope of the site, the Hillside Development Standards are applied and the maximum allowed density is 2.8 units per acre. The project as proposed requests a density of 2.6 units per acre. Additionally, due to the slope of the project site, the area of disturbance and construction will be limited to the 7.92 acre portion of the property on the east side of the ridge, fronting on Piney Mountain Drive. The project will consist of 20 residential buildings, with varying combinations of two and three bedroom units. All of the buildings will be 2-stories with an average height of 33 feet. The project applicant has exceeded all of the open space, buffering and landscaping requirements of the Unified Development Ordnance (UDO). Also, the project applicant has voluntarily implemented many of the suggestions and recommendations of the local authorities not required by the UDO.

The Technical Review Committee has reviewed and approved this project. A Transportation Impact Analysis was not required for this project.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary opinion, absent the benefit of public input, is that all seven standards appear to be met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

Through the cooperation of the project applicant and local authorities, all public health and safety issues a have been adequately addressed and incorporated into the project design.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The project is designed to preserve a significant portion of the site, including the ridge top and areas with the steepest slope. The site design includes limits on the extent of grading, therefore preserving a large portion of the natural vegetation. The project applicant has designed a landscape plan that is consistent with other developments with similar topographical characteristics.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The project design is significantly consistent with the Pinecliff Condominium development, which is immediately adjacent to the project site. The site plan depicts considerable buffering and landscaping designed to screen the development from adjacent and nearby properties.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

At present, the area surrounding the project site is mixed single-family residential, multi-family residential and vacant land. The Pinecliff Condominiums are immediately adjacent to the project site and the scale, bulk, coverage, density, and character of the two developments would be in harmony. The single-family residences in the area are screened and buffered by the natural topography of the area and the preservation of undisturbed areas.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City.

The property is currently zoned for multi-family residential and is also consistent with the land use designations of the 2010 Plan.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The Technical Review Committee representatives have reviewed the proposal and determined that there are adequate infrastructure facilities to accommodate the proposed project.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Due to the low impact generated from the proposed project, no traffic impact analysis was required. The traffic generated by the proposed use will not cause undue traffic congestion or create a traffic hazard.

Based on the information submitted by the applicant, the proposed project does meet all of the UDO standards required for approval. Based on a field investigation of the project site, the proposed project will function appropriately with the natural characteristics and topography. Also based on a field investigation of the surrounding area, the proposed project is consistent with other developments in the area.

The Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their January 2, 2002, meeting. The Commission unanimously voted to approve the request for RM-8 Conditional Use Zoning, subject to the conditions identified by the staff.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the Conditional Use Permit with the following conditions:

1. The site design shall be in accordance with all applicable conditions of the Technical Review Committee.
2. The site design shall include a landscape installation and maintenance plan that will result in the growth of vegetation intended to make the Stone Ridge development as unobtrusive as the adjoining Pinecliff Condominiums when viewed from locations off the subject property. Such maintenance plan shall be incorporated into and recorded as part of the condominium documents for the project so that it will be observed by all future property owners of Stone Ridge.
3. There shall be no voluntary removal, topping, or other modification of any trees or natural vegetation within the undisturbed area or anywhere else on the site as shown on the grading, site plan, and/or landscaping plan without the approval of the Planning and Development Director.
4. The applicant shall install sidewalks along the portion of the property, abutting Piney Mountain Drive per Section 7-9-1(10)(b).
5. Vary the building designs and floor plan layouts to better satisfy the purpose and intent of the PUD overlay district.
6. Work with staff to provide for a means of providing an urban level of public safety for the entire site.

Vice-Mayor Bellamy asked what kind of continuity will this development have with the existing Pinecliff Condominiums. Mr. Tacy said that this development appears to be very similar to Pinecliff Condominiums, e.g., the layout of the units, the number of bedrooms per unit and the roadways.

Upon inquiry of Vice-Mayor Bellamy, Mr. Tacy explained the need to go from RM-6 to RM-8.

When Vice-Mayor Bellamy questioned why Condition No. 5 was a recommendation, Mr. Tacy said that was in error and should be deleted.

Councilman Ellis questioned the condition that the developer must install sidewalks along the portion of the property when there are no other sidewalks in the area. Mr. Tacy explained that sidewalks are required to be constructed in accordance with the City's Standard Specifications and Details Manual. He said that even though there are not a lot of sidewalks out there, as more development occurs this will provide some connectivity with the other developments.

City Attorney Oast said that the City does have a mechanism in place where the developer can pay a fee in lieu of constructing sidewalks, however, that is generally used in subdivisions. Since this is a conditional use permit, he would have to defer to the Planning Department's recommendations. Planning & Development Director Scott Shuford said that he intends to bring some revisions to our current sidewalk policy to Council in the near future and that may be an opportunity for us to address that issue. He said they could have the amount of money associated with a fee in lieu option escrowed until that issue is resolved. Then, whichever direction Council provides at that time, we would then apply that direction to this particular circumstance.

City Manager Westbrook said that unless we collect enough money to build the sidewalk now, in the future it will become the general taxpayer's burden to pay for it. He understands that it looks like a sidewalk going nowhere, but the development does provide urban amenities for urban densities. In most cities where they are developing on the outer rim you will see those sidewalks going into place and they do connect in the future, either by the City or by future developers who develop in the area.

Upon inquiry of Councilman Mumpower, Mr. Mooney said that the slope on Piney Mountain Drive varies but it's about an 8-10% grade. He said the entire frontage of the site requiring sidewalks is approximately 600 feet, but he didn't have a cost estimate. Mr. Mooney said that sidewalks are shown on their plans and they are willing to meet that requirement. However, if City Council deems it more appropriate that they pay a fee in lieu of to build sidewalks in a more appropriate area, they would have not problem with that either.

Upon inquiry of Mayor Worley, Mr. Tacy said that the existing Pinecliff Condominiums would have less than 1/3 of their units if they were to build today under our current standards.

Mr. Mooney recapped that there are 24 unit buildings and each are two story buildings (Applicant Exhibit 1). The Planning Department requested was a reduction in the parking. Originally they had 207 parking spaces and through discussions it was agreed to reduce those to 174 parking spaces. He then showed and explained the elevations of the proposed units (Applicant Exhibits 2, 3 and 4). He then showed a digital photo of what the property looks like now and a rendering of what the property will look like after the condominiums are built (Applicant Exhibits 5 and 6). He said they exceed all of the landscaping requirements set for in the UDO. It is their effort to save as much vegetation as possible. All water and sewer approvals have been obtained. He urged City Council to issue a conditional use permit for this well-designed project.

Upon inquiry of Councilman Peterson, Mr. Mooney said that the clubhouse will be approximately 3-4,000 square feet and it will be one story.

In response to Councilman Peterson, Mr. Mooney said that the additional acreage is on the back side of the slope which is more visible from the Haw Creek area and the Parkway. Again he said that property will not be developed.

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At the request of Councilman Mumpower, City Attorney Oast explained the hillside development ordinance. Mayor Worley also said that there is a State ridge top law that applies to only development above certain elevations.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford said that they have not discussed with the developers inclusionary housing or setting aside some affordable units in their development. He said that state law would preclude them from that, but it is something they can work on to get that legislation in the future. He noted that this will be discussed at Council's upcoming retreat.

Ms. Cheney was concerned that the entire 80 units will be crowded onto the original 15 acres.

Ms. Sharon Martin expressed concern that even though they had to buy the additional 17 acres to meet the hillside development standards, they will still disturb the same original 15 acres.

Ms. Lynn Johnson questioned if there were any greenways planned for pedestrians and bikeways and felt this development may not be sustainable economic development.

There being no request for rebuttal, Mayor Worley closed the public hearing at 6:34 p.m.

Councilman Ellis suggested Condition No. 4 be amended to read that "The applicant shall install sidewalks along the portion of the property abutting Piney Mountain Drive, or pay a fee in lieu of. That decision is to be determined by an agreement between the developer and the Planning and Development Department as the new rules are developed."

City Manager Westbrook stressed that the payment in lieu of is normally for times where it's topographically unwise to building sidewalks.

Mayor Worley suggested Condition No. 4 be amended to read that "The applicant shall comply with the sidewalk requirements set forth in City ordinances."

Upon inquiry of Councilman Mumpower about who determines the cost for sidewalks, Mayor Worley said that if the developer constructs the sidewalks, they have to be constructed to the City's standards and specifications and it's whatever that cost is for the developer to construct them. If the fee in lieu of sidewalks is paid, there is a set cost per foot that is determined by the Engineering Department.

Councilwoman Jones felt that the additional acreage purchased is trying to hold the natural resources piece in balance with the residential development.

Councilman Peterson asked if the back 17 acres are so steep that they are not buildable or could someone have built on that property. Mr. Tacy said that the additional 17 acres would have been buildable with the right engineering.

Mayor Worley said that since this is a conditional use process, whatever Council approves is it. Nothing else can be built on that land, including the undeveloped land on the back side of the ridge without going through the whole zoning process again and coming back before City Council. With respect to the back 17 acres on the back side of the ridge, by adding it to the total land mass and bringing the land mass up sufficient to allow the calculations to get 80 units built on the front side of the ridge, we have effectively protected it from future development. It also appears to him that this project is very compatible in scope, nature and size with the Pinecliff Condominiums development.

Councilman Peterson said that as we develop along some of our ridges we continually need to be sensitive to protecting the visual aspect.

Councilman Mumpower moved to adopt Ordinance No. 2891 to rezone Stone Ridge Condos located on Piney Mountain Drive from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use. This motion was seconded by Councilman Ellis and carried unanimously.

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Councilman Ellis moved to adopt Ordinance No. 2892 granting the conditional use permit for Stone Ridge Condos located on Piney Mountain Drive with the following conditions: (1) The site design shall be in accordance with all applicable conditions of the Technical Review Committee; (2) The site design shall include a landscape installation and maintenance plan that will result in the growth of vegetation intended to make the Stone Ridge development as unobtrusive as the adjoining Pine Mountain Condominiums when viewed from locations off the subject property. Such maintenance plan shall be incorporated into and recorded as part of the condominium documents for the project so that it will be observed by all future property owners of Stone Ridge; (3) There shall be no voluntary removal, topping, or other modification of any trees or natural vegetation within the undisturbed area or anywhere else on the site as shown on the grading, site plan, and/or landscaping plan without the approval of the Planning and Development Director; (4) The applicant shall comply Section 7-11-7 of the City Code with regard to the installation of sidewalks; and (5) Work with staff to provide for a means of providing an urban level of public safety for the entire site; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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At 6:48 p.m., Mayor Worley announced a short break.

D. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED ON LONG STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT

ORDINANCE NO. 2893 - ORDINANCE REZONING PROPERTY ON LONG STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I/CONDITIONAL USE

ORDINANCE NO. 2984 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON LONG STREET

City Attorney said that Ms. Lula Moon, who lives in one of the houses next to this site, contacted him to pass along to City Council her request for a continuance since she is out of the country at this time.

Planning & Development Director Scott Shuford said that Ms. Moon has been the primary person opposed to this request, although she was not the only person in opposition at the Planning & Zoning Commission meeting.

Mr. Mike Rangel, one of the owners of Asheville Pizza and Brewing Company, said that the person Ms. Moon rents from is 100% behind the rezoning and supports all the changes requested. He felt like since Ms. Moon has been the only person to contact his business to

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complain, he felt here is the only voice against the issue and urged Council to continue with the public hearing.

Ms. Hazel Fobes asked City Council to continue with the public hearing.

A man affiliated with the Tailgate Market urged City Council to not continue the public hearing because the people who are involved in the market have to make plans to grow and produce the items for sale in the market. If this hearing is prolonged, they will not have time to readjust their agenda.

Mr. Pete Dixon, vendor at the Tailgate Market, urged City Council to not continue the public hearing because the process of relocation is very lengthy and the continuance is not good for the farmers who work at the market.

When Mayor Worley asked if there was a motion to continue the public hearing, no motion was made. After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:56 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

Mr. Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report dated 1-22-02). This public hearing was advertised on January 11 and 18, 2002.

Mr. Shuford said that this is the consideration of an ordinance to conditionally rezone property on Long Street from RM-8 Residential Multi-Family Medium Density District to Community Business I/Conditional Use, and issuance of a conditional use permit for overflow parking for the adjacent commercial use, a recycling collection center, and a farmer's market.

At their January 2, 2002, meeting the Planning and Zoning Commission recommended rezoning of property located on Long Street from RM-8 Residential Multi-Family Medium Density District to Community Business I/Conditional Use. Lowell and Marvin Pearlman are the owners and applicants. On September 27, 2001, the owners submitted an application for rezoning from RM-8 to Community Business I for an existing parking lot located on Long Street (City Exhibit 3 – Site Plan). This request was subsequently modified to request Community Business I-Conditional Use zoning for the property. The 0.72-acre site is located on Long Street between Edgewood Road and Larchmont Street (City Exhibit 3 – Location Map). The commercial development along Merrimon Avenue is located to the west of the site; and residential zoning and uses are located to the east, north, and south of the site. The existing parking lot has been located on the site and used as an overflow parking area for the adjacent commercial development (Asheville Pizza and Brewing Company) for at least 15 years. For approximately 5 years, a recycling collection center has been located on the parking lot and, in the past year, the lot has been used as the site for the North Asheville Farmer's Market.

The proposal is to conditionally zone the property as Community Business I – Conditional Use to permit the continued use of the lot for overflow parking for the adjacent commercial development (primarily the Asheville Pizza and Brewing Company), the continued operation of the North Asheville Farmer's Market, and the recycling collection center. Some improvements are proposed as a part of this application. The recycling collection center will be screened from the street and from adjacent residential uses by a 6-foot wooden fence supplemented by landscaping that would include shrubs and deciduous and evergreen trees. The Planning and Development staff will work with the manager of Farmer's Market prior to the beginning of the 2002 market season to ensure that adequate parking is provided for customers. All other operations and site characteristics would remain unchanged.

Adequate services and facilities are available to meet the needs generated by the proposed uses of the site. Due to the low volume of traffic that would be generated by the uses proposed for the site, no Traffic Impact Analysis was required. A memo regarding the proposed uses on the lot, provided by the City's Traffic Engineer, states (1) None of these uses generate significant amounts of traffic on Long Street itself (except the farmer's market but this is for a short duration once a week); (2) There aren't any issues with traffic congestion on this street; (3) There is a sight distance problem that is not easily fixable at the intersection of Long Street and Edgewood Road. Any increase in traffic exiting Long Street to Edgewood Road will have an incremental affect on this potential safety problem; and (4) The biggest potential problem is the affect of the additional traffic (especially truck traffic associated with the recycling center) on the few residents of the street. The Planning and Zoning Commission and the City Council should be made aware of this potential impact to the residents.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary opinion, absent the benefit of public input, is that all seven standards appear to be met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed uses are using the parking lot for overflow parking for the Asheville Pizza and Brewing Company, location of the North Asheville Farmer's Market, and location of a recycling collection center. All of these uses are currently located on the site. The proposed uses will not materially endanger the public health or safety provided site improvements are made in accordance with an approved site plan. The site is conveniently located for area residents who take advantage of the recycling collection center and of the Farmer's Market. Long Street is approximately 19 feet wide, but the City's Traffic Engineer has confirmed that the proposed uses do not generate significant amounts of traffic and that there are no issues with traffic congestion on the street.

2) That the proposed use is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The site is currently developed as a paved parking lot. No additional development is proposed. Some landscaping is planned to improve the appearance of the lot and to screen the recycling collection center from adjacent properties. The proposed landscaping will increase the site's compatibility with adjacent properties.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

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The proposed use will be low impact with no substantive changes to the existing parking lot with the exception of the construction of a 6' wooden fence and the planting of some trees and shrubs to screen the recycling collection center. It is not anticipated that the uses would injure the value of adjoining or abutting property in a substantial way. The uses proposed for the site have been located on the site for a varying numbers of years (overflow parking –approximately 15 years, recycling collection center – approximately 5 years, Farmer's Market – 1 year).

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

As stated above, the proposed use will be low impact with no substantive changes to the existing parking lot other than the buffering and landscaping. The character of the area should not be impacted by the proposed uses.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City.

The Comprehensive Plan indicates commercial and residential uses in this area. The lot is contiguous to an existing Community Business II zoning district. The uses are not addressed in any of the other plans of the City.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located in an existing developed area. The project has received approval from Engineering and Public Works Departments, who are most impacted by the use of the property.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

A traffic impact analysis is not required for the proposed uses due to the low volume of traffic that is generated by them. The City's Traffic Engineer has reviewed the request and had the following comments:

- None of these uses generate significant amounts of traffic on Long Street itself (except the farmers market but this is for a short duration once a week).
- There aren't any issues with traffic congestion on this street.
- There is a sight distance problem that is not easily fixable at the intersection of Long Street and Edgewood Road. Any increase in traffic exiting Long Street to Edgewood Road will have an incremental affect on this potential safety problem.
- The biggest potential problem is the affect of the additional traffic (especially truck traffic associated with the recycling center) on the few residents of the street. The Planning and Zoning Commission and the City Council should be made aware of this potential impact to the residents.

In summary, the proposed use of the 0.72 acre parking lot is for overflow parking for the adjacent commercial use, location of a recycling collection center, and operation of the North Asheville Farmer's Market. All of these uses are currently located on the site. Use of the property for these purposes in accordance with the site plan and adherence to the conditions recommended for the approval of the Conditional Use Permit for this project would ensure that the impacts on surrounding property owners are mitigated.

The Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their January 2, 2002, meeting. Two persons spoke in opposition to and several persons spoke in support of the requested rezoning or the proposed use during the public hearing held by the Planning and Zoning Commission.

After reviewing the request and the site plans, the Planning and Zoning Commission voted unanimously (6 – 0) to recommend approval of the conditional use rezoning, subject to the conditions identified below.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the Conditional Use Permit with the following conditions:

- The recycling collection center must be screened from adjacent properties and the street as required by the City of Asheville's standards for this use. A site plan meeting City requirements must be submitted and approved for the collection center.
- A zoning permit must be requested by and approved for the North Asheville Farmer's Market. The permit approval must address parking for the market's customers.
- The recycling center operation should be located to the back of the lot if feasible.
- Hours of pickup for recycled materials shall be restricted to the hours of 8:00 a.m. to 7:00 p.m.
- Recycling trucks servicing the center shall access the site through the Asheville Pizza and Brewery property rather than from Long Street.
- Signage shall be provided to encourage parking at Asheville Pizza and Brewery.
- The property owner and/or recycling contractor shall work with the Asheville Sanitation Division to improve cleanliness of the recycling center.

Mr. Shuford asked that Condition No. 5 be amended to read: "Recycling trucks servicing the center shall access the site through the Asheville Pizza and Brewery property rather than from Long Street, if deemed feasible given risk management consideration as determined by the City."

Ms. Hazel Fobes strongly voice support for this rezoning and issuance of a conditional use permit.

There being no request for rebuttal, Mayor Worley closed the public hearing at 7:10 p.m.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2893 to rezone property on Long Street from RM-8 Residential Multi-Family Medium Density District to Community Business 1/Conditional Use. This motion was seconded by Councilwoman Jones and carried unanimously.

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Councilman Mumpower felt that Condition No. 3 sounds vague. In addition, Councilman Mumpower questioned whether the amended Condition No. 5 needs to be a condition at all.

Mr. Shuford explained that the Planning & Zoning Commission placed Condition No. 5 in there in order to minimize the amount of traffic on Long Street from the recycling trucks. However, after the staff report was written and given to Council, staff realized that there may be concerns about routing the trucks through the private property in that there might have a risk management issue. If Council chooses to delete Condition No. 5, it will probably have the same effect as if Council left it in. With regard to Condition No. 3, the intent was that if the recycling center was located to the southeast corner of the property, it would have less of an effect on surrounding residential property than it would in its current location. That was a suggestion, but it would only be done if it was feasible, given buffering constraints and access constraints by the vehicles.

Upon inquiry of Councilman Ellis, Mr. Shuford said that the Farmer's Market will probably provide the signage.

Councilman Ellis asked if there was any discussion about prohibiting parking on Long Street. Mr. Shuford said that was discussed quite a bit by the Planning & Zoning Commission who saw photographs from Ms. Moon. If the City were to limit or stop parking the street would have to be posted and that could have a negative effect on some residential property that needs to use the street for its parking.

Councilman Ellis moved to adopt Ordinance No. 2894 granting the conditional use permit for property on Long Street with the following conditions: (1) The recycling collection center must be screened from adjacent properties and the street as required by the City of Asheville's standards for this use. A site plan meeting City requirements must be submitted and approved for the collection center; (2) A zoning permit must be requested by and approved for the North Asheville Farmer's Market. The permit approval must address parking for the market's customers; (3) The recycling center operation should be located to the back of the lot if feasible; (4) Hours of pickup for recycled materials shall be restricted to the hours of 8:00 a.m. to 7:00 p.m.; (5) Signage shall be provided to encourage parking at Asheville Pizza and Brewery; and (6) The property owner and/or recycling contractor shall work with the Asheville Sanitation Division to improve cleanliness of the recycling center; and to instruct the City Attorney to prepare the Order for the Mayor's signature. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 404

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 02-17 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing two members to the Tree Commission.

The terms of Margaret Tinkler and Ginger Mahler, as members on the Tree Commission, expired on December 31, 2001. They are both interested in reappointment.

City Council interviewed Mr. Mickey Mahaffee on January 22, 2002. Mr. Mahaffee said that he was not interested in serving on the Tree Commission at this time.

Councilman Peterson moved to reappoint Margaret Tinkler and Ginger Mahler to each serve a three year term respectively, terms to expire December 31, 2004, or until their successors have been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 58

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of January 4-10, 2002: Dorothy A. Wood (Water), Donnella Boyd (Sanitation), Sue Arakas (Streets), Janice Payne (Streets), Neil Culbertson Jr. (Sanitation), James Barrett (Water), Joann Myers (Sanitation), Matthew Martin (Streets), Roger Young (Sanitation) and Judy Gossett (Streets).

The following claims were received by the City during the period of January 11-17, 2002: Cornelia Reeves (Water), Rick Buckner (Water), Howard Rholetter (Water), Eric Malone (Water), Josh Adams (Water) and William K. Rice (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY SHARON MARTIN

Ms. Sharon Martin said that views are important, however it's more important that we don't destroy the habitat of our animals. She also urged the Planning staff to encourage developers to set aside affordable housing.

B. COMMENTS BY MICKEY MAHAFFEE

Mr. Mickey Mahaffee, representing Peacemakers, said that panhandling is a serious problem in the City, but that it's not only a policing issue, but a social service issue as well. He encouraged City Council to make sure that they protect the right for people to ask other people for money as long as it's not aggressive and no one is intimidated by the process. In addition he asked Council to look at what is available for most indigent people and what alternatives Asheville has for them. He hoped Council would lean towards tolerance than a heavy hand police presence.

C. COMMENTS BY HAZEL FOBES

Ms. Hazel Fobes felt that City Council can protect our mountain ridges and still have economic development.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 29, 2002
Skyland Volunteer Fire Department
9 Miller Road

7:00 p.m. - Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

The following topics were raised by residents and addressed by City Council and City staff: request that when the City is involved with lawsuits that the outcome of the lawsuits be published; timing coordination of traffic lights on Hendersonville Road; speed limit on Hendersonville Road should be reduced to 35 miles per hour; need for crosswalks on Hendersonville Road; billboards should continue to be removed; with the new Urban Village District on Hendersonville Road, there needs to be coordination on the City's and State's part regarding safety on Hendersonville Road; demographics of south Asheville; what is the economic future of south Asheville; recognizing there are 97 neighborhoods off Sweeten Creek Road, will the planning of the widening of Sweeten Creek Road tend toward residents needs or businesses needs and how will the two blend; since Sweeten Creek Road is partly in the County, what is the City's relationship with Buncombe County, the Transportation Advisory Committee, and the Metropolitan Planning Organization; concern that City hired an Cultural Arts Superintendent at $48,000 when they could have hired two police officers; concern of Bele Chere accounting each year and that the figures should be published; request for City to make the Regional Water Authority a true authority so Asheville residents do not have to pay N.C. Dept. of Transportation non-betterment costs; Police Department should have new cars and be paid more; concern over the development of the Urban Village with regard to stormwater control; how can the City's stormwater ordinance be changed from a 10-year storm to a 100-year storm; request that the City continue to fund children programs; and concern that N.C. Dept. of Transportation projects frequently extend many months beyond their deadlines and that has major impacts on the businesses along the project area.

Mayor Worley adjourned the meeting at 8:07 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 5, 2002 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson (arrived in meeting at 3:15 p.m.); City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Driveway Easement Across Youngs Cove Reservoir

Summary: The consideration of a resolution authorizing the Mayor to convey a driveway easement over a portion of the Youngs Cove Reservoir property to Bruce O'Connell.

Youngs Cove Reservoir is located on Mountain Drive, a private road off Youngs Cove Road in the Candler community. Mr. O'Connell owns land on the mountain behind Youngs Cove Reservoir and accesses his property via a driveway that crosses the Youngs Cove Reservoir property. Mr. O'Connell has requested an easement to establish his right to use the driveway across the Reservoir property. The Water Resources Department has indicated that the driveway easement would not interfere with the City's anticipated use of the Reservoir property.

The driveway easement would be 12 feet wide and 202 feet long comprising 2,424 square feet. The easement would run outside the chain link fence, which encloses the above ground tank, crossing the property along and near the northeast property boundary and running in a northwesterly direction from the entrance to the Reservoir property at Mountain Drive.

The Reservoir property contains 35,000 square feet and has a current tax value of $20,800.00. The impact of the easement is that the land within the easement area could not be developed. Generally the value of development rights would be 50% of the value of the portion of the property affected by the relinquishment of those rights. A value for the easement was calculated by applying the per square foot value of the whole to the area of the easement and reducing it by 50%. The calculated value of the easement area is $715.00

Planning Department staff recommends City Council adopt the resolution authorizing conveyance of the driveway easement to Bruce O'Connell for the amount of $715.00.

Contract for Urban Trail Decorative Crosswalks

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Young and McQueen Grading Company Inc. to install imprinted decorative crosswalks located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to imprinted crosswalk installation services for crosswalks along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for crosswalk installation services were solicited and three responses were received. The bidders are listed below:

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Company	MB Part	Drug Free	Bond	Bid
Young & McQueen Grading Company, Inc	0%	Yes	Yes	$69,000.00
Tarheel Paving, Inc.	0%	Yes	Yes	$92,006.25
Dee Williams & Co. Inc.	100%	Yes	No	$91,062.40

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget.

The Public Works Department staff recommends City Council adopt the resolution to install decorative crosswalks along the Urban Trail.

Mr. David Foster, Project Coordinator, answered various questions from Council with regard to the cost of the decorative crosswalks vs. standard crosswalks.

Lighting System at Roger Farmer Park

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Wise Electric for the installation of ballfield lights at the upper field at Roger Farmer Park.

The City of Asheville Parks and Recreation is continuing to upgrade parks throughout the City of Asheville. One of the parks to be renovated is the Roger Farmer Park in West Asheville where the West Asheville Little League Association conducts practices and games throughout the year. The segment of the renovation of Roger Farmer Park is the installation of new ballfield lights at the upper field of the complex. In order to complete this portion of the project, staff has put out to bid the installation of a turn-key ballfield lighting system. This project is funded by the 1-cent tax appropriation for Parks and Recreation. The lighting system was put out to bid and the lowest responsible bidder was Wise Electric at a cost of $44,500. Wise Electric has complied with all the necessary requirements outlined in the Minority Business Plan.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with Wise Electric to furnish and install the lighting system for the upper field at Roger Farmer Park.

Street Acceptance of St. Davids Court

Summary: The consideration of a resolution accepting St. Davids Court as a public right-of-way and City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

St. Davids Court is a newly constructed street servicing building sites for residential structures. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is a dead end street that is approximately 500 feet long and has an average width of 21 feet.

Following City Council's approval of this resolution, St. Davids Court will be added to the official Powell Bill list.

Staff request City Council accept St. Davids Court as a public right-of-way and City maintained street.

Financing Purchase of Sanitation Trucks, Roll Carts & Radio Equipment

Summary: The consideration of a resolution authorizing the installment financing of two sanitation trucks, 8,000 roll carts and 150 radios with accessories.

The City of Asheville Capital Improvement Plan 2001/02 to 2006/07includes authorization in Fiscal Year 2001/02 for the installment purchase of two automated side-loader sanitation trucks, 8,000 roll carts (trash cans compatible with the side-loader trucks) and the replacement of aging public safety radios that are no longer maintainable due to obsolete technology and the fact that repair parts are no longer manufactured.

The Finance Department sought proposals from 16 firms to finance the purchase of the above listed equipment purchases. Proposals were received from ten firms, the best of which was submitted by SunTrust Leasing Corporation - - 3.748% interest for four and one half years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and SunTrust Leasing Corporation for the purchase of the two sanitation trucks, roll carts and public safety radios and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

Finance Director Bill Schaefer answered questions regarding the financing from Councilwoman Jones.

Agreement with the N. C. Dept. of Transportation for Re-Inspection of Bridges

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 18 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the N. C. Dept of Transportation (NCDOT). To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; and (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NCDOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. The NCDOT representatives anticipate the inspection costs to be $2,400 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year, which would bring the cost to $60,000. The City's share of 20% is $12,000. Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department, Bridge Maintenance Division staff, recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with the NCDOT for inspection of bridges.

Mr. David Foster, Project Coordinator, answered various questions from Council with regard to bridge inspections.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESTRUCTURE AND INCREASE PENALTIES FOR ANIMAL CONTROL VIOLATIONS

Police Administrative Services Manager Alan Hyder said that this is the consideration of an ordinance to restructure and increase penalties for animal control violations.

The current penalty for animal control violations is $10.00 for the first offense; $20.00 for the second offense within 12 months of the first; and succeeding offenses within 12 months of a prior offense result in increased penalties in $10.00 increments per offense. Penalties of these amounts have proven ineffective in promoting voluntary compliance with animal control regulations. In addition, collection of penalties is a problem because of the costs of collecting delinquent penalties exceeds the value of the revenue.

It is proposed that the penalties be increased as follows:

- First offense --$50.00
- Second offense within 12 months -----------------$100.00
- Third offense within 12 months--------------------$150.00
- Succeeding offenses within 12 months result in increased penalties in $50.00 increments per offense. (For example the third offense within 12 months would carry a $200.00 penalty; the fourth would carry a $250.00 penalty, and so on.)
- Unpaid penalties would be declared delinquent after the 15th day from the issuance of the citation and thereafter for each additional seven-day period of delinquency.
- Delinquency fee-------$50.00.

It is believed this structure will increase the collection of penalties and, in the long run, promote citizen voluntary compliance with animal control regulations.

City staff recommends Council adopt the ordinance.

Several Council members expressed concern that the delinquency periods were too short, and it was the consensus of Council to declare unpaid penalties delinquent after 30 days from the issuance of the citation and thereafter for each additional 30-day period of delinquency.

Upon inquiry of Vice-Mayor Bellamy, Mr. Hyder explained the some different kind of violations of this ordinance.

Mr. Hyder explained that there are approximately 150 unpaid citations now and if Council increases these violations, it will make staff's efforts to collect the fines worthwhile.

Mr. Hyder explained the violation process as requested by Councilman Mumpower and explained that there is an Animal Control Appeals Board.

When Councilman Mumpower asked about a ceiling of the delinquency fee, Mr. Hyder said that there is a cap of $500 and the ordinance would be amended to reflect that amount.

Councilwoman Jones suggested that the first offense be either a $50 fine or a document stating that the dog has been spayed or neutered. City Attorney Oast said that is something staff can look at, but felt it may be difficult administratively to enforce.

There was a brief discussion on how the citizens would be notified of this change and ways in which City residents can be notified that a license is required for dog owners in the City.

Upon inquiry of Councilman Dunn about where the additional revenue would go, City Manager Westbrook explained that the City has a contract with the Asheville Humane Society which is a non-profit organization.

It was the consensus of City Council to send this issue back to staff to address the concerns and issues raised by Council at this meeting and to bring it back to another worksession.

REQUEST TO RENAME PORTION OF I-26 "MORRIS L. MCGOUGH FREEWAY"

Mr. Dan Baechtold, Metropolitan Planning Organization Coordinator, said that this is the consideration of a resolution supporting the designation of a section of I-26 in Buncombe County as the "Morris L. (Mac) McGough Freeway."

The Western North Carolina Highway Corridors Association would like to name a portion of future I-26 in Buncombe County in honor of Mac McGough. The designation would cover the portion of US 19-23 (future I-26) from the Madison County line to I-240 in Asheville. The N. C. Dept. of Transportation Division 13 Office is coordinating the effort to make the designation. The Division 13 Office is asking local governments along the path of future I-26 for resolutions in support of the designation.

Mr. McGough has earned the title of "Father of Community Development in Western North Carolina" and has been active in community development issues for over 50 years. He was instrumental in organizing groups to advocate for construction of I-26 in Buncombe and Madison Counties.

The resolution supports the designation requested by WNC Highway Corridors Association. Similar resolutions have been adopted by the Buncombe County Board of Commissioners, the Town of Woodfin, and the Town of Weaverville. These local governments, along with the City of Asheville are all along the path of future I-26 in Buncombe County.

The Division 13 Office will forward the resolutions to the Board of Transportation, the Secretary of the Department of Transportation, and the Governor's Office for appropriate action in making the designation.

City staff recommends City Council adopt the resolution.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CRIMINAL JUSTICE INFORMATION SYSTEM INTERLOCAL AGREEMENT

Finance Director Bill Schaefer said that this is the consideration of a resolution authorizing the City Manager to execute an interlocal agreement between the City of Asheville and the County of Buncombe for the acquisition and operation of a multi-jurisdictional Criminal Justice Information System (CJIS).

In 1995, the City and County entered into the original CJIS Interlocal Agreement to *develop* and operate the initial multi-jurisdictional criminal justice information system. Due to the challenges of *developing* unique capabilities that proved beyond the capabilities of the contractor on the initial CJIS, not all of the originally envisioned system capabilities were achieved.

However, the portions that were successfully fielded are in operation today supporting such functions as: mug shots, master name index, law enforcement records, warrants & arrest, computer aided dispatch and jail management. The initial CJIS, as with virtually all seven-year-old computer systems, has grown obsolete and unsupportable and should be replaced with a more functional and efficient state-of-the-art system.

Over the past two years, City and County staff have jointly worked to define the needed capabilities and select a source for the successor CJIS system. Among the guiding criteria for the acquisition was that the system *not require a development* effort and that it currently be in operation in a multi-jurisdictional environment - -an off-the-shelf, field-proven system. After evaluation of several vendor's products, Open Software Solutions Inc (OSSI) has been selected to provide the system. Buncombe County anticipates entering into a contract with OSSI to provide CJIS for both the City and County as soon as the supporting CJIS Interlocal Agreement is approved by City Council and the County Commission. The terms of the contract with OSSI will define capabilities, cost and implementation schedule for CJIS and be used as the benchmark for assessment of the program.

Terms of the proposed CJIS Interlocal Agreement include:

a. Effective Date/Duration: Effective upon approval by City Council and County Commission for five years with provisions for automatic one-year extensions unless either party gives notice of their intent to terminate (Buncombe County Commissioners approved the Agreement on October 9, 2001);

b. Management: Day-to-day program management by the CJIS Project Manager – a County staff member – under the supervision of the County Information Technology Director. The City contact will be the Finance Director. Any issues that cannot be resolved by the County Information Technology Director and City Finance Director will be forwarded to the City and County Managers for resolution.

c. Implementation Schedule: Over the next two years as provided in the OSSI contract.

d. Users Group: Key users of CJIS and program management staff from the City and County will be included in a users group to ensure that the system is successfully implemented and goals of the program are achieved. City members of the users group are the Police Chief, Fire Chief and Finance Director.

e. Funding: The City will reimburse Buncombe County quarterly for 45% of the cost of: CJIS debt service; CJIS direct operating costs; and Central Data Entry direct operating costs. Both the City and County will seek any potential grant funding for CJIS. Grants received by either party will offset costs for both in the ratio of overall cost sharing (55% County/45% City).

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute the CJIS Interlocal Agreement.

Lieutenant David Rutledge said that CJIS is comprised of the Buncombe County Sheriff's Department, Buncombe County Emergency Operations, Asheville Police Department, Asheville Fire Department, 28th Judicial District Magistrate's Court, 28th Judicial District Attorney's Office and the City-County Identification Bureau.

Lieutenant Rutledge said that CJIS has existed since 1979. This selection process involves the fourth generation of CJIS application and software. The level of cooperation among the CJIS members is unlike any we have found nationwide. Most software is not written to take advantage of the information sharing and inter-agency cooperation that is CJIS's strength.

He then explained the search process in that CJIS staff and user agencies developed a detailed Request for Information that was sent to a number of vendors. Then CJIS users attended product demonstrations and question sessions presented by vendors and conducted in-dept product interviews. Based on this review, OSSI, far more than any other vendor, met most of the CJIS requirements.

He provided the following information on OSSI (1) they are North Carolina based (home offices in Greensboro) with 101 public safety customers; and (2) 53 of the 101 public safety customers are in North Carolina and they represent a wide mix of agency sizes. He said some of their North Carolina customer base includes Burlington Police, Chapel Hill Police, Wilmington Police, Winston-Salem Police, Cumberland County Sheriff, Guilford County EMS, High Point Police and Fire, New Hanover County Sheriff and Salisbury Police and Fire. He said after contacting OSSI customer references they found that OSSI's references were almost uniformly favorable and users stated that OSSI has a "a solid, proven product."

Mr. Schaefer and Lieutenant Rutledge then answered various questions from Council, some being, but are not limited to: how was the cost-sharing arrived at, does the City anticipate any problems with follow-through on the delivery of services, how is the City going to pay for CJIS, how does the operational cost of the new system compare to the old system, does the system allow access to the NC Division of Criminal Information and also the National Crime Information Center maintained by the FBI, are there are additional hardware costs, are there plans to interface with other City departments, how does the system actually work and will be City be looking for any more grants.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MISCELLANEOUS ITEMS

At the suggestion of City Manager Westbrook, it was the consensus of City Council to move the formal meeting of Tuesday, March 12, 2002, to Wednesday, March 13, 2002, due to a number of City Council members attending the National League of Cities conference in Washington, D.C.

At the request of Vice-Mayor Bellamy, it was the consensus of City Council to make the following board appointments on February 26, 2002, due to the anticipated length of the February 12, 2002, formal meeting: Board of Adjustment, Community Relations Council, Fair Housing Commission, and Transit Commission.

At the suggestion of Councilman Peterson, it was the consensus of City Council to put on an upcoming worksession agenda the possibility of appointing a citizen committee to look at the reform of City elections, e.g. campaign finance reform, City partial funding, terms of the election to avoid the situation which arose on December 4, 2002, when a Council member was elected Mayor and City Council had to appoint a 7th member, etc.. Councilman Peterson suggested each Council member have two names of people they wish to be on this committee. At the worksession, Council can discuss the scope of the committee.

Councilman Mumpower said that report from Heery International on the Civic Center will not be presented to City Council until March 19, 2002. Therefore, at the suggestion of Councilman Mumpower it was the consensus of City Council to hear an update from City staff on events at the Civic Center (especially basketball and hockey) since we are half-way through the season. Items to be included in said update might consist of attendance at the events, revenues, expenditures, foreseeable problems, concession sales, etc.

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At 4:55 p.m., Vice-Mayor Bellamy moved to go into closed session (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including proceedings involving the following parties: Dennis Morgan and the City of Asheville - G.S. 143-318.11(a)(3); (2) to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - G.S. 143-318.11(a)(2); and (3) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5). This motion was seconded by Councilman Mumpower and carried unanimously. At 5:34 p.m., Councilman Ellis moved to go out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:34 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Friday – February 8, 2002
Saturday – February 9, 2002
City Council Annual Retreat Pine Crest Inn, Tryon, N.C.

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Friday, February 8, 2002

State Budget Reduction- City Manager Westbrook said that as a result of Governor Easley's reduction of the state's fiscal year, the City will have a total revenue shortfall of $3,022,689. He recommended the following budget reductions: street paving contract - $600,000; New Haw Creek sidewalk - $190,000; stormwater study - $90,000; general sidewalks - $50,000; traffic calming - $100,000; Summer Youth Program - $50,000; Civic Center repairs - $75,000; travel/training - $50,000; outside agency contributions - $217,000; Roger K. Farmer park project - $75,000; Dr. Martin Luther King Jr. Park turf renovations - $50,000; Walton Street playground - $75,000; Broadway Greenway Master Plan - $100,000; Burton Street Recreation Center - $50,000; Neighborhood Grant Program/Asheville Honors - $15,000; small capital equipment - $65,000; vehicles - $60,689; contracted/professional services/maintenance - $500,000; operating materials - $250,000; Parking Services Fund transfer - $170,000; and positions - $190,000. He stated that the next step would have to be a direction reduction of services for the City.

City Manager Westbrook responded to questions like who makes the decision on what gets added back into the budget if revenue is received and has the City Manager looked at a one percent reduction of salaries. Should the City receive some state funding prior to the end of the end of the fiscal year, the City Manager would return to Council with recommended spending for that funding.

Councilman Ellis asked that the City coordinate with Buncombe County any outside agency funding cuts. He was concerned that if the City and the County reduce funding, it may cause agencies to go out of business.

Vice-Mayor Bellamy asked for more information on where cuts would be made because we need to make sure that some cuts are not linked to other funding.

Fiscal Year 2002-03 General Fund Budget Forecast - City Council heard a summary of major General Fund revenues from Budget Director Ben Durant. Revenue categories included property tax; sales tax; intergovernmental revenue; licenses and permits; and investment earnings. He pointed out that as a result of re-engineering, the City has saved $481,485. Funding issues for Fiscal Year 2002-03 include: Fire Station 6 construction $2,000,000; topography mapping - $750,000; Fire Station 10 land purchase - $250,000; traffic signal upgrades $500,000; sidewalks on Hendersonville Road - $250,000; streetscape improvements (Charlotte Street) - $450,000; additional 1% for 401-K - $400,000; and additional equipment/vehicles purchases - $2,000.000

Economic Development – Director of Economic Development Mac Williams briefed City Council on the City's current policies and incentives; current conditions/trends; the Sustainable Economic Development Plan; and how the Plan has been implemented. His outlined his recommendations in the future to include (1) build/enhance community quality of place; (2) aggressive, pro-active urban redevelopment; and (3) continuous improvement of the development process.

Councilman Mumpower felt the City should see first what they can do to improve the existing quality of place before spending the time, energy and money on future enhancements.

Vice-Mayor Bellamy urged City staff to work with developers and businesses on cost-sharing.

Councilman Ellis was interested in seeing the City identify property that could be developed for affordable housing.

It was the consensus of City Council to instruct the City to proceed with developing plans and strategies to redevelop property within the City limits for commercial/industrial sites. This may include public/private partnerships or possibly the City being the developer.

Affordable Housing – Planning & Development Director Scott Shuford reviewed with Council affordable housing issues. He noted that Asheville has the most expensive housing in the State. He outlined the different available resources available through the government, private non-profit and private for-profit agencies. He then reviewed the funding sources and control by the City, state and federal governments. Challenges regarding affordable housing include the declining federal funding, increased land and house prices, limited amount of multi-family zoned land, "not in my backyard" opposition to affordable housing, and very low income rental is difficult. New development already started include the increased private developer involvement, the City's Housing Trust Fund, the Employer Assisted Homeownership, and the homebuyer assistance through individual development accounts. Future developments include a increased price ceiling for fee rebates, mixed income (inclusionary zoning), and smart growth initiatives to include (1) mixed use projects, housing and retail development nodes and increased diversity of development types.

Stormwater Regulations - City Engineer Cathy Ball updated City Council on the status of the development of the City's stormwater program, which must be submitted to the State on or before March 2003. The program must describe how the City will attempt to meet six minimum requirements: (1) Public Education/Outreach; (2) Public Participation/Involvement; (3) Illegal/Illicit Discharge Detection and Elimination; (4) Construction Site Runoff Construction; (5) Post-Construction Runoff Control; and (6) Pollution Prevention/Good Housekeeping Measures. She pointed out that (1) preliminary estimates for the minimum program would be approximately $150,000 to $200,000 annually, depending on the State's final rule; (2) in Fiscal Year 2001-02, the City budgeted approximately $930,000 on stormwater related tasks, including staff, equipment and materials; (3) in Fiscal Year 2001-02, the City estimated that they would receive $95,000 in revenues from stormwater and erosion control permits; and (4) the current net spending is approximately $835,000. Ways to fund the program include general property taxes, sales tax, service districts, impact fees, increased permit fees, or a stormwater utility. She explained that a stormwater utility is (1) an enterprise fund that functions much like other utilities; (2) fees are calculated based upon impervious area; (3) fees are applied to all properties, taxable and non-taxable; and (4) fees are added onto the water bill much like sewer fees. The communities of Greensboro, Winston-Salem, Fayetteville/Cumberland County, Durham, Charlotte/Mecklenburg County and Wilmington have instituted a stormwater utility.

Discussion surrounded the need for a tier system based upon how much a person contributes to the problem.

Councilman Mumpower stressed the need to make sure that City Council voices their concerns to the state or federal government when unfunded mandates are passed down to local governments.

It was the consensus of Council to begin developing a stormwater utility and that there be a 10-20 person City Manager's Task Force to include developers, property owners, engineers, City staff, and the environmental community in order to develop the framework of a stormwater utility. Council also asked that a City Council liaison be appointed to this Task Force. The City Manager was directed to make recommendations to establish the utility as part of the Fiscal Year 2003-04 budget process.

Saturday, February 9, 2002

Legislative Issues - City Attorney Oast gave City Council a brief synopsis of the City's legislative efforts: (1) red light cameras; (2) nonbetterment waterline relocation expenses; (3) local revenue ability; (4) force account suspension and (5) annexation/ extraterritorial jurisdiction moratorium. He reviewed provided City Council with a brief summary of statewide legislation of interest to municipalities in general: (1) Senate Bill 1005 (State budget); (2) State Bill 914 (Public Construction Law Changes); (3) House Bill 1169 (Amend Local Government Purchasing Laws); (4) House Bill 115 (Public Conflicts of Interest); (5) Senate Bill 774 (Public Enterprise Customer Billing Privacy); (6) House Bill 998 (State Privacy Act); (7) Senate Bill 885 (Unsafe Buildings); (8) Senate Bill 352 (Extend Lien for Public Health Nuisance); (9) Senate Bill 1014 (Strengthen Littering Laws); (10) Traffic stop statistics; and (11) House Bill 948 (ABC Licenses/ Redevelopment Areas). Things to watch for include (1) Smart Growth legislation; (2) Continuing fiscal situation; and (3) Mandate county zoning. He also reviewed with Council some possibilities: (1) implementation of planning recommendations; (2) nonbetterment relocation costs reimbursement; (3) red light cameras; (4) local revenue ability; and (5) towing from private parking lots.

Councilwoman Jones stressed how important it is for City Council members to contact our local legislation via phone, letters, meetings, or social gatherings.

At the request of Vice-Mayor Bellamy, it was the consensus of City Council to request the local delegation to change legislation to reduce the Housing Authority members terms from five years to three years.

At the direction of Council, City Manager Westbrook said that he would arrange a meeting with our local delegation prior to the start of the General Assembly's short session.

Asheville Police Department - Police Chief Will Annarino reviewed with City Council his personnel, their educational levels, his budget, and a survey of 2001 crime comparisons. He explained their efforts with community resource centers. Accomplishments for his department include being nationally accredited through the CALEA, winner of the prestigious IACP Community Policing Award, education, Police Corps, Wellness Program, reduced crime rate and $324,000 through five state/federal grants. In the future he hopes to work toward (1) automation (CJIS and a paperless department); (2) assigned fleet; (3) service delivery (enhanced districts and staffing evaluation); (4) Downtown Business District (maintaining adequate service levels in a dynamic and growing Central Business District; (5) continued ordinance review and enhancement; and (6) continued employee professionalism (education and compensation).

Update on the Development Review Process - Building Safety Director Terry Summary reviewed with Council the following perception issues: faster to build in the County, easier to build in the County, costs less to build in the County, retribution, varying interpretations, regulatory process slows growth and not business friendly. Industry perceptions include: a cumbersome system; a difficult and inflexible Unified Development Ordinance (UDO), conflict between codes, negative image of developers, and inconsistent levels of understanding of the process. He then pointed out the departments/agencies involved in the development process, and state codes and local regulations that need to be reviewed. He then reviewed in detail the following ten strategic action recommendations arrived at by the Sustainable Economic Development's Development Process Team, along with the successes of each action step and their remaining tasks: (1) streamline the process by eliminating/combining steps; (2) advocate changes in the UDO (reformat content and presentation of publication, add flexibility) and adopt mission statement, guiding principles and goals; (3) establish a "common sense" culture among staff and commissions; (4) restructure some processes to provide for "communication" among parties earlier in the process; (5) eliminate to the extent possible conflicts between ordinances, standards and codes; (6) improve permit coordination with "outside agencies;" (7) create more effective education/informational tools (checklists, guides, etc.); (8) strengthen communication between City and industry (development forums); (9) employ technology when and where practical for both City and industry; and (10) encourage density via performance based standards and ordinances. He reviewed the following three staff tasks to be done: (1) continue efforts to streamline the processes and enhance the operations of the Permit Center; (2) implement the enforcement of the new International Codes and the Pilot of the New Jersey Rehab Code; and (3) additional computerization.

Planning & Development Director Scott Shuford reviewed with Council in detail the following: (1) streamline the UDO process (Level III reviews; eliminate repetition of technical and statutory language); (2) revamp or eliminate the Planned Unit Development review process; (3) streamline the Technical Review Committee process (less formal; improve on-site public notification); (4) reassign certain conditional use permit reviews; (5) reformat UDO (more user friendly); (6) increase size of Level I reviews for residential projects; (7) complete Comprehensive Plan update; (8) update Downtown Fire District to be consistent with the International Code; (9) Housing Code revisions; and (10) affordable housing fee rebates.

It was the consensus of City Council to instruct staff to proceed with the ten items Mr. Shuford outlined above with regard to updating various codes and growth management policies.

City Council Goals

After each member of City Council stated their goals and their reasons why their goals were important, City Council tentatively agreed upon the following Fiscal Year 2002-03 Goals:

Regulatory Programs:
1) Affordable Housing – promotion and standards
2) Development review – streaming

Fiscal Responsibility:
1) Re-Engineering
2) Incentives for employees to live in Asheville

Transportation:
1) Streets and sidewalks (basic infrastructure)
2) Transit

Public Safety & Health:
1) Improve support for police and fire
2) Drug Problem

Public Relations:
1) Regional cooperation with focus on Buncombe County & local delegation
2) Perception about affordable housing (Housing Authority oversight strengthened)

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It was the consensus of City Council to also strongly support the issues of education, campaign finance reform, air quality and I-26 Connector.

City Manager Westbrook said that after Council's tentative goals are edited and summarized, he will bring them back to Council at an upcoming worksession for final approval.

Mayor Worley adjourned the meeting at 4:30 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 12, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 12, 2002, AS "JUNIOR LEAGUE OF ASHEVILLE DAY"

Mayor Worley read the proclamation proclaiming February 12, 2002, as "Junior League of Asheville Day" in the City of Asheville. He presented the proclamation to Ms. Julia Heinitsh, President of the Junior League, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING FEBRUARY OF 2002, AS "BLACK HISTORY MONTH" IN THE CITY OF ASHEVILLE

Vice-Mayor Bellamy read the proclamation proclaiming February of 2002, as "Black History Month" in the City of Asheville.

C. RECOGNITION OF CITY CLERK MAGDALEN BURLESON

Mayor Worley recognized City Clerk Magdalen Burleson on acceptance into the First Level of the Master Municipal Clerk Academy Program of the International Institute of Municipal Clerks.

II. CONSENT AGENDA:

Mayor Worley announced that Consent Agenda Items "F" and "K" have been removed from City Council consideration due to State budget cuts.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 22, 2002; THE COMMUNITY MEETING ON JANUARY 29, 2002; AND THE WORKSESSION HELD ON FEBRUARY 5, 2002

B. RESOLUTION NO. 02-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FOR PROPERTY ON CHOCTAW STREET (TRACT 2) IN THE EAST RIVERSIDE REDEVELOPMENT PROJECT

Summary: The consideration of a resolution authorizing the Mayor to convey property on Choctaw Street in the East Riverside Redevelopment Project to Tilman and Sabrina Jackson in the amount of $11,800.

On January 22, 2002, the City Council directed the City Clerk to advertise for upset bids on Choctaw Street, Tract 2. The advertisement ran in the Asheville Citizen-Times on January 25, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Tilman and Sabrina Jackson in the amount of $11,800 was not upset and the sale to Tilman and Sabrina Jackson should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 59

C. RESOLUTION NO. 02-19 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY A DRIVEWAY EASEMENT OVER A PORTION OF THE YOUNGS COVE RESERVOIR PROPERTY TO BRUCE O'CONNELL

Summary: The consideration of a resolution authorizing the Mayor to convey a driveway easement over a portion of the Youngs Cove Reservoir property to Bruce O'Connell.

Youngs Cove Reservoir is located on Mountain Drive, a private road off Youngs Cove Road in the Candler community. Mr. O'Connell owns land on the mountain behind Youngs Cove Reservoir and accesses his property via a driveway that crosses the Youngs Cove Reservoir property. Mr. O'Connell has requested an easement to establish his right to use the driveway across the Reservoir property. The Water Resources Department has indicated that the driveway easement would not interfere with the City's anticipated use of the Reservoir property.

The driveway easement would be 12 feet wide and 202 feet long comprising 2,424 square feet. The easement would run outside the chain link fence, which encloses the above ground tank, crossing the property along and near the northeast property boundary and running in a northwesterly direction from the entrance to the Reservoir property at Mountain Drive.

The Reservoir property contains 35,000 square feet and has a current tax value of $20,800.00. The impact of the easement is that the land within the easement area could not be developed. Generally the value of development rights would be 50% of the value of the portion of the property affected by the relinquishment of those rights. A value for the easement was calculated by applying the per square foot value of the whole to the area of the easement and reducing it by 50%. The calculated value of the easement area is $715.00

Planning Department staff recommends City Council adopt the resolution authorizing conveyance of the driveway easement to Bruce O'Connell for the amount of $715.00.

RESOLUTION BOOK NO. 27 – PAGE 60

D. RESOLUTION NO. 02-20 - RESOLUTION SUPPORTING THE NAMING OF A PORTION OF I-26 FROM MADISON COUNTY TO ITS INTERSECTION WITH I-240 "MORRIS L. MCGOUGH FREEWAY"

Summary: The consideration of a resolution supporting the designation of a section of I-26 in Buncombe County as the "Morris L. (Mac) McGough Freeway."

The Western North Carolina Highway Corridors Association would like to name a portion of future I-26 in Buncombe County in honor of Mac McGough. The designation would cover the portion of US 19-23 (future I-26) from the Madison County line to I-240 in Asheville. The N. C. Dept. of Transportation Division 13 Office is coordinating the effort to make the designation. The Division 13 Office is asking local governments along the path of future I-26 for resolutions in support of the designation.

Mr. McGough has earned the title of "Father of Community Development in Western North Carolina" and has been active in community development issues for over 50 years. He was instrumental in organizing groups to advocate for construction of I-26 in Buncombe and Madison Counties.

The resolution supports the designation requested by WNC Highway Corridors Association. Similar resolutions have been adopted by the Buncombe County Board of Commissioners, the Town of Woodfin, and the Town of Weaverville. These local governments, along with the City of Asheville are all along the path of future I-26 in Buncombe County.

The Division 13 Office will forward the resolutions to the Board of Transportation, the Secretary of the Department of Transportation, and the Governor's Office for appropriate action in making the designation.

City staff recommends City Council adopt the resolution.

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E. RESOLUTION NO. 02-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH YOUNG AND MCQUEEN GRADING CO. INC. TO INSTALL DECORATIVE CROSSWALKS ALONG THE URBAN TRAIL

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Young and McQueen Grading Company Inc. to install imprinted decorative crosswalks located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to imprinted crosswalk installation services for crosswalks along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for crosswalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Young & McQueen Grading Company, Inc	0%	Yes	Yes	$69,000.00
Tarheel Paving, Inc.	0%	Yes	Yes	$92,006.25
Dee Williams & Co. Inc.	100%	Yes	No	$91,062.40

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget.

The Public Works Department staff recommends City Council adopt the resolution to install decorative crosswalks along the Urban Trail.

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F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WISE ELECTRIC TO FURNISH AND INSTALL THE LIGHTING SYSTEM FOR THE UPPER FIELD AT ROGER FARMER PARK

This item was deleted from City Council consideration due to State budget cuts.

G. RESOLUTION NO. 02-22 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT ST. DAVIDS COURT AS A PUBLIC RIGHT-OF-WAY AND PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution accepting St. Davids Court as a public right-of-way and City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

St. Davids Court is a newly constructed street servicing building sites for residential structures. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is a dead end street that is approximately 500 feet long and has an average width of 21 feet.

Following City Council's approval of this resolution, St. Davids Court will be added to the official Powell Bill list.

Staff request City Council accept St. Davids Court as a public right-of-way and City maintained street.

RESOLUTION BOOK NO. 27 – PAGE 63

H. RESOLUTION NO. 02-23 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 26, 2002, TO CONSIDER THE VOLUNTARY ANNEXATION OF 2270 HENDERSONVILLE ROAD KNOWN AS ARDEN SQUARE SHOPPING CENTER

RESOLUTION BOOK NO. 27 – PAGE 64

I. RESOLUTION NO. 02-24 - RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT WITH SUNTRUST LEASING CORPORATION TO FINANCE THE ACQUISITION OF TWO SANITATION TRUCKS, 8,000 ROLL CARTS AND RADIO EQUIPMENT

Summary: The consideration of a resolution authorizing the installment financing of two sanitation trucks, 8,000 roll carts and 150 radios with accessories.

The City of Asheville Capital Improvement Plan 2001/02 to 2006/07includes authorization in Fiscal Year 2001/02 for the installment purchase of two automated side-loader sanitation trucks, 8,000 roll carts (trash cans compatible with the side-loader trucks) and the replacement of aging public safety radios that are no longer maintainable due to obsolete technology and the fact that repair parts are no longer manufactured.

The Finance Department sought proposals from 16 firms to finance the purchase of the above listed equipment purchases. Proposals were received from ten firms, the best of which was submitted by SunTrust Leasing Corporation - - 3.748% interest for four and one half years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and SunTrust Leasing Corporation for the purchase of the two sanitation trucks, roll carts and public safety radios and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 27 – PAGE 65

J. RESOLUTION NO. 02-25 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 18 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the N. C. Dept of Transportation (NCDOT). To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements – (1) do the inspection with City forces; (2) the City to hire a consultant to do the inspections; and (3) the City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute an agreement with NCDOT to accomplish the required inspection through their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. The NCDOT representatives anticipate the inspection costs to be $2,400 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year, which would bring the cost to $60,000. The City's share of 20% is $12,000. Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department, Bridge Maintenance Division staff, recommends adoption of the resolution authorizing the Mayor to execute a municipal agreement with the NCDOT for inspection of bridges.

RESOLUTION BOOK NO. 27 – PAGE 67

K. RESOLUTION RESCHEDULING THE TUESDAY, MARCH 12, 2002, CITY COUNCIL FORMAL MEETING UNTIL WEDNESDAY, MARCH 13, 2002, AT 5:00 P.M. IN THE COUNCIL CHAMBER OF THE CITY HALL BUILDING

This item was deleted from City Council consideration due to State budget cuts.

L. RESOLUTION NO. 02-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND COUNTY OF BUNCOMBE FOR THE PURPOSE OF ACQUIRING AND OPERATING A CRIMINAL JUSTICE INFORMATION SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to execute an interlocal agreement between the City of Asheville and the County of Buncombe for the acquisition and operation of a multi-jurisdictional Criminal Justice Information System (CJIS).

In 1995, the City and County entered into the original CJIS Interlocal Agreement to *develop* and operate the initial multi-jurisdictional criminal justice information system. Due to the challenges of *developing* unique capabilities that proved beyond the capabilities of the contractor on the initial CJIS, not all of the originally envisioned system capabilities were achieved. However, the portions that were successfully fielded are in operation today supporting such functions as: mug shots, master name index, law enforcement records, warrants & arrest, computer aided dispatch and jail management. The initial CJIS, as with virtually all seven-year-old computer systems, has grown obsolete and unsupportable and should be replaced with a more functional and efficient state-of-the-art system.

Over the past two years, City and County staff have jointly worked to define the needed capabilities and select a source for the successor CJIS system. Among the guiding criteria for the acquisition was that the system *not require a development* effort and that it currently be in operation in a multi-jurisdictional environment - -an off-the-shelf, field-proven system. After evaluation of several vendor's products, OSSI has been selected to provide the system. Buncombe County anticipates entering into a contract with OSSI to provide CJIS for both the City and County as soon as the supporting CJIS Interlocal Agreement is approved by City Council and the County Commission. The terms of the contract with OSSI will define capabilities, cost and implementation schedule for CJIS and be used as the benchmark for assessment of the program.

Terms of the proposed CJIS Interlocal Agreement include:

a. Effective Date/Duration: Effective upon approval by City Council and County Commission for five years with provisions for automatic one-year extensions unless either party gives notice of their intent to terminate (Buncombe County Commissioners signed the Agreement on October 9, 2001);
b. Management: Day-to-day program management by the CJIS Project Manager – a County staff member – under the supervision of the County Information Technology Director. The City contact will be the Finance Director. Any issues that can not be resolved by the County Information Technology Director and City Finance Director will be forwarded to the City and County Managers for resolution.
c. Implementation Schedule: Over the next two years as provided in the OSSI contract.
d. Users Group: Key users of CJIS and program management staff from the City and County will be included in a users group to ensure that the system is successfully implemented and goals of the program are achieved. City members of the users group are the Police Chief, Fire Chief and Finance Director.
e. Funding: The City will reimburse Buncombe County quarterly for 45% of the cost of: CJIS debt service; CJIS direct operating costs; and Central Data Entry direct operating costs. Both the City and County will seek any potential grant funding for CJIS. Grants received by either party will offset costs for both in the ratio of overall cost sharing (55% County/45% City).

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute the CJIS Interlocal Agreement.

RESOLUTION BOOK NO. 27 – PAGE 68

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE 500 LONG SHOALS ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 2895 - ORDINANCE TO REZONE 500 LONG SHOALS ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 5:15 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to rezone one lot located at 500 Long Shoals Road from RS-2 Residential Single-Family Low Density District to Community Business I District. This public hearing was advertised on February 1 and 8, 2002.

The City staff has initiated this rezoning to permit re-establishment of commercial use for this property. During the zoning process for the 1,831 acres in the "south" extra-territorial jurisdiction area adopted in August of 2001, this property was initially zoned RS-2. Although vacant at the time the extraterritorial jurisdiction was extended, the property had been previously used for a veterinary clinic.

The Planning & Zoning Commission, at their January 2, 2002 meeting, reviewed, and by unanimous vote, recommended this rezoning. The staff had originally proposed Community Business II zoning but concurs with Planning & Zoning Commission that Community Business I would be preferable. The property owner is also in agreement with this change.

Staff has received no comments of concern or opposition to the proposed rezoning.

The Planning and Development staff and the Planning & Zoning Commission recommend that City Council adopt an ordinance rezoning the property at 500 Long Shoals Road from RS-2 to Community Business I District.

Mayor Worley closed the public hearing at 5:17 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2895. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 410
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B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING FLEXIBLE DEVELOPMENT STANDARDS

ORDINANCE NO. 2896 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY FRONT SETBACKS AS A CATEGORY FOR MODIFICATION USING FLEXIBLE DEVELOPMENT STANDARDS AND TO CLARIFY THE PROVISIONS REGARDING VARIANCES AND FLEXIBLE DEVELOPMENT STANDARDS

Mayor Worley opened the public hearing at 5:18 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify front setbacks as a category for modification using flexible development standards and to clarify the provisions regarding variances and flexible development standards. This public hearing was advertised on February 1 and 8, 2002.

Flexible development standards allow City staff to make administrative exceptions to certain parts of the UDO under specific circumstances. We have identified a new dimensional category for the application of flexible development standards - front setbacks.

To a great extent, front setbacks determine the character of most subdivisions. Front setbacks are generally measured from the right-of-way and, in Asheville, street pavement and right-of-way widths have not been consistent. Consequently, subdivisions in the same zoning classification may have front setbacks that measure different distances from the edge of pavement due to this variety. Additionally, in our mountainous terrain, some lots in a subdivision are differently situated than other lots due to topography. These circumstances, among others, warrant some flexibility in establishing the front setbacks for both entire subdivisions and for individual lots within subdivisions.

Currently staff is authorized to grant modifications in the following rules using the flexibility standards: lot size, lot width, setbacks and off-street parking requirements. If a project is required to be reviewed by a design review board, the design review board can waive requirements for the following, if the building design is approved: building size, building height, setbacks and landscaping.

The ordinance provides for the application of flexible development standards in order to make minor adjustments to front setbacks in entire subdivisions or portions of subdivisions. The front setback may be reduced by up to 10 feet in an entire subdivision as part of the plat approval process. A minimum 10 foot setback is required. The front setback in up to 10% of the lots in a subdivision may be reduced by up to 10 feet, except in the RS-2 zoning district where the front setback may be reduced up to 20 feet. The minimum front setback of 10 feet is required.

He said the following conditions must exist that warrant approval of the reduced front setback: (1) protection of significant existing vegetation; (2) accommodation of trails and greenways; (3) provision of a more usable lot arrangement due to topographical constraints; and (4) maintenance of consistent appearance within the subdivision.

Staff believes that this ordinance will provide the needed flexibility to evaluate and approve reasonable adjustments to front setbacks in a number of cases where such flexibility is needed. Property owners/developers can request and receive minor modifications under the flexible development standards without the need to present a variance request to the Board of Adjustment. The Board of Adjustment is in agreement with this amendment. The ordinance amendment also clarifies the relationship between flexible development standards and variances.

Staff has received no comments in opposition to the proposed revisions.

At their January 2, 2002, meeting, the Planning and Zoning Commission voted 6 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Vice-Mayor Bellamy asked that staff look at the possibility of flexible development standards for developments other than residential or subdivisions. Mr. Green responded that staff continually looks for ways to increase the flexibility of our ordinances.

Upon inquiry of Councilman Dunn, Mr. Green said that any staff decision on this matter can be appealed to the Board of Adjustment.

Mayor Worley closed the public hearing at 5:36 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2896. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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C. PUBLIC HEARING ON THE PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT DESIGNATION AND MASTER PLAN REVIEW FOR ROSS CREEK COMMONS LOCATED AT CHUNNS COVE ROAD AND OLD CHUNNS COVE ROAD

Due to a conflict of interest, Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Dunn and carried unanimously.

City Attorney Oast said that this matter involves two steps: (1) adoption of the Planned Unit Development (PUD) Overlay zoning classification (involves consideration of the usual issues in rezoning: appropriateness of the classification for the location, consistency with the City's master plan, compatibility with surrounding land uses, etc.); and (2) adoption of the master plan for the PUD (involves determination as to whether the master plan meets specific criteria set out in the ordinance). He said it may be helpful to think of the first step in the PUD process as establishing a zoning classification and applying it to a particular property, and the second step as adopting the regulations that apply within that newly-established zone.

He said that a valid protest petition has been filed by the property owners surrounding the property that is the subject of the application. This protest petition relates to the rezoning element only. The effect of the protest petition is that an affirmative vote of 3/4 of all the members of City Council is required in order to rezone the property. This means that six votes of the City Council will be required to approve the rezoning request. And since Vice-Mayor Bellamy has a conflict her absence does not lower the number of votes required. This, a 6-0 vote will be required in order to approve the rezoning element of the PUD application. He noted that attorneys for the applicants have objected to this ruling. He did note that the protest petition does not affect the master plan; if the rezoning is approved, the vote required to approve the master plan will be a simple majority. He said that the attorneys for the applicants have objected to this ruling as well. If the rezoning element fails to pass, the project is denied and there is no necessity for consideration for voting on the master plan. Letters from Mr. Steven L. Barden, III, and Mr. W. Louis Bissette, Jr., were entered into the record.

City Attorney Oast also said that an issue was raised regarding a possible conflict of interest with regard to Councilman Ellis' position as a member on the Board of Directors of the Blue Ridge Area Authority. He has investigated that contention and does not feel there is a disqualifying conflict, therefore, Councilman Ellis must vote in this matter.

City Attorney Oast said that in connection with the rezoning, the main question is whether the PUD Overlay designation is appropriate for this particular property. The PUD Overlay does not change the underlying zoning of the property. What it does is permit increases in density if the developer meets certain standards set out in the Unified Development Ordinance (UDO). Relevant issues on this question are whether the PUD Overlay designation, with the increased density that PUDs allow, is appropriate here. Consideration should be given to such usual rezoning considerations as to whether and to what extent the PUD designation advances the City's policy objectives, as set forth in its various plans (comprehensive plan, land use plan, smart growth policy, etc.), compatibility with surrounding land uses, adequacy of infrastructure, and other general health, safety and welfare considerations. Even though some specific information regarding the Ross Creek Commons master plan will necessarily come before Council with Council's consideration of the rezoning element, it is important to remember that the plan can change and, as with any rezoning, any information regarding its specific proposed use should be considered as an example of what could go on the property, not necessarily what will. Once the PUD Overlay is established, any of the density bonuses allowed under Section 7-9-1 may be obtained if the applicable standards are met.

With regard to the master plan approval, it would be appropriate to get into more specific issues such as the placement of buildings on the site, the number of units in each building and the total number of units, the availability of parking, landscaping and preservation of natural landscape or topographic features on the site, setbacks, pedestrian and traffic circulation within the project etc. City Council may be as specific as it wishes in asking questions about the proposed use of the property. He stressed that City Council must not take into consideration the possibility that one or more of the units may be occupied by persons with mental disabilities or any other kind of disability

Mayor Worley opened the public hearing at 5:46 p.m.

Summary: WNC Housing and Mountain Housing Opportunities, Inc., have applied for a Master Plan approval and Planned Unit Development zoning overlay designation for Ross Creek Commons, a 35 unit affordable housing development. The proposed site for the development is a 3.38 acre parcel located at the corner of Chunns Cove Road and Old Chunns Cove Road, near Buck Cove Terrace. The parcel is currently zoned RM-6 Residential Multi-Family Low Density District, 6 units per acre. The PUD zoning overlay district provides a density incentive bonus for affordable housing and conserving open space that would allow the site to be developed at a density of up to 13 units per acre. The actual development density, as proposed, would be 10 units per acre. While this density is higher than that allowed under much of the surrounding property, it is not inconsistent with multi-family development in other areas of the Chunns Cove community, including the adjacent Buck Cove Townhomes, which have a density of 9 units per acre on much steeper property. It should also be noted that the subject property is located at the entrance to the Chunns Cove community, quite near an interstate interchange, and across the street from a church use. Such locational characteristics lend support to this site as a suitable place to allow density bonuses for affordable housing and open space conservation since traffic and site activity impacts would already be at a center of activity for the Chunns Cove community and will not be directed toward the interior of the community.

The proposed project is comprised of 4 buildings with a total of 36 units, one of which will be used as a community gathering space. Two buildings will be three stories, with twelve units each. The other two buildings will be two stories high, with six units in each. The buildings will be no taller than those allowed under the current zoning of the subject property and under the surrounding residential zoning, including the single family zoned areas. The development will be clustered towards the front of the property (the least steep part of the property along Chunns Cove Road), leaving over 40,000 sq. ft. of undeveloped open space to the west side of the property. A small playground will also be provided on site. Overall the site will have over 56,000 sq. ft. of open space; open space would constitute 38% of the total site. The site will be landscaped in accordance with the City Code for this type and impact of development.

Staff has received considerable public comment on this project. Neighboring property owners are primarily concerned about increased density, traffic impacts, and water and sewer capacity. Most of these issues were addressed through the Technical Review Committee (TRC) review process. A traffic impact analysis was not required for this project because the traffic generated from the site would be below the threshold for such an analysis. The site was redesigned with a single entrance off of Old Chunns Cove Road. The applicant is working with the Transit Services Department to work out the provision of public transit via Mountain Mobility. A Letter of Commitment for water availability has been issued and MSD has issued a Wastewater Allocation, which will require the applicant to complete some minor manhole improvements.

Staff recommends approval of the PUD Master Plan and Zoning Overlay, subject to the following conditions: (1) Provide details for the playground equipment; and (2) Provide pedestrian connections between the apartments and the large area of common open space.

Planning & Development Director Scott Shuford said that this proposed zoning change comes before Council with a recommendation of denial (3-3) from the Planning and Zoning Commission. This is the first Planned Unit Development request that has included the affordable housing density bonus. This public hearing was advertised on February 1 and 8, 2002.

He said his first presentation involves the zoning change to the PUD Overlay classification. If Council approves that change, then there will be a separate presentation that deals with the applicant's master plan. He said he would not get into details about site design in this first presentation but that his comments will be limited to general compatibility and infrastructure sufficiency issues associated with the proposed zoning overlay.

As noted at the Council retreat, the PUD zoning tool is relatively cumbersome and has been largely replaced by conditional use zoning. However, the PUD regulations contain an extremely important provision that supports key community goals: density bonuses for affordable housing and for environmental protection. Also as pointed out at the retreat, Asheville has a major affordable housing problem. One of the most important incentives local government can provide for affordable housing is to allow increases in density that reduce the per-unit cost of providing housing. He then reviewed graphs and charts demonstrating the affordable housing problem in Asheville.

He said that if we are to provide affordable housing to the extent that we must provide it to meet the obvious community-wide affordable housing and economic development needs, it will have to occur in multi-family developments. In our land-short situation, we cannot expect single-family development to come close to meeting the need for affordable housing. He showed a map of what land is available for multi-family housing. He said that approximately 2,200 is available and vacant for multi-family development.

Mr. Shuford then reviewed with Council the Sustainable Economic Development Strategic Plan priorities. (1) Shortage of diverse and affordable housing within the City, including rental units; (2) Lack of developable sites; (3) Tight labor supply with a shortage of skilled workers; (4) Lack of local agreement about the type business and industry the City should try to attract; (5) The water supply is inadequate and high cost; (6) Lack of prestigious research institutions and technical graduate programs; (7) Problems with the planning, zoning, and permitting process; (8) Lack of cooperation between City and County governments; (9) Need to revitalize the riverfront; (9) High underemployment; (10) Lack of available buildings for manufacturing and distribution; and (11) City's economic development role needs to be more clearly defined.

Mr. Shuford then provided Council with the project description and discussed some of the surrounding land uses in an effort to demonstrate compatibility of this project with the overall development pattern of this part of the City. He said that Ross Creek Commons is a 35 unit multi-family complex to be located at the corner of Chunns Cove and Old Chunns Cove Roads on a 3.38 acre parcel. The project site is located about ¼ mile from the intersection of Chunns Cove Road and I-240. The property is currently zoned RM-6; prior to the UDO, the property was zoned R-2 which also allowed six residential units per acre. Surrounding zoning is almost all RM-6 although there is some RS-2 on the steep, western side of the property. It is in the proximity of nonresidential and other multi-family development – Churches; Buck Cove Townhomes; CentrePark Business Park; multi-family projects farther south and north on Chunns Cove Road (Willow Springs, 24 Old Chunns Cove Road). He described the building height, massing, scale and location (building elevations; meet maximum height limits of zoning ordinance; similar design; Laurelwood).

He said that staff feels that the project is physically compatible with the surrounding neighborhood due to (1) the amount of existing multi-family development immediately proximate to and in close vicinity to the subject property; (2) the relationship of the subject property to streets and highways; (3) the natural and topographic circumstances of the subject property; and (4) the surrounding area and the proximity of nonresidential development.

The next questions that must be answered are: whether there is adequate public services to serve this development; and whether other existing or potential development in the area will be substantially and negatively impacted if these services are used to support this proposed development. Water service has been reviewed by the Water Authority and they have no capacity concerns. Sewer service has been reviewed by the Metropolitan Sewerage District (MSD) and they have no capacity concerns. Streets have been reviewed by the City's Traffic Engineer and he has no capacity concerns. Public Safety (Fire, Police and Emergency Medical Services) have been reviewed by City staff and there are no response time concerns.

He hoped he had sufficiently demonstrated to Council the extent of our affordable housing problem, the importance of resolving that problem to the City's economic development program, the overall compatibility of the proposed development with surrounding properties, and the adequacy of public services necessary to support the development. Based on this analysis, staff recommends your approval of the PUD Overlay zoning.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities (MHO) and City resident, asked City Council to approve the City's only land use provision that supports affordable housing for their site in Chunns Cove. On 3.38 acres they want to put 35 attractive apartments. Twenty-seven of those apartments will be affordable to families in the $15-30,000 income range. Eight of the apartments will be for individuals who have receive care from the Blue Ridge Center and are able to live independently. One additional unit, in addition to the 35 residences, will be a community meeting space. If the PUD Overlay designation is approved, they could have asked for 40 apartments with a double density bonus allowed in the UDO. With other provisions of the PUD, they could have requested up to 44 units. In fact, the did initially request 44 units and last year the City's Technical Review Committee (TRC) unanimously reviewed their proposal on all technical issues. However, after hearing concerns from neighborhood residents about the number of units and the scale of their buildings, they reduced their plan to 35 units (and one community space) and reduced the side of the buildings. If

Council approves the PUD Overlay, then the exact details of the site plan will be discussed in detail. If Council does not approve the PUD Overlay, then they will build 20 apartments on the site. Fifteen families or individuals will live somewhere else, most likely further away from convenient shopping, transportation, jobs and services. He showed slides to illustrate the location of the site, noting that the site is less than 2/10 of a mile from I-240, 1/4 of a mile from Tunnel Road and 1.5 miles from downtown. He then entered into the record a booklet entitled "The Story of Ross Creek Commons" dated February 8, 2002, which included (among other things) a timeline of communication with the neighbors. He agreed that people should care about and be involved their neighborhoods. But issues of "Not in My Back Yard" (NIMBY) are issues of concern all across our nation, many which reference inadequate infrastructure. Infrastructure is a significant reason MHO has chosen this site. Water and sewer lines are ample and right at the site, grading costs will be well below any other site they have been able to find and develop, and the land is located on a good road and a good intersection. All regulations have been met. Concerns have been raised about the height of the buildings and they will address that concern fully if the PUD Overlay is approved. But as a side note, the buildings are below the height of the City's regulations not only for multi-family development but for single-family development. Even though neighbors stress that building height is the main difference between other developments in the community and this proposed development, he showed slides to dispute that issue. Therefore, the question is density and density is people. He read various letters from residents that support the phrase "we support affordable housing, but ...." Some excerpts were (1) "if they just build 20 units and not ask for any affordable housing density bonus, they well welcome us with open arms;" (2) "hope you will look elsewhere for another piece of property;" (3) "affordable housing belongs in areas where similar housing exists just as commercial buildings belong in settings that foster other commercial enterprises;" (4) "the proposed development will house people with substance abuse and mental illness problems. Similar MHO developments may be accepted by other communities, but I do not believe it will be accepted here – certainly not by me or many of my neighbors in Buck Cove Townhouses;" (5) "children will have to spill over onto a very congested part of Chunns Cove Road and into the properties of those who are and have been established. This is a real cruelty to the people would be living under these conditions. There is plenty of land to be had to allow more space and probably cost less. Perhaps the deserted theatre at Innsbruck Mall with the space around it could be bought, along with the Heilig Meyers space." He said that after the Planning & Zoning Commission meeting of 2-1/2 hours of discussion about traffic, sewer, buffers, density and building height, a neighborhood representative asked "I just want to know one thing – why type of people will live there." The City Attorney ruled her out of order in that the question was not relevant to the rezoning issue. Mr. Dedman said their families are typically in the income range of $15-30,000. These families can afford the rent, they just can't afford Asheville's market rent which is very high. MHO does not build public housing and they do not admit residents who have had a violent history or history of sexual offense. Because of neighborhood concerns expressed, MHO will commit to having a paid person on site to keep watch and alert other professionals if a problem arises. This goes beyond what is available to any other home or property in the neighborhood. He summarized by saying that City Council unanimously approved the zoning map of six units per acre on their site and they also unanimously approved the affordable housing density bonus. MHO try to help the families who live in their apartments and homes to fulfill their highest aspirations. He asked City Council to help not just 20 families but 15 additional families to achieve their highest aspirations.

Ms. Patsy Brison-Meldrum, attorney representing MHO and extra-territorial jurisdiction resident, addressed the legal issues. She discussed the authority for a PUD Overlay District, clearly pointing out that it is authorized under North Carolina law. She then said that State law also sets out the purposes that should be considered in determining whether to adopt a zoning designation. She cited from a few cases which note that you do not have to consider all of the purposes or to adopt a zoning designation that complies with all of these purposes. One purpose is that zoning regulations shall be made in accordance with a comprehensive plan. That plan for the City is known as the 2010 Plan. She then pointed out some case law regarding zoning designations. Again, there is clearly authority in North Carolina for establishing this overlay district. City Council must consider the character of the land, the suitability of the land for the uses permitted, and the comprehensive plan or the existence of circumstances justifying the rezoning application. She asked Council to apply the law set forth in those cases in determining how they have met the rules for this zoning designation and to base their decision on those factors, not on someone's characteristic of the area or on unfounded facts set forth. She reviewed language from the City's 2010 Plan to show that this zoning designation requested will be in compliance with the comprehensive plan. Another policy adopted by the City regarding affordable housing is the Consolidated Housing and Community Development Plan for 2000-2005 adopted on June 9, 2000. In concert with the 2010 Plan and the Consolidated Housing and Community Development Plan, City Council adopted the PUD Overlay District in the UDO. She noted it has been shown how this project is compatible of the uses in the area and also the density in the area with this proposed zoning designation. This proposal fits within the uses in the area, not that this proposal would provide for about 10.4 units per acre, whereas Buck Cove Townhomes are about 9 units per acre and Willow Ridge Apartments are about 10.1 units per acre. There is clearly compliance with uses and with density in order to support this designation. Ms. Meldrum entered into the record a letter from Mr. Dan Baechtold, Urban Planner, dated May 24, 2001, noting that on May 21, 2001, the TRC reviewed the proposed site plan and took action to move forward with conditions. She believed that by the action of the TRC, that clearly shows that the infrastructure supports this zoning designation. She referred to letters in the booklet Mr. Dedman entered into the record earlier regarding water commitment; sewer allocation; adequate capacity in the fire hydrants and fire flow; and no problems with crime in the area. She then submitted into the record email correspondence from Michael Moule, the City's Traffic Engineer, regarding the analysis of the traffic in the area that it was well below the threshold of requiring an Traffic Impact Analysis. Mr. Moule also detailed that he "pulled the crash reports for Chunns Cove Road. According to our data, since 1994, there have been no crashes at the intersection of Chunns Cove Road and Old Chunns Cove Road." He did point out, however, that there have been some minor fender-benders in the vicinity. Another reason the zoning designation should be approved is because it meets the purposes of the PUD. She detailed how it encourages more open space; it retains natural features, especially on steep slopes, and to encourage developments that will be compatible with environmentally sensitive areas; facilitates more affordable housing; facilitates energy costs through clustering of dwellings; effective use of transportation system; and encourages pedestrian circulation. The project meets the location standards of the PUD in that it shall be located on a street which is capable of accommodating the projected traffic needs of the proposed development. It must meet the infrastructure standards and the infrastructure in this area supports the density proposed. There may be other issues raised, such as an environmental impact statement and also concern about whether or not there may be some history to the site related to the underground railroad. Because federal funding is involved there is approval for the project from the N.C. Dept. of Cultural Resources in a letter dated September 28, 2001, saying they have conducted a search of their maps and files and determine that this structure is not located in or adjacent to any district which is listed in or eligible for listing in the National Register of Historic Places. In addition the structure, meaning also the property, is neither listed in, nor eligible for listing in, the National Register as an individual property. "We therefore have no comment." Also a notice to the public of no significant impact to the environment was published in the Asheville Citizen-Times on October 9, 2001, pursuant to requirements of the United States Dept. of Housing and Urban Development to release federal funds under the Title 1 of the Housing & Community Development Act. Clearly there has been a determination that there is no historic designation for the property and no need for an environmental impact study under federal regulations. In summary, the UDO, the comprehensive land use plan and the Consolidated Housing Plan has set forth Council's policies. In carrying out those policies, a provision in the UDO, the PUD has been adopted to allow for an affordable housing density bonus to carry out Council's policies. We have presented evidence that this is the right location, the right size, has access to I-240 and Tunnel Road, to a major commercial strip. City Council has set out the rules and they have complied with those rules. She respectfully urged City Council to adopt this zoning designation for the site.

At 7:00 p.m., Mayor Worley announced a short break.

Mr. W. Louis Bissette, attorney representing the Chunns Cove neighborhood and City resident, started out by saying he was disappointed in Mr. Dedman's attacking the Chunns Cove. The Chunns Cove Road neighborhood is made up of good people in a diverse neighborhood with low, medium and high income residents. These are working people, retirees, minorities, single-family parents and others and they share a fierce pride in their homes and community. City Council needs to look at the compatibility of this project to the neighborhood. The neighborhood is asking that Council deny the appeal of the developers for the proposed Ross Creek Commons project. The Planning & Zoning Commission denied the request after a thorough review of the facts and a full hearing. The Commission is a body Council appoints and they should listen to those members. The property located at the corner of Chunns Cove Road and Old Chunns Cove Road is a steep site rising 10 feet above Chunns Cove Road at the entrance to the Chunns Cove community. The property is currently zoned RM-6, Residential Multi-Family Low Density District. He read the description of RM-6 from the UDO. RM-6 is what the people of Chunns Cove counted on at the entrance to their community – a zoning district that would limit the size and density of multi-family development. The RM-6 district allows the developer to build 20 units and the PUD Overlay with its density bonus provisions would permit the developers to put more than twice that many units. He said their plan, which they contend is partially through the process, shows 35 units plus an office. But there is nothing that says if Council passes this PUD Overlay that they can't come back with a plan for 44 units. This is a 3.38 acre site, but really the construction of the project will be on 1.77 acres – less than one-half of that site. That calculates to be 18 units per acre. Very few, if any, of MHO existing projects have this level of density per acre. Furthermore, they disagree with some of the numbers given on the multi-family developments in Chunns Cove. Buck Cove is 20 units on 2.41 aces (8 units per acre) and Pinecliff Condos and Stone Ridge Condos are not in the Chunns Cove area. The Chunns Cove neighborhood strongly supports affordable housing and they support many of the efforts of MHO. This neighborhood, however, opposes the density and scale of this project. It simply does not fit into the character of their neighborhood. They think, in addition to the project being incompatible with the character of the neighborhood, this oversized project will exacerbate existing sanitary sewer, stormwater and traffic problems that already exist in the Cove. He has a police report that lists 23 accidents last year at different spots on Chunns Cove Road. These issues have not been properly addressed by needed traffic, infrastructure or environmental studies. Setback and buffering requirements have been waived and there are none on one side of the project at all. There are serious concerns about fire safety and concerns about the site. Mr. Baechtold's letter that Ms. Brison submitted into the record was dated May of 2001 and was based on a plan that is no longer in existence. That was the original plan that had two access points and had a different configuration of buildings. We contend that the new plan only has one access point and the Fire Department has never seen the revised plan. He didn't think the Tree Commission has seen the revised plan either. After looking at the plat of ownership for this project and it looks like their property line does not come over to Old Chunns Cove Road where this access road exists. So, they're not sure if they actually own the property that their one access road goes on. He felt the PUD Overlay process is unfair – not just to Chunns Cove, but to anyone. The PUD Overlay with its density bonus provisions have never been used by the City to date. It was also his understanding that there have been some issues about this process and there may well be some forthcoming modifications or deletions recommended to City Council. Chunns Cove was the only neighborhood who was forced to suffer through the "rock pile" fiasco when I-240 was built. They request City Council not vote to make it the only neighborhood to suffer through the unfair provisions of the PUD Overlay District. People in a neighborhood have the right to know, with some certainty, what can be constructed in that neighborhood. That's why there is zoning. The residential PUD Overlay process, however, does nothing but bring about uncertainty and destroys the trust which should exist between the City and its neighborhoods. He felt that every neighborhood in Asheville should be concerned about this. If we are going to have areas where we want affordable housing, let's zone it that way so that people know what's there and what's going to be there. We content that the people who live in the proposed development will be jammed into a crowded environment that is not going to be adequate for what is trying to be done. They would like to see a smaller project with 20 units with more amenities and a safer and comfortable residency for those people who will be living in the development. He realized that cost considerations have no bearing on Council's decision but the people in Chunns Cove are taxpayers and they are disturbed by the magnitude of the monies used to purchase this site. The site was purchased in late 1996 by a local attorney for $59,000. It's valued on the tax books of Buncombe County for $40,000. According to the tax stamps, the developers paid last week $282,000. He can't believe that other sites are not available. On behalf of the citizens of Chunns Cove, he promised that if the developer will reduce the density of this project to the allowed 20 units, the people of Chunns Cove will welcome these new residents into the Cove as friends and neighbors. He said that Mr. Dedman visited the neighborhood about two weeks ago and one of the things he said was that if they don't get this density bonus, they will build 20 units and they will put more mentally disadvantaged people in those 20. He said that the Chunns Cove residents don't care. He said since Mr. Dedman will not voluntarily consider a reduction in density, they respectfully request City Council deny their appeal and require them to comply with the existing RM-6 density requirements. This will be a win-win-win for the City, the Chunns Cove neighborhood and also for affordable housing.

The following residents support affordable housing, however, they urged City Council to deny the PUD Overlay District request for various reasons, some being, but are not limited to, the height elevation of the buildings, once constructed, will be overwhelming since the first building will already start off at 20 feet higher than Chunns Cove Road and then the 38 foot building would be built on top of that; development is out of proportion for the area; the development would denominate the entrance to Chunns Cove and the surrounding neighborhood; the project is not compatible to the neighborhood; density of the project is too high; project doesn't fit into the character of the neighborhood; already existing sanitary sewer, stormwater and traffic problems on Chunns Cove Road; fire safety; buffers and setbacks are insufficient; revised plan was not approved by the Fire Department as reported at the Planning and Zoning Commission meeting; fire safety concerns; turn area in the drive is inadequate in that it a 30-foot fire truck (medium size) has to use both lanes of the road to complete the turn; not a well-designed project; only one close by fire hydrant; speeding on Chunns Cove Road; Chunns Cove Road is dangerous with a blind hill; there have been many traffic accidents on Chunns Cove Road; Chunns Cove Road and Old Chunns Cove Road is a dangerous intersection; existing sewer line is inadequate; existing seepage, overflow and spilling sewage problems; developer knew what the zoning was when they purchased the property; there will be clear-cutting of large trees; there will be bull-dozing of historical artifacts; City to be looking to attract businesses with good paying jobs and then people could affordable homes; other sites are available that would support the density, in particular the 30 acres behind Memorial Stadium; Chunns Cove neighborhood just wants the residents of this development to have a little space and not be overcrowded in the development; property values will be harmed; if the PUD Overlay is granted, other area properties will petition to rezoned to a higher density; since the PUD Overlay process is going to be reviewed, why rush to approve it and then it will be the only one standing that already is greatly at variance with traditional UDO policies and would then be grandfathered in at a later time; several old oak trees need to be protected so they can live through the grading and construction of the site; important historic reminders of Asheville and southern history should stay in their original places and be preserved for future generations; proposed site is too hilly; Chunns Cove Road has no sidewalks; entire development will be on the front half of the lot; there is not enough parking, buffer zones, outdoor recreation space or setbacks provided for the residents of the development; inadequate water flow; with only one access, if an emergency occurs people will be trying to drive out and the emergency vehicles cannot get into the development; the 3-story buildings will block the views;

there are no other 3-story buildings in Chunns Cove; keep the zoning only RM-6; the extra 15 units (if a PUD Overlay is granted) will not solve Asheville's affordable housing needs; 20 units will be welcomed into the Chunns Cove neighborhood; City and County should work together to solve affordable housing problems; and more higher paid jobs than $7.00 need to be created:

Mr. Jeff Burleson, adjoining property owner and resident in the City's extraterritorial jurisdiction
Mr. Thomas Custer, resident of Chunns Cove
Mr. James Judd, 26 Rollingwood Road (entered into record four letters)
Mr. Gerald Wagstaff, resident on Honey Drive
Ms. Rhonda Byrd, 156 Chunns Cove Road
Ms. Patty Robertson, 35 Covewood Road in Chunns Cove
Ms. Jean Wall Penland, resident on Rollingwood Road
Mr. Nlan Avery, 46 Chunns Cove Road
Ms. Jean Baker, resident of Chunns Cove
Ms. Linda Price, property owner in Chunns Cove
Ms. Beth Pilz, resident on Covewood Road
Ms. Carol Collins, Co-Chair of Highland Gate Neighborhood Association
Ms. Nancy Orbin, resident on Rollingwood Road in Chunns Cove
Ms. Patricia Teague, resident of East Asheville
Mr. Kermit Brown, 398 Chunns Cove Road
Ms. T. Finch, 655 Chunns Cove Road
Mr. Ed Teague, Asheville resident
Ms. Beth Chestnut, resident on Rollingwood Road
Ms. Judy Marshall, 1 Honey Drive
Mr. Wayne Marshall, 1 Honey Drive
Mr. Dick Washam, resident on Honey Drive
Ms. Susan Counsel, 37 Rollingwood Road
Ms. Helen Coman
Mr. Don Sly, Asheville resident
Ms. Madge Murray, 19 Old Chunns Cove Road
Mr. David Herbert, Kenilworth resident
Ms. Carolyn Turminy, 658 Chunns Cove Road
Ms. Karen Hunnicutt, resident in Chunns Cove
Ms. Linda Baker, 33 Rollingwood Road
Ms. Denise Garrison, 5 Rollingwood Road
Mr. Joe Wald, property owner in Chunns Cove
Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods and Haw Creek resident
Mr. Walter Plaue, Carolina Real Estate Investors Association

The following residents urged City Council to approve the PUD Overlay District to allow a 35 unit development for MHO for various reasons, some being, but are not limited to, the project is actually less that the allowed 44-units; the PUD is a new concept that forward thinking cities have used; the PUD gives the City an additional tool to accept higher density if other conditions are met; affordable housing is desperately needed in Asheville; good design of the project; people shouldn't have to fight to live in a section of town; people need a place to live; neighborhoods should be enriched with diversity; this project is an opportunity to advance the cause for affordable housing; affordable housing is important to the City's economic development; MHO has complied with all the City's regulations and should be allowed to build these needed affordable housing units; working people can't afford a decent place to live; Chunns Cove Road neighborhood is changing just by the fact that people move to Asheville; affordable housing will increase the affordability of nearby houses; MHO has had meetings with the neighborhoods and have reduced the number of units as a result of those meetings; some Chunns Cove residents say they support affordable housing, but not in their neighborhood or less of it or they want houses and not apartments; there is not much more land available for multi-family development; zoning should have nothing to do with the wealth of a resident or ownership status of resident; this development is over a one million dollar private investment in affordable housing; the more units that can be built, the less rent they have to charge; to allow this development is pro business and pro economic development; if MHO doesn't get funded for Ross Creek, there will be no new affordable housing units built in Asheville next year; for the City's investment of $1 Million the City can receive approximately $3 Million in return; and development will not overtax water, sewer or roadways:

Mr. Robert Todd, Asheville resident
Ms. Willie Vincent, Asheville resident
The Rev. Jim Abbott, Pastor of St. Matthias Episcopal Church and East End/Valley Street resident
Mr. Mathew Ashworth
Ms. Suzanne Walker Wilson, Asheville resident
Ms. Veronika Gunter, Asheville resident (entered into record letter with 11 signatures)
Mr. Barry Summers, Asheville resident
Mr. Alan Ditmore, County resident
Ms. Ann Bamburger, East Asheville resident
Mr. Richard Genz, 355 Sunset Drive
Ms. Pauline Counsel, 415 Chunns Cove Road and Asheville resident
Mr. Tony Sayer, resident on Florida Avenue
Mr. Douglass Keen, 105 Sunny Ridge Drive in Town of Woodfin
Mr. Al Mojonnier, Buncombe County resident
Mr. Bud Walker, 315 Chunns Cove Road
Mr. Brownie Newman, Asheville resident
Ms. Beth Maczka, Asheville resident
Ms. Amanda Ross, Asheville resident
Ms. Robin Merrill, housing attorney for Pisgah Legal Services
Mr. Jim Barrett, Asheville resident
Mr. Greg Walker Wilson, North Asheville resident
Mr. Rich Olejniczak, Asheville resident (entered into record NCHFA Multi-Family Rental Development 2002 Preliminary Application Report)
Ms. Karen Keenan, Executive Director of the Affordable Housing Coalition
Ms. Melendez, Asheville resident
An unidentified lady
Ms. Beth Duttera, Asheville resident
Mr. Howard Shepherd, West Asheville resident
Ms. Noel Nickle, Asheville resident
Ms. Selina Sullivan, Asheville resident
Mr. Bob Smith, Montford resident

Ms. Rebecca Campbell felt both sides of the issue need to sit down and find a way to work together.

Mayor Worley said that Mr. Tom Hartye, General Manager of the Metropolitan Sewerage District, called him earlier that day and said that they have plans to line this section within the next four months and that lining that section will stop the current infiltration. He said that the date of completion of this lining is June and the line is scheduled for a major upgrade in approximately two years.

Mr. David Matney, attorney representing WNC Housing Inc. and Buncombe County resident, said that they do have a legal right-of-way to the roadway. Zoning has the provision for change to allow for changing circumstances and the PUD Overlay is to promote innovative design by providing flexibility. The flexibility and site design is intended to accomplish, among others, to facilitate more affordable housing through clustering of dwellings through increased density. The issue here is whether City Council will assist affordable housing at this site by increasing the density. City Council should follow the philosophy set forth in the UDO and support the PUD Overlay for this property.

Mr. Steve Barden, attorney representing MHO and City resident, said that MHO undertook an exhaustive search for suitable property for affordable housing and this tract was one of the few suitable places in the City. MHO submitted a first-class application and made many concessions to please the Chunns Cove Road homeowners. The City's TRC approved this and the Planning & Development staff recommended approval. They say that it meets the City's smart growth policies, preserves a significant amount of open space and it helps the City meet it's affordable housing goals. He stressed this is an ideal site for a PUD Overlay and it meets all of the UDO's criteria. One of the rights of all of us as property owners is to use our property as we see fit as long as that use complies with laws and land use regulations. The applicant/property owner in this case has complied to the letter of the law. Mr. Bissette stated that none of the other MHO projects had the same density, but that is not true. With regard to the traffic impact, the City's Traffic Engineer determined that it's below the threshold to require a traffic study. The City has certified there are no water, sewer or fire problems. The price of the site has absolutely nothing to do with this issue, but the fact of the matter is that the contract price in this acquisition was completely supported by an appraisal by a qualified professional appraiser in Asheville. Mr. Bissette referred to Mr. Baechtold's letter being outdated. The plan changed but the changes did not reflect the substance of the letter. When the plans were revised the revised plans did not have to go back to the TRC because it involved an actual reduction in the density. In a letter dated today to City Attorney Oast from Mr. Bissette, it reads in part "We are very concerned that the City Council's prior action in approving the $100,000.00 in CDBG funds for this project will make it very difficult for the Council to make an impartial decision on this Appeal. It is our understanding that $100,000.00 in City of Asheville CDBG funds was approved by the Asheville City Council last year for this project and those funds have already been disbursed to the Developers for acquisition of the property." Mr. Barden was confident that City Council will be fair and impartial. He cited a case in that the City of Raleigh Court of Appeals held that there is nothing improper about a council voting on a project it previously participated in planning on. There were comments about the project being higher than the rock pile, but is it not. There was a comment about the sewer line capability, but pointed out that a 80 unit condo complex was approved and that runs into the same main sewer line but only two residents of Chunns Cove residents were present at that hearing. There was a question about fire hydrant pressure, but it's indicated that there is no problem with fire hydrant pressure. There has been no good reason raised why this application should not be approved. He stressed that they have complied with all the requirements and are entitled to a PUD Overlay.

Mr. Dedman admitted to stating that if they did not get approval for 35 units and were only able to build 20 units that there might in fact be more mental health units. The reason is that a tax credit development is very complex and when you get to a certain size of units its not feasible. A 20 unit development is very difficult for a tax credit development. If eight of those 20 are mental health, it's that much worse as far as the flexibility of the funding. With regard to not being flexible about the plan and the number of units, that is not true. He has offered Mr. Bissette and Mr. Washam several times to sit down. They took the position that 20 units is it and anything above 20 units would not be acceptable.

Mr. Bissette cleared up a statement in that he meant to say that if they want to put this number of affordable housing apartments in an area, do it in an area that is zoned for that number. This seems to be framed as a referendum on affordable housing. It's not. Chunns Cove residents say they want, will take and will be great neighbors to 20 affordable housing units because they believe that is what is compatible to their neighborhood. Chunns Cove is not against affordable housing. There are affordable units going up in other areas of the City and these 15 units are not going to bring us from last place to first place. This development is clearly not going to be compatible with this neighborhood. There are safety problems, road problems, sewer problems and water problems in this area. The area residents want these problems cleared up before something of this size is allowed in this area. Pinecliff Condos and the Stone Ridge development sewer does not go into Chunns Cove but into the Haw Creek sewer. The TRC did not approve the revised plans and they are not something with one change on them – they go from two access to one and that's a big change. He said that if City Council denies the PUD Overlay, there will still be 20 units of affordable housing. He entered into the record a petition containing 275 names. Said petition read "Petition against proposed 40-unit, 3-story Mountain Housing Opportunities/Blue Ridge Mental Health Joint P.U.D. project/development to be known as 'Ross Creek Commons.' Proposed project to be located at the corner of Chunns Cove Road and Old Chunns Cove Road. Said project is to begin 2002. Please sign your name, address and are you a voter (Y/N)?"

Mr. Dick Washam reiterated that the issue with the Chunns Cove community is not affordable housing – it's the density overlay position of the UDO. He felt the property should be built to the existing zoning and they would support 20 units. The cost of the property has a significant impact on the ability to have affordable housing and that is driving the number of units they would like to have there in order for it to be affordable housing. Either too much was paid for the property or the property is an inappropriate choice for affordable housing. If that is the case, then that is a poor business judgment and why ask the community to stand behind a poor business judgment by a developer.

Mayor Worley closed the public hearing at 11:50 p.m.

City Attorney Oast reiterated that there are certain things that are not relevant to City Council's consideration on the rezoning issue: nature or degree of ability or disability of the potential tenants of the project; as with any rezoning, MHO may not always be the owner or operator of the project and so their policies, practices and track record is not relevant to Council's consideration; the PUD Overlay is in the UDO and the applicant has applied to the law and that is what Council needs to apply; and whether it is a good or bad financial decision, or the price paid for the property is irrelevant to Council's consideration.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that a PUD may contain any type of residential use except manufactured homes. He said there is nothing in the Code that restricts the application of PUDs to mixed use developments.

Mayor Worley clarified that City Council has used the PUD Overlay District before, but just not with density bonuses.

Upon inquiry of Councilman Peterson, Mr. Shuford said that by the time the site is prepared and ready for occupancy that would put a demand on the sewer system, the sewer line improvements will be in place. MSD has issued a sewage allocation letter for the project saying there is sufficient sewage capacity in the treatment facility and the lines leading to that treatment facility to accommodate this use.

Councilwoman Jones questioned the process for review with regard to fire safety. Mr. Shuford explained that this project went to the TRC in May of 2001. Since that time the developer did reduce the density and change some of the site configurations. They did go from a loop access road to a single access road. To do that requires a fire truck turn-around which he believed has been approved. There are also some additional minor adjustments for the Fire Department that the plan will require in order to get the lane configuration. In addition, when the plans come in for a permit there would be an additional review by all of the different departments that are involved. That gives the City an opportunity to catch any changes, mistakes or omissions.

Councilman Dunn felt like Council needs to look at the spirit of the law and then the letter of the law. He felt that if you have a certain density, that density should apply to the entire property, however, he does understand the upper part is too steep on this site. Even though City staff feels that the extra acreage is a buffer, the truth is that it's too steep to build on. He felt we should be looking at putting apartments in a project that may be spread out a little more. When you have a density of 6 per acre, that means six units per acre -- not just crammed into a little area that calculates to 18 units per acre. That fulfills the letter of the law, but doesn't think it is the spirit of the law. He felt if Council votes to approve this and allows a developer to arbitrarily put buildings where they want to when it's zoned to be put on the entire property, that would be starting a dangerous precedent.

Mr. Shuford explained that they encourage developers to do just that - whether or not we had the density bonus provision that encourages clustering. If the units were spread out into the steeper area, they would be just as difficult to serve as Buck Cove Townhomes which is in a very steep environment. Those Townhomes would run into very serious permitting issues today due to the steepness of the road and the design of the facility. In addition, we want to encourage the preservation of open space and in this particular case, roughly 1/3 of the site would be retained for open space. It's good planning to concentrate the units on the flatter part and try to preserve the steeper part and the wildlife habitat up towards the top of the mountain.

Councilman Mumpower confirmed that City Council recently passed the Stone Ridge Condominium development which built their units on the flatter property and left the higher elevations open. When he asked why there is no elevation drawing for this project, Mr. Shuford said that the developers actually have a model that would show how the elevation pieces work but that information has to be presented when Council talks about the actual site design.

Councilman Peterson said that some concern is about a very large building right-up-against Chunns Cove Road. Because of the N. C. Dept. of Transportation right-o-way, he questioned if there will be some setback requirements and if staff took those into consideration with regard to buffering on the property. Mr. Shuford said that at the request of the neighborhood, MHO did try to make some adjustments to the building in front and saved a fairly good stand of taller trees. But that gets into the site design issue. However, the buildings meet the height limit and anything that is built on that site could probably meet that setback and have that height whether it be a single family home, a duplex, or some other form of multi-family.

Upon inquiry of Councilman Dunn about how the height of the buildings are measured, Mr Shuford said the building height is measured from the ground up. He explained that the first building will be approximately 10-15 feet above the road because of how the land lays. It would require extensive grading to reduce that back to the road level.

Councilman Dunn said he didn't think a decision tonight will kill affordable housing in this community. The Housing & Community Development Committee have just recommended spending $500,000 on affordable housing projects and the City just started, last year, designating $400,000 to the Housing Trust Fund. He didn't feel that 15 units is going to destroy economic development.

Councilwoman Jones asked if some common ground might be achieved by cutting off a few units from the three story buildings. Mr. Dedman said that if they remove the third story units on the front building and make it a two story, that would be a reduction of four units for a total of 31 units. Even though he believed there are tax credit developments that have been successful with 30 units, the developments MHO has done have been 38, 40 and 48 units and those have been successful tax credit developments.

Councilman Dunn pointed out that not only is height a concern of his, but also the density.

Mr. Dedman said that there are a lot of regulations when you start building on steep land. Some of the older developments, e.g., Buck Cove Townhomes and Pinecliff Condos, could not be built today because of those regulations. He, frankly,, would like to move a little further up the hill with some of the buildings, but didn't know if regulations would allow him to do that. As to other accommodations of the site plan, there wasn't a lot of room for that in the process because the neighbors chose the position of only 20 units. If Council approves the PUD Overlay, he would commit to coming back and sitting with the neighbors and discussing the density on the site plan. Even though this PUD Overlay public hearing is not supposed to be about how many units are on that site, they had to submit a site plan saying how many units were on the site. They couldn't submit the application without it. He did reiterate that if Council wants to discuss 30 or 31 units, he would be willing to discuss that in the next public hearing and would accommodate Council's wishes as to the site plan.

Upon inquiry of Mayor Worley, City Attorney Oast explained Council's ability to change the site plan is limited to a large extent by what the applicant brings to Council. If the applicant brings a site plan that meets the qualifications of the ordinance, Council doesn't have a lot of room to amend it, from a legal standpoint. They can't require adjustments to the site plan, but can strongly encourage them. Again, if the applicant can demonstrate that they have met the requirements, Council may not have a choice but to approve the site plan. He did note that the site plan can change, but it would have to be approved by the Planning & Zoning Commission or by the City Council, if appealed.

Councilman Mumpower said it was Council's job to implement the ordinances in a fair and consistent manner, therefore, he moved to adopt the PUD Overlay District designation for Ross Creek Commons, located at Chunns Cove Road and Old Chunns Cove Road. This motion was seconded by Councilwoman Jones.

Councilman Peterson pointed out how this is a discretionary call for City Council with regard to whether the project is compatible with the surrounding area. Looking at what is immediately around the property, with no development on two sides, apartments and multi-family mostly on the other side and then other multi-family further down the road, his judgment is that it is a close call, but feels it is compatible.

Councilwoman Jones said that during the campaign process a lot of the comments were that City Council was not predictable and were inconsistent. The City does have mechanisms in place to give Council information and she has to rely on staff's expertise. She felt MHO has followed the rules. She felt it's a scary precedent in the other direction for the business and development community if Council sends mixed messages.

Councilman Dunn reiterated his comments with regard to density and how it should be spread over the entire property and not just in one small area. Again, the City has an Housing Trust Fund and the Housing & Community Development Committee will recommend $500,000 in affordable housing projects. He said this Council is committed to affordable housing, so, he didn't think, this vote won't kill affordable housing or economic development.

Councilman Ellis pointed out some of the similarities of the Stone Ridge Condominium Project City Council recently approved, noting that Councilman Dunn was absent from that meeting. He did have several site specific questions, but would wait until the appropriate time to ask those questions.

Councilman Worley explained why the PUD Overlay district with the density bonus was adopted in 1997 as part of the UDO, noting that the UDO was just a recompilation of the existing zoning ordinances. There was a serious concern about recognizing the lack of affordable housing in 1997. He sees this project as a comprehensive plan for the development of this site that utilizes the density bonus. This density is no different than in any of our other zoning districts, in that whether you have a density bonus or not, the density allowed is done that way. You frequently see a concentration on one portion of the lot, where another portion may not be buildable or you want to preserve open space. Again, the application of the density bonus is no different than that theory when you apply just regular zoning density to it. He did have some concerns about the site plan, especially with regard to fire safety and he will discuss those at the appropriate time. He, too, was a little concerned about the height of the building at the front and hoped MHO will come back with a lower building and slightly fewer units on that front building. However, at this stage, he is prepared to vote for application of the PUD.

Upon inquiry of Councilman Dunn, Mayor Worley said that Council may have some influence, but not total control, of the number of units that can be placed on that site.

When Mayor Worley called for a vote on the motion to approve of the PUD Overlay District, said motion failed on a 5-1 vote, with Councilman Dunn voting "no."

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 1-7, 2002: Claire Payne (Water), Rose Gwaltney (Water), Dave Ariola (Streets), Marilyn Pagett (Water), Koriander (Streets), Rita Lunsford (Water), Glenda Whitten (Streets), Hazel Guthrie (Water) and Stanley Woodruff (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City was served with the following Complaint on January 31, 2002: Kenny McDaniels v. City of Asheville. The nature of the complaint is EEOC charge of racial discrimination.

The City was also served on January 28, 2002, with the following Complaint: Charles D. Williams v. City of Asheville. The nature of the complaint is EEOC charge of racial discrimination.

Both lawsuits will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttell, representing NC AIDS Policy Center, stressed the need for education for HIV and AIDS.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:56 a.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 19, 2002 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Donation from Asheville Professional Firefighters Association

Summary: The consideration of a budget amendment to accept a donation of $17,100 from the Asheville Professional Firefighters Association.

The Asheville Professional Firefighters Association has raised money through fundraising efforts. The Association desires to donate money to the City to purchase a thermal imaging camera for use in the Fire and Rescue Division. The camera will allow firefighters to see in smoke and dark conditions. Use of the camera improves firefighter effectiveness and safety. The cameras also allow firefighters to locate and rescue fire victims quickly and to search for fire hidden in walls and building voids.

The Asheville Firefighter's Association, IAFF Local 865, recently received the "North Carolina Professional Firefighters and Paramedics of North Carolina Local of the Year" award for the State of North Carolina. This is a prestigious honor for the Association. The Association is comprised of approximately 85% of the Asheville firefighters.

City staff recommends City Council adopt a budget amendment accepting the donation.

Urban Trail ADA and Sidewalk Improvements Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Precision Contracting Co. Inc. to construct ADA and sidewalk amenities located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to perform ADA and sidewalk construction services along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-129, formal bids for ADA and sidewalk construction services were solicited and four responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Specialties Construction Inc.	Non-Compliance	Yes	Yes	$111,827.00
Precision Contracting Inc.	100%	Yes	Yes	$133,410.00
Candler Concrete Works Inc.	0%	Yes	Yes	$137,328.54
Jerry Payne Const. Co. Inc.	0%	Yes	Yes	$191,300.00

These amenities will include: The installation of seven additional handicap accessible ADA ramps. Sidewalk replacement on Haywood Street adjacent to the downtown library, which will include new handicap accessible parking spaces to accommodate side-unloading vehicles, tree grates, and streetscape amenities such as benches and trash cans. The installation of thematic, directional markers will assist downtown visitors in finding their way along the Urban Trail.

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget. Under the provisions of a TEA 21 Transportation Improvement Project (project number E-4138), completion of this contract would qualify the City of Asheville for a reimbursement of $106,728.00.

The Public Works Department staff recommends City Council adopt the resolution to construct ADA and sidewalk amenities along the Urban Trail.

Preventive Maintenance Contract for Traffic Signals

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc., for preventative maintenance of traffic control devices in the amount of $79,775.

In April 2001, the Public Works and Engineering staff undertook the project of reengineering the Division of Traffic Operations, given the fact that two signals technicians resigned and the impending retirement of the traffic signal supervisor. Staff goals were to evaluate the existing level of service and determine if reengineering options were available, with the possibility of contracting out some of the existing services. Other goals were to improve overall signal services, assure system reliability, and maintain direct accountability for fundamental system functions.

City staff has determined that preventative maintenance activities could, and should be, contracted to the private sector.

It was further determined that a minimum staff level of two signal technicians, whose pay scale and classification would more closely emulate the N. C. Dept. of Transportation technicians with similar responsibilities, would be maintained to insure emergency response and guarantee that timely repairs were enacted. Their primary responsibility, beyond emergency response, is to maintain and update signal system data and functions of coordination and timing.

Bids were solicited to determine actual costs for a comprehensive preventative signal maintenance program by the private sector. The City received three bids for the work. Bids were received from the following vendors:

Green Light Electric	$119,800
ALS of North Carolina	$199,800
MB Haynes Electric	$249,945

City staff negotiated with the successful bidder to further reduce the contract amount for the required work to $79,775 per year for the next 5 years, with annual options for renewal, calculating a 3% increase per year.

The overall cost savings from the reengineering idea, along with the improved services mentioned above, is approximately $40,000 per year.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

Approval of 2002 Co-Sponsored Events

Summary: The consideration of a motion approving the 2002 festival and special events scheduled co-sponsorship by the City of Asheville.

In March of 1995, the Asheville City Council adopted a festival policy. A segment of that policy requires that City Council approve the list of festivals requesting co-sponsorship with Asheville Parks & Recreation on an annual basis. In 2001, the City co-sponsored 37 events produced by 25 organizers. For 2002, the request is for 65 events produced by 35 organizers.

The criteria for inclusion as a co-sponsored event are laid out in the Outdoor Special Event Guide which are:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The Parks and Recreation Department recommends accepting the list of events as the only events eligible for co-sponsorship for 2002. All further requests for 2002 will be denied, and organizers will be encouraged to apply for 2003.

When Councilman Mumpower expressed concerned about the City co-sponsoring 65 events with regard to the budget situation, Parks & Recreation Director Irby Brinson explained that it would be a total of approximately $95,000, two-thirds being non-direct costs. He explained that other third of that total is for overtime costs for Park Maintenance, Asheville Police Department, and some Public Works services.

Mr. Brinson explained that the policy was adopted in 1995 and it would be difficult to decide who and who not to co-sponsor, especially when the meet the criteria established in the policy. He said staff will do their best to limit co-sponsorship, however, they would need direction from City Council. A possible way to limit co-sponsorship would be to not allow any new festival or possibly look at a lottery system and draw from a hat.

Councilman Ellis felt that festivals are a great way to bring in some tax base to our City and create some jobs. The economic development factor also needs to be considered as hotels, restaurants, etc. benefit as well.

Councilman Dunn felt that the festivals that help people out are the important festivals, and given our budget constraints, the City needs to look for ways to save money.

Councilman Mumpower realized the millions of dollars of secondary impact from the festivals last year, but still expressed concern over the City's tight budget. He suggested maybe half co-sponsorship or to totally postpone co-sponsorship until our budget is on firm ground.

Vice-Mayor Bellamy pointed out that there are some non-profit organizations that supplement their budget based on "walks" or "runs". The County has reduced their funding to non-profits and the City is looking at that as well. She stressed how the non-profits depend on the community and the City to help them raise money. She felt that by not co-sponsoring, especially non-profits, the City will do more harm than good. In addition, there are business entities that clearly benefit from co-sponsorship too. She supported co-sponsorship of each one of the festivals. She also noted that each of the festival organizers paid a $25 application fee, and Council doesn't realize that the festivals pay for a lot of the associated costs, e.g., electricity, etc.

At the suggestion of Councilwoman Jones, it was the consensus of City Council to have staff review the policy adopted back in 1995 and bring it back in early fall for Council review. This way people will be on notice ahead of time that the policy, and possibly the criteria, might change.

Fire Station 8 Renovations

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Glazer Architecture, P.A., in the amount of $33,000, for renovations and additions at Fire Station #8 located at 902 Tunnel Road.

Fire Station #8 was constructed in 1966 and no major building renovations have been undertaken during the life of the building. The additional growth of east Asheville required the building to house a pumping fire engine and ladder truck today. However the building was only designed for one fire company. The renovations include women's locker area, storage area, enlarged dayroom and kitchen. A new public entry, bay for a quick response vehicle, and officer office are in the scope of work. Site work to improve the traffic flow is included in the contract. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #8.

Fire Station 3 Renovations

Summary: The consideration of a resolution authorizing the City Manager to sign the contract with Glazer Architecture, P.A., in the amount of $18,600, for basic renovations and minor additions at Fire Station #3 located at 50 Oregon Avenue.

Fire Station 3 was constructed in 1976 and no major building renovations have been undertaken during the life of the building. Presently, a pumping fire engine and a ladder truck are housed within the station. The renovations include re-roofing the building, renovating the kitchen, new finishes in the dayroom, kitchen, and dorms, new HVAC for all areas except the apparatus bays, electrical and plumbing renovations as required by Code. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #3.

Clerk to Advertise Offer to Purchase Disposal Parcel 146 on Lincoln Street

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 146 in the East End/Valley Street Community for the amount of $3,200.

Disposal Parcel 146 is a substandard lot located on the north side of Lincoln Street comprising 3,659± square feet. The lot is irregular in shape and mostly flat about street level then sloping up sharply to the rear. The bid in the amount of $3,200 from Damon Rouse includes the proposal to combine the property with adjoining property currently owned by Mr. Rouse on Jordan Street.

Although the new tax appraisal is $5,600, this property was available for several years at the previous tax value of $2,000 and then at $4,900 with no offers having been received. A letter of opinion from Ben Mansell CRS, GRI with RE/MAX Advantage Realty, indicates that due to the limited utility of the property to any buyer except an adjoining owner, the market value of the property would be approximately $3,000.

Approval of the resolution will establish the minimum price in the amount of $3,200 and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Sale of Property at 9-13 Biltmore Avenue

Summary: The consideration of a resolution setting a public hearing and directing the City Clerk to publish a notice regarding proposed sale of real property at 9 -13 Biltmore Avenue, Asheville, N.C.

The property at 9 -13 Biltmore Avenue is located about 125 feet south of Pack Square. It is improved with a store front building with three bays dating from the 1920s. The land area comprises 14,469 square feet and the total combined building area is approximately 6,529 square feet. The lot extends to the east side of South Lexington Avenue, about 125 feet south of the intersection with Patton Avenue, and is improved with marked parking spaces on an asphalt surface. The lot is rectangular in shape and sloped to street level access. The appraised value of the property is $530,000.

Asheville Area Arts Council has submitted a proposal to purchase the property minus the air rights over the rear parking lot in the amount of $462,500. The bid from the Arts Council includes the proposal to cooperate with the eventual purchaser of the air rights over the parking lot to allow construction a new building containing parking, office, retail and/or residential units on South Lexington Avenue. The new building would be constructed above the first level by the purchaser of the air rights. The calculated value of the air rights retained by the City to be sold separately is $67,500. The bid from the Arts Council reflects the appraised value minus the air rights. The City has a bid in hand from a redeveloper for the air rights. The bid from the Arts Council includes an offer of $339,000 cash and a request that the City finance $123,500 of the purchase price.

If the bid of the Arts Council is accepted, Community Development staff recommends evidence of funding or financing be required within 60 days of acceptance.

Approval of the resolution will schedule a public hearing on March 12, 2002, and initiate the sale of the property through a private sale as provided in N. C. Gen. Stat. sec. 160A-457(4).

Community Development staff recommends adoption of the resolution.

Contract Approval Authority

Summary: The current contract approval authority for the City Manager is relatively low compared to formal bid limits set in the North Carolina General Statutes and normal practices across the state, thus requiring many routine, budgeted, contracts to require approval of Council. This change, if approved, would increase the City Manager's authority consistent with state law and general practices across North Carolina.

Currently the City Manager is authorized to sign contracts up to $30,000.00. All contracts for construction and services above $30,000.00 require approval of City Council. In many cases contracts are approved by Council on the consent agenda and, therefore, require several additional weeks before the awarding of the contract can be accomplished. This slows down the process and, in several recent cases, you have noticed where staff has asked you to take special action at worksessions in order to be able to move projects forward at a more rapid pace.

Just recently the General Assembly amended General Statute §143-129 regarding the procedures for letting of public contracts. The General Assembly increased the amount of the contract needed to trigger the formal bidding requirements as outlined in the statute. The recent changes require that cities receive formal bids on construction or repair contracts that could amount to more than $100,000.00. In addition, the formal bid requirement for purchases of apparatuses, supplies, material or equipment has been raised from $30,000.00 to $50,000.00. (Note: Informal bids are still required for purchases from $5,000.00 to $49,999.99.)

In order to align local responsibilities with newly changed state law, it is recommended that the City Manager be given authority to approve contracts in the following manner:

A. Construction or repair contracts up to $100,000.00 could be approved and signed by the City Manager without City Council approval while construction contracts over $100,000.00 must be approved by City Council before the City Manager is authorized to sign the contract.

B. Purchase contracts for apparatuses, supplies, materials or equipment below $50,000.00 could be approved and signed by the City Manager without Council approval.

C. Service contracts up to $50,000.00 can be approved and signed by the City Manager without Council approval while service contracts $50,000.00 and over need City Council approval before the City Manager can sign the contract. Currently, the City Manager can sign a service contract under $30,000.00 without City Council approval. (NOTE: THERE IS NO REQUIREMENT TO BID A SERVICE CONTRACT AND THERE ARE NO MONETARY THRESHOLDS.)

All of the above recommendations are made with the understanding that there must be sufficient funding in the budget and that all contracts will be approved in accordance with federal, state and local laws. In addition, the Manager will continue to report to City Council on a quarterly basis in writing regarding the contracts of the City.

The above changes would take some of the items off the Council's agenda which sometimes tend to lengthen it with routine matters. In addition, it would follow the tradition of allowing Council approval of formally bid construction projects and large service contracts, while allowing the City Manager to execute the remaining contracts.

The City Manager requests that Council adopt the ordinance granting authority to approve, award and execute construction contracts, purchase contracts and service contracts as outlined.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

2002 TAX REVALUATION

Buncombe County Tax Collector Jerome Jones explained the 2002 Buncombe County revaluation. He explained how the City's tax base has grown. He pointed out that revaluation has three key points: (1) values are determined by market forces; (2) computer assisted mass appraisal: possible errors occur in some appraisals); and (3) every taxpayer has the right to appeal. Revaluation is (1) every four years; (2) 1998 last revaluation; (3) 2002 next revaluation; and (4) it's continuous. Revaluation is a process that determines fair market value and analyzes local real estate sale, cost and market trends. Thee approaches used to value include: (1) cost; (2) sales comparison/market; and (3) income. The following are reasons why we have revaluations: (1) North Carolina General Statutes; (2) insure fairness, equity and uniformity; (3) property values change at different rates; (4) sales/assessment ratio; and (5) public service companies. Revaluations are conducted by (1) the county assessor; (2) in-house personnel; and (3) local appraisers who are state certified. Mr. Jones then explained the Elderly/Disabled Exclusion Program. This program excludes the larger of $20,000 or 50% of residence value. Some facts of the program include (1) you must be 65 years of age or older; (2) totally and permanently disabled; (3) gross income of $18,000 or less (spouse); (4) must be a North Carolina resident; and (5) once you enroll, you don't have to enroll again. He said that there are approximately 3,400 people enrolled. Mr. Jones then explained that the value, not the taxes, can be appealed and reviewed the process starting out with the informal appeal, working it's way up to the NC Supreme Court. He did note that virtually all appeals are settled locally.

Mr. Jones then answered and responded to various questions from Council, some being, but are not limited to, historic designations, has there been any property depreciation, does the revaluation have any effect on the tax collection rates, flyer sent out has valuable information in it, many homes are becoming not affordable after revaluations; and how do our property tax rates stack up with the rest of the state.

Upon inquiry of Councilwoman Jones, Mr. Jones said that he would provide the Council with information on how many of the 3,400 people enrolled in the Elderly/Disabled Exclusion Program are City residents.

At the suggestion of Councilman Mumpower, City Manager Westbrook said that the City might be able to put something on it's governmental channel about the County's Elderly/Disabled Exclusion Program.

City Manager Westbrook said that he is working with Mr. Jones regarding the building being designated historical but then luxury apartments being built inside that building – all being taxed at 50% under the historic landmark designation.

City Manager Westbrook said that this is a good example of the cooperation between the City and the County working together.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled for Tuesday, March 12, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Identifying Artist's Studios & Workshops as Home Occupations in Residential Districts

Chief Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development Ordinance to identify artist's studios and workshops as home occupations in residential districts and to establish standards for these uses.

The Planning and Zoning Commission is recommending adoption of an amendment to the City's zoning standards to identify artist's studios and workshops as home occupations and to establish standards for these uses. Home occupations are currently permitted in all residential districts and although many artists have studios or workshops in their homes, these uses are not specifically identified in the City's zoning code. As a result of the City of Asheville's popularity as an arts center, the number of artist's studios and workshops located in residential areas will continue to increase. Artist's studios and workshops often require more space than traditional home occupations due to the need to store materials and for larger work areas. The proposed amendment addresses this need by allowing artist's studios and workshops to be larger than other home occupations. In order to protect adjacent residential uses from potential adverse impacts of artist's studios and workshops, a larger lot size is required for larger studios and workshops. Larger studios and workshops, when constructed as a separate building, must be setback a greater distance from the property lines. The studios and workshops must also adhere to the other standards for home occupations set forth in the City's zoning ordinance. These standards address:

- The display of goods and products as well as other advertising;
- Prohibition on retail sales from the home;
- Restriction on uses that create odor, noise, glare, etc.; and
- Standards for signs and parking.

Staff worked with a group of artists and craftspeople in developing the standards set forth in the draft ordinance amendment. No comments in opposition to the proposed revisions have been received.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mr. Green responded to Councilman Peterson's questions about the definition of a workshop and also displaying of goods on the premises.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearing on March 12, 2002.

HOUSING TRUST FUND LOAN RECOMMENDATIONS

Councilman Dunn moved to excuse Vice-Mayor Bellamy from participating in this discussion due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to award five loans from the City's Housing Trust Fund.

Available funds in the City Housing Trust fund stand at $512,000. This comprises $400,000 in new Fiscal Year 2002 funds and approximately $112,000 in loan repayments. Applications for these funds were invited by letter and advertisement on December 7, 2001.

Eight applications were received by the January 18 deadline, requesting loans totaling $840,000. They were reviewed by a five-person committee of City staff and outside experts, using criteria developed by a broad-based focus group last fall. The review committee reported to the Housing and Community Development Committee, which has recommended the five highest ranked applications for a total of $520,000 in loans, producing 26 affordable housing units. They are:

1. WNC Housing, Inc. – $100,000 for "Independence Cottages", five 1-bedroom houses for rent to very low income individuals with severe and persistent mental illness; on Clemmons Street and Spinet Street.
2. Mountain Housing Opportunities – $80,000 for construction of a 4-bedroom house for sale and rehabilitation of two dilapidated houses, one for sale and one as a rental duplex; on Jefferson Street, Clingman Avenue, and Rector Street.
3. Tim & Wendy Vorst – $40,000 for a duplex with a 1-bedroom and a 3-bedroom apartment to rent on Brookshire Street.
4. Tim & Wendy Vorst – $120,000 for a 6-plex of 1-bedroom apartments to rent on Hendersonville Road.
5. Carolina Custom Exteriors – $180,000 for a 3-bedroom house for sale, and two duplexes and a 4-plex to rent on Galax St. The proposal includes an offer to buy the City-owned site on Galax.

Proposed loan terms are as follows:

WNC Housing:	2% interest payable annually; first year's interest and all principal repayment deferred for 30 years.
Mountain Housing:	Rental duplex: 2% interest with all payments deferred for 20 years; S/F homes: x% interest with all payments deferred for 30 years, where x = the rate of appreciation of the properties.
Tim & Wendy Vorst:	2% for 30 years, amortizing, on both projects.
CC Exteriors:	2% construction loan only on the S/F house; 2% for 15 years amortizing on the rental units.

The Housing & Community Development Committee and City staff recommends approval of the five loans from the City's Housing Trust Fund.

Mayor Worley questioned the deferrals and his theory of the Housing Trust Fund was that the Fund would continue and evolve and help more people than having a good portion of our assets tired up for a number of years with the deferrals. Ms. Caplan explained that this issue did come up last year and was sent to a focus group. It was their consensus that only a limited amount would be deferred, stressing that the deferral is necessary for the low and very low income projects. She stressed that financing affects affordability.

Councilman Dunn, member of the Housing & Community Development Committee, did note that WNC Housing requested no interest, however, they did agree to a 2% interest payable annually. He said that the Committee is aware of the deferral issue and also wants to see money being put back into the Fund.

Councilwoman Jones, member of the Housing & Community Development Committee, said that the Housing Trust Fund is only one answer to affordable housing, as is Community Development Block Grant funds. She said the Fund is a great tool and the Committee members are thinking of ways to improve the system.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

TROLLEY FRANCHISE

Transit Services Director Bruce Black said that this is the consideration of a franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

Trolley Leasing, LLC, is a Florida Limited Liability Corporation. They propose to do business in Asheville as Asheville Historic Trolley Tours, with two trolleys. The services to be offered will include narrated historic tours of the downtown and nearby historic areas. They intend to stop at a number of local hotels. The tickets will be sold at various locations including hotels and the Asheville Visitors Center.

The tour will follow an established route and could occur up to four times per day. The business plan does not contemplate point-to-point transportation of people on a scheduled basis for a fee, but does include the possibility of charter business.

At the request of City staff, the operator has met twice with the City Traffic Engineer and he has signed off on the proposed route as not unduly interfering with the normal flow of traffic.

The vehicle is a 30-foot rubber-tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

It is recommended that the Council franchise the historical tour aspect of this business. A tour trolley usually runs somewhat slower than prevailing traffic and occasionally stops to embark or discharge passengers from a public street. This creates the possibility of interfering with the flow of traffic on public streets by creating unsafe situations or by blocking a lane of traffic. The franchise, as drafted, would simply require that the City's Traffic Engineer sign off on the proposed routes and be advised of any changes subject to his approval. At this time, the Traffic Engineer has reviewed and approved the routes, but the operator is conferring with the Traffic Engineer on some proposed changes.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day

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of the week. For charter operations, the hours of operation are not limited to the above, providing that Trolley Leasing meets all local, state and federal laws regarding the operation of a chartered vehicle.

The ordinance is drawn to be as narrow as possible. It does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council adopt the franchise ordinance.

Mr. Rich Mills, owner of Trolley Leasing LLC, said that they are currently operating in Everglade City, Florida, and also Madison, Georgia.

Upon inquiry of Councilwoman Field, Mr. Mills said that his trolleys have the state of the art small diesel engine. He did state, however, that they are willing, as this progresses, to look at ways to address the issue of air quality.

Vice-Mayor Bellamy felt that the $1 day franchise fee was too low. Mr. Black responded that this is a one year agreement and that fee will be revised when, and if, the franchise renewal is requested. Mr. Mills said that he would also be willing to discuss the franchise fee at the end of the year. He also noted that in the cities he is currently operating in, they had no franchise fee in that they feel the trolley is a moving billboard advertising the City. He felt that the cities get a lot of intangible benefits from his business.

Upon inquiry of Councilwoman Jones, Mr. Black said that this trolley would also help with the problems of parking in downtown.

City Attorney Oast noted that the franchise, by law, has to be adopted by two votes, which need to happen at two different meetings. He suggested City Council vote on the franchise at the February 26, 2002, formal meeting and then at the March 5, 2002, worksession.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON RESTRUCTURING AND INCREASING PENALTIES FOR ANIMAL CONTROL VIOLATIONS

Police Chief Will Annarino said that this is the consideration of an ordinance to restructure and increase penalties for animal control violations.

The current penalty for animal control violations is $10.00 for the first offense; $20.00 for the second offense within 12 months of the first; and succeeding offenses within 12 months of a prior offense result in increased penalties in $10.00 increments per offense. Penalties of these amounts have proven ineffective in promoting voluntary compliance with animal control regulations. In addition, collection of penalties is a problem because of the costs of collecting delinquent penalties exceeds the value of the revenue.

It is proposed that the penalties be increased as follows:

- First offense --$50.00
- Second offense within 12 months ----------------$100.00
- Third offense within 12 months--------------------$150.00

- Succeeding offenses within 12 months result in increased penalties in $50.00 increments per offense. (For example the fourth offense within 12 months would carry a $200.00 penalty; the fifth would carry a $250.00 penalty, and so on.) The maximum penalty is set at $500.00.
- Unpaid penalties would be declared delinquent after the 30th day from the issuance of the citation and thereafter for each additional 30-day period of delinquency.
- Delinquency fee------$50.00. (This is similar to the parking penalty delinquency schedule which provides for a $25 fee for each 30 day delinquency period.)

The following is a survey of seven cities' and counties' which have animal control penalties (none provide for a delinquency fee for non-payment):

- Chapel Hill: $50 per offense; if payment is not received a criminal summons is issued, to $500.
- Buncombe County: Each offense not to exceed $500 at the discretion of the Animal Control Officer.
- Lee County: 1st offense $25; 2nd $50; 3rd $250 and/or confiscation of animal.
- High Point: $50 per offense.
- Salisbury: 1st offense $25; 2nd $50; 3rd $75; 4th $250. Loose dog is $50.
- Sanford: 1st offense $50; 2nd $100; 3rd $250 and/or confiscation of animal.
- Cary: 1st offense $20; 2nd $50; 3rd $75; 4th $100; 5th $250 and confiscation of animal.

Public education of the penalty structure is an important component of the implementation plan. Asheville's Government Access Channel, the "City Works" section of the Asheville Citizen-Times, internet postings and other methods will be used to inform the public. The effective date of the ordinance will allow a 60-day window of opportunity for staff to carry out public education activities.

Spay and neuter alternatives to penalties will be considered on a case-by-case basis.

The contract for animal control services the City has with the Asheville Humane Society specifies that all civil penalties and license fees collected will be retained by the Humane Society to off-set expenses associated with enforcing the annual license fee, sterilization of animals adopted from the shelter, and public education. For 2001, approximately $1,700 in penalties and $10,000 in license fees were collected.

City staff recommends Council adopt the ordinance.

There was a lot of discussion with regard to how the spay and neutering alternatives would occur, how the penalties would escalate, the need for dogs to be licensed and benefits associated with that licensing, the cost for a license, how the public (especially renters who do not receive water bills with the licensing insert) is not aware that dogs need to be licensed, penalties are too high, maximum cap should be $500 per offense,

Police Chief Will Annarino stressed that the City wants to violators to pay for this program, not the general taxpayers.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

MISCELLANEOUS MATTERS

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Worksessions Items

Upon inquiry of Councilman Peterson, Mayor Worley said that the proper procedure for a Council member to have an issue placed on a worksession agenda is to let him know at least one week in advance of the worksession and he would advise the City Clerk to place it on the agenda.

U.S. Citizenship on Boards and Commissions

It was the consensus of Council to remove the U.S. citizenship on boards and commissions from City Council's consideration on February 26, 2002, and remand the issue back to the City's Boards and Commissions Committee.

Current Operations at the Civic Center Worksession Item

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that it was his understanding that City staff was to provide City Council with a staff representation with regard to the current operations at the Civic Center – what is and is not working – at the March 5, 2002, worksession. He did not think that City Council wanted him to invite the tenants, but to hear the staff presentation and then if Council wanted different information, then the tenants could be brought in.

Councilman Mumpower felt strongly that the Civic Center Commission members should be invited to the worksession to hear the report, or possibly even share the report with them prior to City Council. City Manager Westbrook said that he would be happy to invite the Commission members, however, the City doesn't normally release information to others before City Council. In addition, due to time restraints, he didn't think that the staff's presentation could be ready any sooner than the Friday before the Tuesday worksession, if then.

Mayor Worley agreed that the Commission members should be present to hear the report in that Council may wish to defer the report to them or to ask them questions.

Public Hearing Procedures

Councilwoman Jones felt City Council should look at its deliberation process. She felt it was important that Council balance open government while not short-changing City Council discussion.

Mayor Worley said that he had once suggested that if a meeting reaches a certain hour (11:00 p.m. or Midnight) that a good breaking point be found and the meeting be recessed until the next day or next couple of days.

Vice-Mayor Bellamy agreed in at if the public knows ahead of time that the meeting will not last past Midnight, they could be better prepared.

Councilman Peterson agreed in that the Mayor can announce at 10:00 p.m. a short break at which time people can sign-in to speak if the meeting is recessed to another day. That way only those who attended the beginning of the meeting would be allowed to speak at the end of the meeting on a different day.

It was the consensus of Council to have Mayor Worley, Vice-Mayor Bellamy and Councilman Peterson work on a proposed policy regarding the length of the meetings.

Asheville Smoke

Discussion occurred with regard to a letter City Council members received from the Asheville Smoke asking for two things, both of which mean providing funding which would require a City Council appropriation. City Manager Westbrook said that based on the information from the State with regard to the budget, a reduction in City services, and infrastructure needs in the City, he did not recommend making an appropriation to those requests.

When Councilman Mumpower suggested the City write off the facility fee for the remainder of their season, City Manager Westbrook said that City Council would have to pass a resolution and then there could be a problem with the basketball team and other vendors who use the facility.

City Manager Westbrook stated that City Council has worked with the Asheville Smoke in the past by taking over some responsibilities. He stressed that we do value the Smoke.

All of Council stressed that the City of Asheville recognizes the importance of hockey, but given the City's financial situation is unable to help them financially. Therefore, it was the consensus of Council to ask staff to look for some non-financial support for the Smoke.

State Budget Cuts

Mayor Worley updated City Council on a meeting he had recently with the Metropolitan Coalition and Governor Easley regarding the State budget. In summary, Governor Easley agreed to work with the Coalition and try to determine if there are other areas of the State budget that can be cut to alleviate pain to cities and towns, and to also look at ways to make our revenues more secure. It will be difficult to get any of our reimbursements back this fiscal year and the State is anticipating a similar problem next year. He did state that our local delegation was sympathetic and very much willing to help to make Asheville's revenues more secure in years to come.

City Manager Westbrook said that the Governor has appointed a Revenue Commission whose charge will be to review the revenue laws passed in the 1930's.

Councilwoman Jones spoke of the need for leadership and mutual support in how we approach this problem on a local level.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:02 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 26, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. MAYOR WORLEY RECOGNIZED BOY SCOUT TROOP 77

B. ORDINANCE NO. 2897 - ORDINANCE ACCEPTING DONATION FROM THE ASHEVILLE PROFESSIONAL FIREFIGHTERS ASSOCIATION

Mayor Worley recognized Fire Chief Greg Grayson who in turn recognized Asheville Professional Firefighters Association Mike Marshall and thanked the Asheville Professional Firefighters Association for the $17,100 donation to the City to purchase a thermal imaging camera for use in the Fire and Rescue Division. The camera will allow firefighters to see in smoke and dark conditions. Use of the camera improves firefighter effectiveness and safety. The cameras also allow firefighters to locate and rescue fire victims quickly and to search for fire hidden in walls and building voids.

The Asheville Firefighter's Association, IAFF Local 865, recently received the "North Carolina Professional Firefighters and Paramedics of North Carolina Local of the Year" award for the State of North Carolina. This is a prestigious honor for the Association. The Association is comprised of approximately 85% of the Asheville firefighters.

Fire Chief Grayson was also pleased to announce that the Asheville Chapter of Professional Firefighters and Paramedics of North Carolina received the Local of the Year Award for the Year 2001.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2897. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 414

C. PROCLAMATION PROCLAIMING MARCH 10-16, 2002, AS "GIRL SCOUT WEEK"

Mayor Worley read the proclamation proclaiming March 10-16, 2002, as "Girl Scout Week" and recognizing March 12, 2002, as the 90th Anniversary of Girl Scouts of the USA and recognizing 2002 as the 50th Anniversary of Girl Scouts of Western North Carolina Pisgah Council. He presented the proclamation to Ms. Jennifer Hallmark, Director of Communication/ Marketing for the Girl Scouts of Western North Carolina Pisgah Council.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON FEBRUARY 8, 2002; THE REGULAR MEETING HELD ON FEBRUARY 12, 2002, AND THE WORKSESSION HELD ON FEBRUARY 19, 2002

B. ORDINANCE NO. 2898 – FIRST READING OF ORDINANCE GRANTING A FRANCHISE TO TROLLEY LEASING, LLC, TO OPERATE A NARRATED HISTORIC TOUR TROLLEY ON THE STREETS OF THE CITY OF ASHEVILLE

Summary: This is the consideration of the first reading of a franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

Trolley Leasing, LLC, is a Florida Limited Liability Corporation. They propose to do business in Asheville as Asheville Historic Trolley Tours. The services to be offered will include narrated historic tours of the downtown and nearby historic areas. They intend to stop at a number of local hotels. The tickets will be sold at various locations including hotels and the Asheville Visitors Center.

The tour will follow an established route and could occur up to four times per day. The business plan does not contemplate point-to-point transportation of people on a scheduled basis for a fee, but does include the possibility of charter business.

At the request of City staff, the operator has met twice with the City Traffic Engineer and he has signed off on the proposed route as not unduly interfering with the normal flow of traffic.

The vehicle is a 30-foot rubber-tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

It is recommended that the Council franchise the historical tour aspect of this business. A tour trolley usually runs somewhat slower than prevailing traffic and occasionally stops to embark or discharge passengers from a public street. This creates the possibility of interfering with the flow of traffic on public streets by creating unsafe situations or by blocking a lane of traffic. The franchise, as drafted, would simply require that the City's Traffic Engineer sign off on the proposed routes and be advised of any changes subject to his approval. At this time, the Traffic Engineer has reviewed and approved the routes, but the operator is conferring with the Traffic Engineer on some proposed changes.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day of the week. For charter operations, the hours of operation are not limited to the above, providing that Trolley Leasing meets all local, state and federal laws regarding the operation of a chartered vehicle.

The ordinance is drawn to be as narrow as possible. It does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council adopt the franchise ordinance.

The required second reading of this ordinance will occur on March 5, 2002.

ORDINANCE BOOK NO. 19 – PAGE [redacted] 416

C. RESOLUTION NO. 02-27 - RESOLUTION ESTABLISHING A NEW POLICY AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS AND AWARD BIDS

Summary: The current contract approval authority for the City Manager is relatively low compared to formal bid limits set in the North Carolina General Statutes and normal practices across the state, thus requiring many routine, budgeted, contracts to require approval of Council. This change, if approved, would increase the City Manager's authority consistent with state law and general practices across North Carolina.

Currently the City Manager is authorized to sign contracts up to $30,000.00. All contracts for construction and services above $30,000.00 require approval of City Council. In many cases contracts are approved by Council on the consent agenda and, therefore, require several additional weeks before the awarding of the contract can be accomplished. This slows down the process and, in several recent cases, you have noticed where staff has asked you to take special action at worksessions in order to be able to move projects forward at a more rapid pace.

Just recently the General Assembly amended General Statute §143-129 regarding the procedures for letting of public contracts. The General Assembly increased the amount of the contract needed to trigger the formal bidding requirements as outlined in the statute. The recent changes require that cities receive formal bids on construction or repair contracts that could amount to more than $100,000.00. In addition, the formal bid requirement for purchases of apparatuses, supplies, material or equipment has been raised from $30,000.00 to $50,000.00. (Note: Informal bids are still required for purchases from $5,000.00 to $49,999.99.)

In order to align local responsibilities with newly changed state law, it is recommended that the City Manager be given authority to approve contracts in the following manner:

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B. Purchase contracts for apparatuses, supplies, materials or equipment below $50,000.00 could be approved and signed by the City Manager without Council approval.

C. Service contracts up to $50,000.00 can be approved and signed by the City Manager without Council approval while service contracts $50,000.00 and over need City Council approval before the City Manager can sign the contract. Currently, the City Manager can sign a service contract under $30,000.00 without City Council approval. (NOTE: THERE IS NO REQUIREMENT TO BID A SERVICE CONTRACT AND THERE ARE NO MONETARY THRESHOLDS.)

All of the above recommendations are made with the understanding that there must be sufficient funding in the budget and that all contracts will be approved in accordance with federal, state and local laws. In addition, the Manager will continue to report to City Council on a quarterly basis in writing regarding the contracts of the City.

The above changes would take some of the items off the Council's agenda, which sometimes tend to lengthen it with routine matters. In addition, it would follow the tradition of allowing Council approval of formally bid construction projects and large service contracts, while allowing the City Manager to execute the remaining contracts.

The City Manager requests that Council adopt the ordinance granting authority to approve, award and execute construction contracts, purchase contracts and service contracts as outlined.

RESOLUTION BOOK NO. 27 – PAGE 69

D. RESOLUTION NO. 02-28 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PRECISION CONTRACTING CO. TO CONSTRUCT ADA AND SIDEWALK AMENITIES ALONG THE URBAN TRAIL

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Precision Contracting Co. Inc. to construct ADA and sidewalk amenities located along the Urban Trail in downtown Asheville.

The City is in need of a contractor to perform ADA and sidewalk construction services along the Urban Trail. In accordance with N.C. Gen. Stat. sec. 143-129, formal bids for ADA and sidewalk construction services were solicited and four responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Carolina Specialties Construction Inc.	Non-Compliance	Yes	Yes	$111,827.00
Precision Contracting Inc.	100%	Yes	Yes	$133,410.00
Candler Concrete Works Inc.	0%	Yes	Yes	$137,328.54
Jerry Payne Const. Co. Inc.	0%	Yes	Yes	$191,300.00

These amenities will include: The installation of seven additional handicap accessible ADA ramps. Sidewalk replacement on Haywood Street adjacent to the downtown library, which will include new handicap accessible parking spaces to accommodate side-unloading vehicles, tree grates, and streetscape amenities such as benches and trash cans. The installation of thematic, directional markers will assist downtown visitors in finding their way along the Urban Trail.

As part of a TEA 21 Grant, 80% of the project funding is reimbursable from the N. C. Dept. of Transportation. The City's 20% match has already been allocated in the Public Works Department's Capital Improvement Project budget. Under the provisions of a TEA 21 Transportation Improvement Project (project number E-4138), completion of this contract would qualify the City of Asheville for a reimbursement of $106,728.00.

The Public Works Department staff recommends City Council adopt the resolution to construct ADA and sidewalk amenities along the Urban Trail.

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E. RESOLUTION NO. 02-29 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GREEN LIGHT ELECTRIC INC. FOR PREVENTIVE MAINTENANCE OF TRAFFIC CONTROL SIGNALS

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc., for preventative maintenance of traffic control devices in the amount of $79,775.

In April 2001, the Public Works and Engineering staff undertook the project of reengineering the Division of Traffic Operations, given the fact that two signals technicians resigned and the impending retirement of the traffic signal supervisor. Staff goals were to evaluate the existing level of service and determine if reengineering options were available, with the possibility of contracting out some of the existing services. Other goals were to improve overall signal services, assure system reliability, and maintain direct accountability for fundamental system functions.

City staff has determined that preventative maintenance activities could, and should be, contracted to the private sector.

It was further determined that a minimum staff level of two signal technicians, whose pay scale and classification would more closely emulate the N. C. Dept. of Transportation technicians with similar responsibilities, would be maintained to insure emergency response and guarantee that timely repairs were enacted. Their primary responsibility, beyond emergency response, is to maintain and update signal system data and functions of coordination and timing.

Bids were solicited to determine actual costs for a comprehensive preventative signal maintenance program by the private sector. The City received three bids for the work. Bids were received from the following vendors:

Green Light Electric	$119,800
ALS of North Carolina	$199,800
MB Haynes Electric	$249,945

City staff negotiated with the successful bidder to further reduce the contract amount for the required work to $79,775 per year for the next 5 years, with annual options for renewal, calculating a 3% increase per year.

The overall cost savings from the reengineering idea, along with the improved services mentioned above, is approximately $40,000 per year.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

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F. MOTION APPROVING THE 2002 FESTIVAL AND SPECIAL EVENTS CO-SPONSORED BY THE CITY OF ASHEVILLE

Summary: The consideration of a motion approving the 2002 festival and special events scheduled co-sponsorship by the City of Asheville.

In March of 1995, the Asheville City Council adopted a festival policy. A segment of that policy requires that City Council approve the list of festivals requesting co-sponsorship with Asheville Parks & Recreation on an annual basis. In 2001, the City co-sponsored 37 events produced by 25 organizers. For 2002, the request is for 65 events produced by 35 organizers.

The criteria for inclusion as a co-sponsored event are laid out in the Outdoor Special Event Guide which are:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The Parks and Recreation Department recommends accepting the list of events as the only events eligible for co-sponsorship for 2002. All further requests for 2002 will be denied, and organizers will be encouraged to apply for 2003.

Councilman Mumpower pointed out the fact that the numbers have increased dramatically and City staff has been instructed to review the policy on the criteria for co-sponsorship.

G. RESOLUTION NO. 02-30 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GLAZER ARCHITECTURE P.A. FOR RENOVATIONS AND ADDITIONS TO FIRE STATION 8 LOCATED AT 902 TUNNEL ROAD

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Glazer Architecture, P.A., in the amount of $33,000, for renovations and additions at Fire Station #8 located at 902 Tunnel Road.

Fire Station #8 was constructed in 1966 and no major building renovations have been undertaken during the life of the building. The additional growth of east Asheville required the building to house a pumping fire engine and ladder truck today. However the building was only designed for one fire company. The renovations include women's locker area, storage area, enlarged dayroom and kitchen. A new public entry, bay for a quick response vehicle, and officer office are in the scope of work. Site work to improve the traffic flow is included in the contract. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #8.

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H. RESOLUTION NO. 02-31 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH GLAZER ARCHITECTURE P.A. FOR RENOVATIONS AND ADDITIONS TO FIRE STATION 3 LOCATED AT 50 OREGON AVENUE

Summary: The consideration of a resolution authorizing the City Manager to sign the contract with Glazer Architecture, P.A., in the amount of $18,600, for basic renovations and minor additions at Fire Station #3 located at 50 Oregon Avenue.

Fire Station 3 was constructed in 1976 and no major building renovations have been undertaken during the life of the building. Presently, a pumping fire engine and a ladder truck are housed within the station. The renovations include re-roofing the building, renovating the kitchen, new finishes in the dayroom, kitchen, and dorms, new HVAC for all areas except the apparatus bays, electrical and plumbing renovations as required by Code. The contract is an AIA Document with modifications for the City of Asheville.

The funds for this project were appropriated in previous fiscal years and no funds would be used from Fiscal Year 2001-02 appropriations.

The Fire Chief recommends City Council authorize the City Manager to sign the contract with Glazer Architecture, P.A. for renovations and additions to Fire Station #3.

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I. RESOLUTION NO. 02-32 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 146 ON LINCOLN STREET IN THE EAST END/VALLEY STREET COMMUNITY

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 146 in the East End/Valley Street Community for the amount of $3,200.

Disposal Parcel 146 is a substandard lot located on the north side of Lincoln Street comprising 3,659± square feet. The lot is irregular in shape and mostly flat about street level then sloping up sharply to the rear. The bid in the amount of $3,200 from Damon Rouse includes the proposal to combine the property with adjoining property currently owned by Mr. Rouse on Jordan Street.

Although the new tax appraisal is $5,600, this property was available for several years at the previous tax value of $2,000 and then at $4,900 with no offers having been received. A letter of opinion from Ben Mansell CRS, GRI with RE/MAX Advantage Realty, indicates that due to the limited utility of the property to any buyer except an adjoining owner, the market value of the property would be approximately $3,000.

Approval of the resolution will establish the minimum price in the amount of $3,200 and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

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K. RESOLUTION NO. 02-33 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE PROPOSED SALE OF REAL PROPERTY AT 9-13 BILTMORE AVENUE, ASHEVILLE, N.C., AND SETTING A PUBLIC HEARING ON MARCH 12, 2002

Summary: The consideration of a resolution setting a public hearing and directing the City Clerk to publish a notice regarding proposed sale of real property at 9 -13 Biltmore Avenue, Asheville, N.C.

The property at 9 -13 Biltmore Avenue is located about 125 feet south of Pack Square. It is improved with a store front building with three bays dating from the 1920s. The land area comprises 14,469 square feet and the total combined building area is approximately 6,529 square feet. The lot extends to the east side of South Lexington Avenue, about 125 feet south of the intersection with Patton Avenue, and is improved with marked parking spaces on an asphalt surface. The lot is rectangular in shape and sloped to street level access. The appraised value of the property is $530,000.

Asheville Area Arts Council has submitted a proposal to purchase the property minus the air rights over the rear parking lot in the amount of $462,500. The bid from the Arts Council includes the proposal to cooperate with the eventual purchaser of the air rights over the parking lot to allow construction a new building containing parking, office, retail and/or residential units on South Lexington Avenue. The new building would be constructed above the first level by the purchaser of the air rights. The calculated value of the air rights retained by the City to be sold separately is $67,500. The bid from the Arts Council reflects the appraised value minus the air rights. The City has a bid in hand from a redeveloper for the air rights. The bid from the Arts Council includes an offer of $339,000 cash and a request that the City finance $123,500 of the purchase price. If the bid of the Arts Council is accepted, Community Development staff recommends evidence of funding or financing be required within 60 days of acceptance.

Approval of the resolution will schedule a public hearing on March 12, 2002, and initiate the sale of the property through a private sale as provided in N. C. Gen. Stat. sec. 160A-457(4).

Community Development staff recommends adoption of the resolution.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Ellis and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley said that this public hearing was opened on October 23, 2001, and continued several times.

On February 19, 2002, a letter was received from Ms. Diane Smoak, representing the petitioner, as follows: "We are requesting that our rezoning hearing for 1153 Sweeten Creek Road be rescheduled for the May meeting. We have been trying to work with the citizens of the Shiloh community to rezone this property and apologize for the inconvenience to the council but feel a mutually agreeable plan for the property would be good for the community as well as the owner of the property. Thank you in advance for working with us."

Councilman Ellis moved to continue the public hearing to May 28, 2002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF 2270 HENDERSONVILLE ROAD KNOWN AS ARDEN SQUARE SHOPPING CENTER

ORDINANCE NO. 2899 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE 2270 HENDERSONVILLE ROAD KNOWN AS ARDEN SQUARE SHOPPING CENTER.

Mayor Worley opened the public hearing at 5:17 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to consider the voluntary annexation for property located at 2270 Hendersonville Road, site of the Arden Square Shopping Center. This public hearing was advertised on February 15, 2002.

Mr. Winston W. Pulliam, sole owner of Arden Square LLC, has submitted an annexation petition for property located at 2270 Hendersonville Road.

This property is not contiguous to the City, but is located within the Arden annexation area, for which the annexation ordinance has been adopted with an effective date of June 30, 2002. The location of the property is further described as being on the east side of Hendersonville Road, south of Royal Pines Drive. The annexation area includes one lot, PIN No. 9654-09-15-9196, and consists of 2.2 acres.

City staff recommends City Council adopt the ordinance annexing 2270 Hendersonville Road.

Mayor Worley closed the public hearing at 5:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2899. This motion was seconded by Councilman Mumpower and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED AT THE CORNER OF HENDERSONVILLE ROAD AND MILLS GAP ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2900 - ORDINANCE TO REZONE TWO LOTS LOCATED AT THE CORNER OF HENDERSONVILLE ROAD AND MILLS GAP ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:23 p.m.

Urban Planner Jeff Tacy said that this is consideration of an ordinance to rezone two lots located at the corner of Hendersonville Road and Mills Gap Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on February 15 and 22, 2002.

The Planning and Development Department has initiated this rezoning request (.88 acre) (PIN Nos. 9655.09-25-0433 and 1468) in an effort maintain the commercial character of the Hendersonville Road corridor. The Highway Business District is established to address the needs of commercial development along major thoroughfares. The district permits a wide range of residential, recreational, institutional, public/semi-public, office/business and other land uses. The majority of the properties in the vicinity that front on Hendersonville Road are zoned Highway Business. There are no industrial uses fronting on Hendersonville Road in the immediate area. Based on the purpose of the HB District and the development patterns along Hendersonville Road, HB zoning would be more appropriate than Commercial Industrial. HB zoning would prevent the location of incompatible uses in the area and promote the location of uses similar to those in existence. Next month, the Planning and Development Department will request the same rezoning for the property on the southeast corner of Hendersonville Road and Mills Gap Road. This will eliminate nearly all of the Commercial Industrial zoning fronting on Hendersonville Road at the Mills Gap Road intersection.

It should be noted that the current owner of the subject property has submitted a letter of agreement for the rezoning request.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the northeast corner of Hendersonville Road and Mills Gap Road from Commercial Industrial to Highway Business. The Planning and Development staff recommends approval of the requested rezoning.

Councilman Peterson said that at their recent retreat City staff advised Council that the City needs to preserve property that is zoned industrial to encourage more industrial development in the City. This rezoning request is doing just the opposite. He wondered if by changing the zoning on this property, are we making it easier for the properties behind it to be more justified in changing to a more commercial use vs. a more industrial use. He admitted that it's easy for the City to say they need to preserve the industrial zones, but hard to enforce if property owners can get better use out of their property if zoned commercial.

Mr. Tacy said that these properties are not good from a planning or land use type perspective to be preserved as industrial. He pointed out that there are a lot of uses permitted in the industrial district that would not fit into the long-range plan for the Hendersonville Road corridor.

Planning & Development Director Scott Shuford said that at this particular location it is very unlikely that the property would be developed for anything industrial. In fact, with very rare exceptions, when property is placed in commercial industrial zoning classifications, the end result is that the commercial aspect usually gets developed. He advised Council that in the near future Planning staff will be bringing forward to Council an amendment that will allow more industrial development to occur in our commercial zoning classifications.

Mayor Worley closed the public hearing at 5:33 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2900. This motion was seconded by Councilman Dunn and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. AMENDMENT TO CITY COUNCIL POLICY ON RULES FOR BOARDS AND COMMISSIONS REGARDING U.S. CITIZENSHIP AS A QUALIFICATION FOR APPOINTMENT

Mayor Worley said that this issue has been referred to the City's Board and Commission Committee and will not be discussed at this meeting.

V. NEW BUSINESS:

A. RESOLUTION NO. 02-34 - RESOLUTION APPROVING FIVE LOANS FROM THE CITY'S HOUSING TRUST FUND

Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to award five loans from the City's Housing Trust Fund.

Ms. Caplan explained the 2nd Year Housing Trust Fund Program. She pointed out the concerns of Year 1 and explained the focus group, which was formed to address those concerns. She explained why repayments should be deferred: (1) funding structure depends on target income group; (2) making housing affordable at 80% median income requires incentives; and (3) making housing affordable at less than 50% median income requires subsidy. She explained the growth of the Fund through repayments vs. level of subsidy and then gave examples of finding the right loan structure.

Ms. Caplan said that available funds in the City Housing Trust fund stand at $512,000. This comprises $400,000 in new Fiscal Year 2002 funds and approximately $112,000 in loan repayments. Applications for these funds were invited by letter and advertisement on December 7, 2001.

Eight applications were received by the January 18 deadline, requesting loans totaling $840,000. They were reviewed by a five-person committee of City staff and outside experts, using criteria developed by a broad-based focus group last fall. The review committee reported to the Housing and Community Development Committee, which has recommended the five highest ranked applications for a total of $520,000 in loans, producing 26 affordable housing units. They are:

1. WNC Housing, Inc. – $100,000 for "Independence Cottages", five 1-bedroom houses for rent to very low income individuals with severe and persistent mental illness; on Clemmons Street and Spinet Street.

2. Mountain Housing Opportunities – $80,000 for construction of a 4-bedroom house for sale and rehabilitation of two dilapidated houses, one for sale and one as a rental duplex; on Jefferson Street, Clingman Avenue, and Rector Street.
3. Tim & Wendy Vorst – $40,000 for a duplex with a 1-bedroom and a 3-bedroom apartment to rent on Brookshire Street.
4. Tim & Wendy Vorst – $120,000 for a 6-plex of 1-bedroom apartments to rent on Hendersonville Road.
5. Carolina Custom Exteriors – $180,000 for a 3-bedroom house for sale, and two duplexes and a 4-plex to rent on Galax Street. The proposal includes an offer to buy the City-owned site on Galax Street.

Proposed loan terms are as follows:

WNC Housing:	2% interest payable annually; first year's interest and all principal repayment deferred for 30 years.
Mountain Housing:	Rental duplex: 2% interest with all payments deferred for 20 years; Single-family homes: x% interest with all payments deferred for 30 years, where x = the rate of appreciation of the properties.
Tim & Wendy Vorst:	2% for 30 years, amortizing, on both projects.
CC Exteriors:	2% construction loan only on the single-family house; 2% for 15 years amortizing on the rental units.

City staff recommends approval of the five loans from the City's Housing Trust Fund.

Councilman Dunn felt that the Housing & Community Development Committee (of which he is a member) should carefully review using the Housing Trust Fund monies to restore historic sites. He asked that if a focus group is again formed, he felt it should be more balanced by having an equal number of developers, non-profits and for-profits.

Upon inquiry of Councilman Dunn, Ms. Caplan said that since property in the extraterritorial jurisdiction does not provide tax revenue, City Council did not wish Housing Trust Fund monies to be expended outside the City limits.

Councilwoman Jones, member of the Housing & Community Development Committee, felt this would be a good time to ask the County to be a part of the Housing Trust Fund. She felt these five recommendations represent a balance of rehab and new construction; rental and sale; different types of dwellings as far as duplexes and single-family homes; is a mixture of private and non-profit; and are different parts of the City. She stressed that part of what we must do as policy and decision makers is be good stewards of hard earned tax money. However, the "bang-for-the-buck" is only one criterion in the bottom line and will not always be for the best decisions. When we talk about balance, we need to bring in other criteria as well.

Councilman Mumpower felt that accountability is a good criterion, but also defends getting the most benefit out of the monies that we have to spend.

Upon inquiry of Councilman Ellis, Ms. Caplan said that the City would gain 26 affordable housing units from the combined $520,000 loans this year.

Mayor Worley gave a brief history of the Housing Trust Fund and said that City Council has never adopted policies to apply to this Fund. He suggested the Housing & Community Development Committee look at adopting some policies on how the Trust Fund is administered in the future. His concern has to do with the no payment loans where the loans are for 20 or 30 years and there is no principle being returned and no opportunity to revolve that money over and over again within the community. He does understand how incentives and subsidies are needed. Perhaps Community Development Block Grant (CDBG) funds could be used more effectively as a subsidy. He also suggested we look at our total funds available for affordable housing and see which fund sources are best for which aspects of affordable housing.

Councilwoman Jones said that CDBG funds and the Housing Trust fund are not enough to fix affordable housing problems in Asheville. We need to find more creative solutions and be open to land use planning if we are going to make a difference in affordable housing. Council needs to remember that while we are growing this Fund and using it wisely, let's not forget we are putting people in homes.

Councilman Dunn said that the Housing & Community Development Committee is already talking about some of the issues mentioned at this meeting.

Councilman Ellis asked if all of the new units pay property taxes. Ms. Caplan responded that the units owned and maintained by WNC Housing for special needs people will not be on the tax rolls – all the other units will be.

Mr. Walter Plaue, City resident, said that he was a member of the focus group that addressed the first year concerns. They agreed that (1) no more than 30% of the loan funds in any year should be deferred; (2) no more than 30% of the loan funds in any year should be at 0% interest; and (3) there should be a creation of a balanced citizens advisory committee for the 2002-03 year to be appointed by the City Council by the Spring of 2002. He agreed that this is not simply the matter of the best dollar, but that there needs to be a consideration of the human element. He personally felt that the City should look to expand the Fund into the ETJ areas. Granted those properties may not pay City taxes, but already one of the recommendations today is for a project that is not going to pay City taxes. By going into the ETJ we can find land that is less expensive and that is a key element in giving the people better units to live in.

Mr. Fred English, City resident, felt that the City should not be putting any of the Trust Fund into historic properties.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 02-34. This motion was seconded by Councilwoman Jones and carried unanimously.

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Vice-Mayor Bellamy said that there are other ways to address the issues of affordable housing and some is looking at our policies and how we interpret those policies. We need to think about what people want in their existing neighborhoods -- something that blends in with the character of the neighborhood. We need to look at more collaboration with non-profits and for-profits and look at how we can work together. She supported inclusionary housing, which the City needs legislative authority.

B. ORDINANCE NO. 2901 - ORDINANCE RESTRUCTURING AND INCREASING PENALTIES FOR ANIMAL CONTROL VIOLATIONS

Police Chief Will Annarino said that this is the consideration of an ordinance to restructure and increase penalties for animal control violations.

The current penalty for animal control violations is $10.00 for the first offense; $20.00 for the second offense within 12 months of the first; and succeeding offenses within 12 months of a prior offense result in increased penalties in $10.00 increments per offense. Penalties of these amounts have proven ineffective in promoting voluntary compliance with animal control regulations. In addition, collection of penalties is a problem because of the costs of collecting delinquent penalties exceeds the value of the revenue.

It is proposed that the penalties be increased as follows:

- First offense --$50.00
- Second offense within 12 months ----------------$100.00
- Third offense within 12 months--------------------$150.00
- Succeeding offenses within 12 months result in increased penalties in $50.00 increments per offense. (For example the fourth offense within 12 months would carry a $200.00 penalty; the fifth would carry a $250.00 penalty, and so on.) The maximum penalty is set at $500.00.
- Unpaid penalties would be declared delinquent after the 30th day from the issuance of the citation and thereafter for each additional 30-day period of delinquency.
- Delinquency fee-------$50.00. (This is similar to the parking penalty delinquency schedule which provides for a $25 fee for each 30 day delinquency period.)

The following is a survey of seven cities' and counties' which have animal control penalties (none provide for a delinquency fee for non-payment):

- Chapel Hill: $50 per offense; if payment is not received a criminal summons is issued, to $500.
- Buncombe County: Each offense not to exceed $500 at the discretion of the Animal Control Officer.
- Lee County: 1st offense $25; 2nd $50; 3rd $250 and/or confiscation of animal.
- High Point: $50 per offense.
- Salisbury: 1st offense $25; 2nd $50; 3rd $75; 4th $250. Loose dog is $50.
- Sanford: 1st offense $50; 2nd $100; 3rd $250 and/or confiscation of animal.
- Cary: 1st offense $20; 2nd $50; 3rd $75; 4th $100; 5th $250 and confiscation of animal.

Public education of the penalty structure is an important component of the implementation plan. Asheville's Government Access Channel, the "City Works" section of the Asheville Citizen-Times, internet postings and other methods will be used to inform the public. The effective date of the ordinance will allow a 60-day window of opportunity for staff to carry out public education activities.

Spay and neuter alternatives to penalties will be considered on a case-by-case basis.

The contract for animal control services the City has with the Asheville Humane Society specifies that all civil penalties and license fees collected will be retained by the Humane Society to off-set expenses associated with enforcing the annual license fee, sterilization of animals adopted from the shelter, and public education. For 2001, approximately $1,700 in penalties and $10,000 in license fees were collected.

City staff recommends Council adopt the ordinance.

Councilman Peterson asked if the City considered confiscation of animal as the last resort as some cities and counties do. Police Chief Annarino said that administratively and realistically they don't get to that point. Confiscation of animals generally means a violation of some type of criminal offense.

Vice-Mayor Bellamy said that she people have brought to her attention problems with the Humane Society not enforcing the ordinance and their inability of responding in a timely manner. Police Chief Annarino said that the City's contract with the Humane Society is in the amount of $170,000 and expires on July 1 of this year. He noted that both parties are currently evaluating the contract. They do have a new director who is working on those issues. She has instituted training and certification for her officers, is working to enforce compliance and has supported the increasing of fees. This will help them bring in revenue to help offset some of their costs.

The following residents spoke in support of increasing the penalties for animal control violations:

Mr. Bob Brummond, Haw Creek resident
Mr. Walter Plaue, City resident
Mr. Robert Maddox, City resident
Mr. Fred English, Haw Creek resident
Mr. Lynwood Crump, Shiloh resident
Mr. Bernard Lancaster, Haw Creek resident
Mr. Thomas Penland, Haw Creek resident
Mr. Chris Pelly, President of the Community Association of Haw Creek

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2901. This motion was seconded by Vice-Mayor Bellamy.

Councilman Mumpower understands that there is a clear need for this increase of fees, however, felt that this is an extreme percentage of increase. He would prefer to support of a sequential increase in fees. He felt that our fees are higher than the healthier models in the survey, specifically speaking to Lee County, Salisbury and Cary. He was also concerned that we are changing the fees before we clarify our ordinance. He felt the enforcement part is as least as important as the fees, if not more. He felt this should be a more reasonable fee structure, for example $50 first offense and $25 increments from there on.

The motion made by Councilman Dunn and seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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At 6:55 p.m., Mayor Worley announced a short break.

B. RESOLUTION NO. 02-35 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Board of Adjustment.

The terms of Lauren Malinoff (Regular), Dennis Hodgson (Regular) and Joseph Brady (Alternate) on the Board of Adjustment expired on January 21, 2001.

On February 5, 2002, City Council interviewed Chris Goodwin, Lauren Malinoff, Dee Knight, Richard Fort, Robert Smith, Ned Guttman and Steven Sizemore. On February 12, 2002, City Council interviewed Beverly Robinson, Tom Muncy and James Mills.

Chris Goodwin received 0 votes; Lauren Malinoff received 3 votes; Dee Knight received 0 votes; Richard Fort received 3 votes; Robert Smith received 0 votes, Ned Guttman received 1 vote, Steven Sizemore received 4 votes; Beverly Robinson received 4 votes; Tom Muncy received 6 votes; and James Mills received 0 votes. Because of a tie between Beverly Robinson and Steven Sizemore, another vote was taken: Beverly Robinson received 5 votes and Steven Sizemore received 2 votes.

Vice-Mayor Bellamy moved to appoint Tom Muncy and Beverly Robinson, as Regular members, to each serve a three year term respectively, terms to begin immediately and expire on January 21, 2005; and to appoint Steven Sizemore, as an Alternate member, to serve a three year term, term to begin immediately and expire January 21, 2005. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote with Councilman Peterson voting "no".

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C. RESOLUTION NO. 02-36 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Bellamy said that this is the consideration of appointing members to the A-B Community Relations Council.

The terms of Bernadette Thompson and Cassandra Ingram, as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2001.

On January 22, 2002, City Council interviewed Rod Whiteside, Shirley Dillingham and Leslie Hennessee. On February 5, 2002, City Council interviewed Dan Comer.

Mayor Worley noted that he had received an e-mail from Rod Whiteside which stated he did not wish to be considered for the A-B Community Relations Council appointment.

Shirley Dillingham received 2 votes; Leslie Hennessee received 6 votes and Dan Comer received 6 votes.

Vice-Mayor Bellamy moved to appoint Leslie Hennessee and Dan Comer to each serve a three year term respectively, terms to begin immediately and expire on December 31, 2004, or until their successor have been appointed. This motion was seconded by Councilwoman Jones and carried unanimously.

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D. RESOLUTION NO. 02-37 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Asheville-Buncombe Fair Housing Commission.

The terms of Christiana Tugman, Kim Moore and Jim McCulley, as members on the Asheville-Buncombe Fair Housing Commission, expired on December 31, 2001.

On February 12, 2002, City Council interviewed David Clegg.

City Council noted how impressed they were with Mr. Clegg.

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Vice-Mayor Bellamy moved to reappoint Jim McCulley, Kim Moore and Christiana Tugman to each serve a three year term respectively, terms to expire December 31, 2004, or until their successors have been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

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E. RESOLUTION NO. 02-38 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Asheville Transit Commission.

The term of Claudia Nix, Ron Lambe, Althea Goode and Willie McDaniel, as members on the Asheville Transit Commission, expired on December 31, 2001.

On January 22, 2002, City Council interviewed Mickey Mahaffee and on February 12, 2002, City Council interviewed Richard Fosmoen.

Mickey Mahaffey received 5 votes and Richard Fosmoen received 2 votes.

Vice-Mayor Bellamy moved to reappoint Claudia Nix, Ron Lambe and Althea Goode to each serve an additional two year term, terms to expire December 31, 2003, or until their successor have been appointed; and to appoint Mickey Mahaffey to serve a two year term, term to begin immediately and expire December 31, 2003, or until his successor has been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 8-21, 2002: Perry Christopher (Parks & Recreation), Asheville Smoke (Civic Center), Jean Arrington (Water), Kent Cook (Streets) and Scott Bralley (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English, City resident, spoke about several matters concerning the Asheville Smoke, the Asheville Altitude, affordable housing, 2002 revaluation, and the City's budget as a result of the State's budget cuts.

B. COMMENTS BY KEVIN NUTTELL

Mr. Kevin Nuttell, representing the N.C. AIDS Policy Center, spoke about his dissatisfaction about the services provided by local AIDS service organizations.

Mayor Worley stated that the comments Mr. Nuttell makes before Council are not relevant to the tasks of City Council. He suggested Mr. Nuttell to only bring matters to Council's attention which are in their preview.

C. COMMENTS BY NELDA HOLDER

Ms. Nelda Holder, City resident and President of the League of Women Voters of Asheville and Buncombe County, presented City Council with a petition containing 45 signatures which reads "WHEREAS, the cost of running for and winning elective office has been escalating throughout the nation; and WHEREAS, this escalation has reached to municipal election level; and WHEREAS, this escalation results in a de facto Wealth Primary, limiting access to public office to those with wealth or access to the wealth of others; and WHEREAS, this Wealth Primary seriously erodes the principle of one person, one vote. We citizens of Asheville, North Carolina, do hereby resolve to petition the City Council to appoint a Citizens Committee to study alternative methods of municipal campaign finance reform and to recommend adoption of a specific ordinance for comprehensive campaign finance reform to the City Council by July, 2002." She said that the League of Women Voters will volunteer in any way they can to help.

D. COMMENTS BY SHARON MARTIN

Ms. Sharon Martin, City resident, spoke to Council about their board and commission appointment process and also about campaign finance reform.

E. COMMENTS BY BEN DARUDY

Mr. Ben Darudy, City resident, spoke about how the unusual people are the heart of downtown Asheville and the need for affordable housing.

F. COMMENTS BY REBECCA CAMPBELL

Ms. Rebecca Campbell, City resident, spoke about the need for campaign finance reform.

G. COMMENTS BY JOHN YARNALL

Mr. John Yarnall, City resident, spoke about the need for campaign finance reform and the need for the changes to be make before the next election.

H. COMMENTS BY DENNIS JUSTICE

Mr. Dennis Justice, Fletcher resident, spoke to Council about the lack of practice time on the ice for the Asheville Smoke. He felt the City needs to create a sports authority for the Asheville area.

I. COMMENTS BY LYNWOOD CRUMP

Mr. Lynwood Crump spoke about the need for additional police.

J. CLOSESD SESSION

At 8:08 p.m., Councilwoman Jones moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including proceedings involving the policy pay grievance decision by the Civil Service Board – G.S. 143-318.11 (a) (3). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 9:37 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:37 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 5, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Agreement with NC DOT for Black Mountain Bus Route

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System (City of Asheville) in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

In no event will the City of Asheville be required to contribute financially to this route. All financing will be provided by the State (maximum of $92, 708), the Town of Black Mountain ($13,360), Mountain Mobility ($5,000), and Fare Box Revenue ($3,882). The total budgeted cost is $114,950. The City`of Asheville is specifically exempted from any liability towards operating costs. If funds budgeted are not sufficient, the operation will either be additionally funded by some combination of the above, or it will be terminated. The City of Asheville will not be liable for any additional cost of operation under this contract.

The contract has a period of performance of 14 months - from March 1, 2002, through May 1, 2003. During that time, the Asheville Transit System must provide 12 consecutive months of service, within the above financial constraints.

The NC DOT requires the Mayor to sign the contract for this service, and will then return a copy signed by the state Secretary of Transportation. Commencement of service is contingent upon receiving this signed contract from the NC DOT. Service will start as soon as possible after receipt of the fully executed contract.

Black Mountain will be served four times a day, six days a week, except for holidays during which the transit system does not operate. Thus, Black Mountain will be served 306 days during the twelve-month period.

City staff recommends adoption of the resolution.

Clerk to advertise offer to purchase property on Galax Avenue

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Galax Avenue in the West Asheville community.

Michael A. Pressley submitted a bid in the amount of $25,800 for the purchase of land on Galax Avenue in the West Asheville Community. Said bid is not less than the tax appraisal of $25,800.

The land on Galax Avenue is a residential zoned lot beyond the end of the street improvements of Galax Avenue. Said lot is 0.94 acre. The bid from Michael A. Pressley includes the proposal to combine the property with adjacent property he owns and construct nine units of affordable housing on the property. Mr. Pressley's project has been recommended for a Housing Trust Fund Loan and is consistent with the policy of encouraging infill development.

The property was designated as surplus property in 1997 and has been available for sale since that time.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution.

Application to Land, Water & Conservation Fund for Grant for Azalea Road Park

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road in east Asheville. If this grant is received, the funds will be used to assist with the construction of the first phase of the Park. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise $3 million to build the first phase of the Park.

The Parks and Recreation Department is requesting $500,000 in grant funds from the Land, Water and Conservation Fund, which requires a 50% cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation via the John B. Lewis Family Foundation, and the in-kind match (approximately 25%) is available in labor, equipment, and project management in the Parks and Recreation Department.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds to assist with the construction of Azalea Road Park Phase I.

New Street Name of Myra Place off East Starnes Cove Road

Summary: The consideration of a resolution accepting the new proposed street name "Myra Place."

Dave Ball, owner of lots in Maple Grove Subdivision, has petitioned the City of Asheville to accept the street name " Myra Place." The new street will begin at East Starnes Cove Road and end at cul-de-sac on Myra Place.

City staff recommends adoption of the resolution.

Clerk to Publish Notice of Intent to Lease Space at 45 Wall Street

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed lease with the Asheville Performing Arts Alliance for space at 45 Wall Street.

The property at 45 Wall Street is located in the Wall Street Parking Garage owned by the City of Asheville. The City has previously leased the space, but currently the space is vacant.

The Asheville Performing Arts Alliance (APAA) has offered to enter into a lease for the space. The proposed lease will enable APAA to operate offices and a small performing theater at the site. There is a provision which allows either the Lessor or the Lessee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 9 years and 11 months. APAA will pay rent in the amount of $1,050 for the first six years the rent will increase annually thereafter based on the Consumer Price Index compared to the date the lease originated. In addition to the rent, APAA will up-fit the space at its own expense.

Approval of the resolution will authorize the City Clerk to publish a Notice of Intent to enter into the Lease.

Finance Department and Planning Department staffs recommend adoption of the resolution.

City staff answered various questions from Councilman Dunn with regard to this lease.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled for March 12, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Revisions to the Sidewalk Regulations

City Engineer Cathy Ball said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) related sidewalk regulations.

In May of 1997, sidewalks requirements were adopted as part of the final adoption of the UDO. In March of 2000, the sidewalk requirements were revised to include the provisions for allowing a "fee in lieu of" constructing sidewalks under certain conditions.

In 2000, staff began working with the development community to review the conditions for allowing a fee in lieu of constructing sidewalks. This group consisted of developers, affordable housing advocates and staff. The group agreed that some additional changes needed to be made in the sidewalk requirements (Section 7-11-17) for the following reasons:

- The group had concerns regarding the fact that the ordinance did not have an exemption for properties that had low pedestrian impact and were on relatively low vehicular volume streets.
- The development community, while not happy to pay additional costs of sidewalks, supported paying the fee in lieu of constructing the sidewalk so long as the money was used to install sidewalks in places where it was needed. Developers requested more flexibility in being able to pay the fee in lieu of constructing the sidewalk.
- Staff was concerned about maintenance issues that would arise from having sidewalks installed piecemeal. This means that the sidewalks would age at varying degrees and need to be replaced at different times, thus increasing the maintenance and replacement costs.
- The development community requested that a more expedient appeal process be developed. Currently they are required to go to City Council for a waiver to the sidewalk requirements.
- The group requested that clarification be made as it relates to sidewalk requirements on private and public streets.

As a result of these concerns, staff began exploring ways of improving the sidewalk requirements. The revisions that you are being asked to approve include most of the concerns of the task force.

The revisions include the following changes:

- Establishing a threshold for requiring sidewalks or a fee in lieu of constructing sidewalks. We recommend that this threshold be 300 Average Daily Traffic (ADT) volume currently or projected for the next 5 years. (Provided the street is not listed on the Pedestrian Thoroughfare Plan.)
- Requiring sidewalks to be constructed on all new and improved streets. A large cost of the sidewalk includes mobilization and grading. When a street is being constructed or reconstructed, the mobilization and grading for the sidewalk can occur in conjunction with the roadway.
- Allowing developers to pay the fee in lieu of constructing the sidewalk unless the sidewalk is on the Pedestrian Thoroughfare Plan.
- Providing for an appeal process that allows the develop to appeal to a committee consisting of the City Manager, or his designee, and two other Department Directors, excluding the City Engineer.
- Clarifying that public and private streets have the same requirements with regard to sidewalks.

In addition, an amendment to the Fees and Charges Manual is requested. She said the amendment would be to add the following sentence: "In the event that a fee is allowed for an economic development project, the developer will be allowed to pay 50% of the fee, provided that the project is eligible for the City of Asheville Economic Development Incentive Grant as defined by the City of Asheville Economic Development Incentive Policy and administered by the Economic Development Director."

Nothing in the revised ordinance would prohibit a developer from installing sidewalk as opposed to paying the fee in lieu of constructing the sidewalk. The developer always has the option of installing the sidewalk adjacent to their project.

The Planning and Zoning Commission approved the revisions to the sidewalk regulations on February 6, 2002. The approval vote was unanimous with the following two suggested changes:

(1) Allow the developer to pay the fee in lieu of constructing sidewalk if the sidewalk is listed on the Pedestrian Thoroughfare Plan so long as the project is on a N. C. Dept. of Transportation or City of Asheville funded project.

(2) Request an easement from the developer for future sidewalk installation even if they are exempt from installing the sidewalk or paying the fee in lieu of constructing the sidewalk.

Staff presented the concept of this proposal at the Development Issues Forum in September 2001 and at the February meeting of the Council of Independent Business Owners. Both groups had a favorable response to the revisions.

Staff requests that City Council adopt the revisions to Section 7-11-7 of the Unified Development Ordinance related to sidewalk regulations and the amendment to the Fees & Charges Manual.

Ms. Ball answered various questions from City Council, some being, but are not limited to: who set the current fees; how were those fees determined; instead of allowing a developer to pay a fee in lieu of or build sidewalks on his project, can the developer construct the same length elsewhere in the City; and can the developer build nature trails instead of sidewalks.

Revisions to the Floodplain Regulations

Ms. Natalie Berry, Stormwater/Erosion Control Coordinator said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) regarding floodplain regulations.

Below are the recommended amendments to the City's flood control standards. All of the revisions are housekeeping in nature.

- Revising the ordinance to give the City Engineer authority to enforce this section of the UDO in place of the Planning and Development Director, adding a few definitions, amending a few definitions and changing the name of the Erosion Control Review Committee to Specifications Review Committee.
- Expanding the duties of the Specifications Review Committee to be able to interpret and make recommendations on variances to the flood ordinance to the Board of Adjustment, leaving final authority vested in the Board of Adjustment.
- Delete the paragraph entitled "exemptions" out of the flood ordinance. The National Flood Insurance Program Western Coordinator recommends the deletion due to non-compliance with Federal Emergency Management Agency (FEMA) regulations.
- Adding an option under the unnumbered "A" zone section. When the base flood elevation (BFE) is not known this is known as an unnumbered "A" zone. A structure may be constructed if the lowest finished floor is built at least three (3) feet above the highest adjacent grade. This option will help the property owner(s) who could not afford to hire a professional engineer to do a flood study to determine the base flood elevation (BFE).
- Remove wet flood proofing option "c" under the flood proofing heading in Section 7-12-1(i)(2). The National Flood Insurance Program Western Coordinator recommends the removal of this option for the City of Asheville's UDO. The NFIP does not allow wet flood proofing in lieu of meeting the lowest floor elevation requirements. The City's ordinance currently is out of compliance with the NFIP regulations by allowing this option and we could be at risk of losing the program. This is not an option under FEMA model ordinance.
- Include the flood ordinance under the enforcement and penalties for civil penalties when violations occur.

The Planning and Zoning Commission voted 6 to 1 to recommend approval of the proposed ordinance amendment. The opposing vote was due to the changes in no longer allowing wet flood proofing on structures in the floodway.

Staff recommends that City Council adopt the proposed amendments to the Floodplain Regulations of the Unified Development Ordinance.

When Councilman Mumpower expressed his concern over the $100 per day violation, City Attorney Oast explained that that figure is standard in North Carolina and not extreme at all.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on March 12, 2002.

SECOND READING OF ORDINANCE NO. 2898 - ORDINANCE GRANTING A FRANCHISE TO TROLLEY LEASING LLC TO OPERATE A NARRATED HISTORIC TOUR TROLLEY ON THE STREETS OF THE CITY OF ASHEVILLE

City Attorney Oast explained that this ordinance was adopted on its first reading on February 26, 2002.

Councilman Ellis moved to waive the rules and proceed with formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilwoman Jones moved to adopt Ordinance No. 2898 on its second and final reading. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 506

PROHIBITING PERSONS FROM SOLICITING FROM THE STREET OR MEDIAN WITHIN CITY LIMITS

Police Chief Will Annarino said that this is the consideration of an ordinance prohibiting pedestrians to stand on any city street or median and solicit money, employment, business or a ride from passing or stopped motorists within the City limits.

The Asheville Police Department has determined that there is a potential danger allowing persons to solicit money, employment, rides or business from the streets and mediations within the City. Currently, there any many busy intersections where persons regularly use to beg for money, rides or employment. It is the Asheville Police Department's (APD) contention that this type of behavior near a busy intersection creates a dangerous situation for the pedestrian and the motorists.

This ordinance will make it a class 3 misdemeanor and a fine no more that $500.00 for a pedestrian to stand on any city street or median and solicit money, employment, business or a ride from passing or stopped motorists within the City limits.

In addition, APD has determined that at certain intersections, homeless persons have formed "gangs" to enforce the exclusive right to beg at certain intersections and will resort to violence if another group or person tries to beg at said intersection.

The APD has checked with the N. C. Dept. of Transportation and they fully support this ordinance.

Currently, the cities of Charlotte, Gastonia, Wilmington, Greenville and Garner have some form of a street solicitation prohibition. Durham is currently in the process of adopting such an ordinance.

City staff recommends approval of the ordinance.

Sergeant Haun and Officer Bowman both related incidents to City Council in which this ordinance is necessary to address safety.

Councilman Dunn passed out pictures of syringes, broken bottles, drug paraphernalia, etc. located behind businesses on Tunnel Road. He felt this ordinance was not only necessary for the safety of motorists and pedestrians, but also for the safety of residents.

Upon inquiry of Councilman Mumpower, Police Chief Annarino said that this is not a tool to regulate transients that pass through our community, but a public safety tool to make our major intersections and thoroughfares safe.

Councilwoman Jones hoped that there is a plan to advise individuals and organizations before citing them for violations.

Vice-Mayor Bellamy stressed the need to work with organizations and to develop a comprehensive plan on how to address the issues regarding the homeless because harassment and arrest is not the solution. Police Chief Annarino said that when camps are identified, they identify the property owners and work with them to get the camp removed. Because this is a broader social issue, they are working with shelters on how to address these concerns.

Councilman Dunn felt that City Council should review their budget and find monies to help Hospitality House keep their doors open longer.

Councilman Peterson asked if some regulations could be put in place to allow good charitable organizations to continue this type of soliciting. Perhaps they could be required to be a non-profit organization, wear orange vests and have the Traffic Engineer develop some requirements. Assistant City Attorney Curt Euler stressed that this is a safety issue, not an issue of who should and shouldn't solicit. Police Chief Annarino also said that people could still solicit on private property.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

9-13 BILTMORE AVENUE

This matter was removed from the agenda for City Council consideration.

CAMPAIGN FINANCE REFORM

Councilman Peterson suggested a citizen study committee be formed. Two issues that need to be addressed are (1) campaign finance reform; and (2) election process changes. He felt that perhaps one group could address both of those issues and report on them separately, however, it might be better to separate the issues. He suggested each Council member submit two names of people to form the committee (and representation from some civic groups), give them a timeline and ask them to report back in 90 days with not necessarily one plan, but some options and different approaches City Council can consider. He suggested City Attorney Oast be the staff person on that committee. He suggested some ideas might be to expand access to communication tools; some voluntary limits on campaign spending; inducements to voluntary limits; and if public funding is used, who should get it and what are the thresholds. He suggested City Council discuss the parameters of the committee and at the next worksession, Council be prepared to appoint the committee.

Council discussed their reasoning for two separate groups vs. one group to deal with both items.

Councilman Ellis felt that the election process should be changed to allow City Council members appoint the Mayor every two years, as was done several years ago.

Councilman Dunn questioned if district elections would cut down on campaign expenses. He also felt City Council should look at term limits.

Councilman Mumpower felt a Council sub-committee might be in order to explore this issue further before appointing a citizen study committee. That Council committee could report back to Council in 2-4 weeks.

Mayor Worley felt that a Council sub-committee could develop some parameters for the committee.

It was the consensus of Council that Mayor Worley appoint a 3-member Council sub-committee as quickly as possible in order to have a report from the citizen study committee this fall.

CIVIC CENTER UPDATE

Finance Director Bill Schaefer used the charts to describe the Civic Center's Fiscal Years 1979-2001 revenues, losses before transfer of monies from the General Fund, losses before transfer of monies from the General Fund in 2001 dollars, losses as percentage of revenue, transfer as percentage of General Fund revenue, revenues as percent of year to date budget, and expenditures as percent of year to date budget. He then used charts to describe the profit and loss by venue and the profit and loss by event type for July 2001 through January 31, 2002.

At 5:20 p.m., Mayor Worley announced a short break.

Civic Center Director David Pisha said that his report would cover Fiscal Years 1997-2001.

With regard to the Arena, there are two important phases in the history of the Civic Center (1) 1997-1998 before the Bi-Lo Center opened (attendance averaged 288,600 patrons per year); and (2) 1999-2001 after the Bi-Lo Center opened (attendance averaged 342,500 patrons per year). Using a chart, he showed the contribution of various major event types on annual Arena attendance. Family shows migrated to the Bi-Lo Center when it opened in 1999, however, that attendance loss was made up by ice-related events. It is important to note that attendance does not directly translate into profitable financial performance. Family shows saw attendance plunge from high of 68,800 in 1997 to low of 4,400 in 2001. Consumer/Trade shows followed the downward trend. Hockey, concerts, and public skating made up the difference in attendance and helped hold the overall patron at historic levels. While overall attendance held up, the events in the Arena were very different in the post Bi-Lo era as compared to the pre Bi-Lo period. The Arena is now primarily used for sporting events, public skating and consumer trade shows. The Arena is also seeing a return of rock concerts (1) this year all three concerts held in the Arena were sell-outs; and (2) we have a fourth concert scheduled which we expect to sell out. The Warren Haynes Concert: (1) sold tickets in 26 states and the District of Columbia; (2) Good Morning America called for information on the show; and (3) overall the concert produced gross revenues of nearly $75,000 for the Civic Center. It is important to remember that entertainment events will continue as long as the public supports them. Good financial performance is dependent on the number and type of events held at the facility.

With regard to the Thomas Wolfe Auditorium, it has not felt the impact of the Bi-Lo Center. These events are more localized in nature. The concerts are an eclectic mix with a ready market in Asheville in that (1) their success may not transfer as easily to another venue; and (2) the Auditorium is the perfect size. Using a chart, Mr. Pisha showed the concert activity is booming at the Civic Center, especially in the Auditorium. The total number of concerts in the Auditorium could reach 20 by the end of Fiscal Year 2002. Attendance at the Symphony and Bravo has remained flat over time and major growth is not expected. Attendance at special events and touring productions have declined, in that staging accommodations have long proven inadequate for Broadway productions and national touring productions could cease to be an event category. Concerts along with local events have been providing the attendance growth for the Auditorium. Their increases have allowed the overall patron numbers to remain flat rather than decline.

Regarding the overall Civic Center usage, the mix of events has changed over the years; however, attendance has remained about 300,000 attendees per year. Regarding the monthly attendance for Fiscal Year 2001, (1) there's a strong seasonal bias in the current space utilization as is indicated by the graph; (2) this bias is not expected to change in any significant way in the future; (3) non-use days are primarily concentrated in the summer months; and (4) most arenas experience this same seasonal bias.

The Center's current available space is being successfully utilized in that since November 2001 there have been only four non-use days at the Civic Center (Thanksgiving, Christmas Eve, Christmas Day and New Year's Day). The Arena, Auditorium and Exhibit Hall are primarily designed to hold events that occur in fall, winter and spring: (1) Basketball and hockey are fall, winter and spring events; (2) the Home and Boat Show are winter activities; (3) Symphony and Bravo are fall, winter and spring events; (4) most concerts are held indoors in the fall, winter and spring; and (5) in the summer most concerts play in outdoor amphitheatres.

He then explained the usage by venue. A functional Banquet Hall has the most potential for growth with the resulting reduction in non-use days. The current Banquet Hall is under utilized. An expanded, fully functional ballroom would have a seasonal bias different than the rest of the facility (1) it would primarily operate spring, summer and fall; (2) we would be able to shrink non-use day losses; (3) event load would smooth out for a more efficient operation; (4) local usage could rise substantially with wedding receptions, proms, banquets and other social activities; and (5) meetings and regional conventions could also use this space.

He reviewed the major current users. Potential future users include all the citizens, groups, institutions and companies of Western North Carolina for receptions, banquets, proms, meetings, regional conventions and many other activities requiring affordably priced professional, centrally located ballroom/meeting space.

In conclusion, Mr. Pisha said that the type of events using the Civic Center has changed drastically over time (1) the Bi-Lo Center has affected Arena usage; (2) public tastes have changed regarding entertainment; and (3) while the Center has tried to accommodate these changes, improvements are necessary to shrink non-use days and improve efficiency. It is important to remember that the number and type of events are both critical to the Center's financial outcome.

Mr. Schaefer and Mr. Pisha responded to several questions and comments from Council, some being, but are not limited to: what are expenses on non-use days; is there a lot of interaction between the Civic Center Director and the Civic Center Commission; if hockey or basketball left, what would be the overall effect on the Civic Center; have comparisons been performed to see what other Civic Center losses have been; does the Civic Center promote events; and what was the Bi-Lo contribution to the Bi-Lo Center.

Mr. Richard Bowman, Chairman of the Civic Center Commission, said that the Commission feels they can do something about the non-use days at the Civic Center. The Commission wishes to work closer with the Chamber of Commerce and the Chamber should actively participate in the Commission meetings. With improved communication, the Commission's requests and needs should be given a higher priority as we work to develop and make recommendations to the Civic Center Director, the City Manager and City Council regarding long-range plans for the Civic Center. There should be a contingency plan if hockey or basketball leave the Civic Center. There needs to be improved public relations by better informing the public of the Center's benefits to them as citizens.

Councilman Mumpower questioned if City Council has been asking the Commission for guidance or advise. Mr. Bowman responded yes. Councilman Mumpower disagreed in that he felt the Commission is severely underutilized. He felt the Commission should be included and asked to offer their opinion in any primary decisions affecting the Civic Center.

Ms. Laverne Laney and Mr. Paul Hornyak, Civic Center Commission members, asked City Council to devote a person solely to the Civic Center to solicit events.

Mr. Dan Wilhelm, representing the Asheville Smoke, said they were in a good position to finish the season and they wanted hockey to remain in Asheville for years to come.

UPDATE ON INFORMATION TECHNOLOGY

Information Services Director Larry Bopp and members of his staff updated City Council on five new applications that will serve residents: (1) Search City Council minutes; (2) utility billing Internet service; (3) Parks and Recreation on-line registration; (4) building permits on-line; and (5) community reporting. Future initiatives (which will require funding) include (1) determine flood zone conditions for properties; (2) apply for and pay for business licenses; (3) pay parking tickets; (4) access housing inspection reports; (5) access traffic accident reports; and (6) access map data sources (for architects, engineers, surveyors and government agencies.

BOARD AND COMMISSION REPORT

Vice-Mayor Bellamy, Chair of the Boards & Commissions Committee, gave a brief report on the School Board vacancy process. She presented City Council with an aggressive schedule to appoint a member to the School Board to fill Mark Gordon's unexpired term. After discussion, it was the consensus of Council to proceed with the schedule presented by Vice-Mayor Bellamy, and to not make it mandatory that School Board applicants must live in the Asheville School District.

At the request of Vice-Mayor Bellamy, it was the consensus of City Council to change the Film Commission membership from 15 to 13 members and instruct the City Attorney to prepare the proper ordinance amendment.

Vice-Mayor Bellamy said that with regard to the U.S. Citizenship issue, based on the information given to City Council from the City Attorney, they could not legally make any changes to the list, except to exclude the Asheville-Buncombe Community Relations Council and the Minority Business Commission.

Upon inquiry of Councilman Dunn, Mayor Worley said that this item will be scheduled for an upcoming agenda.

CLOSED SESSION

At 7:25 p.m., Councilman Mumpower moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 8:10 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 12, 2002 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTH OF MARCH 2002 AS "PROFESSIONAL SOCIAL WORK MONTH"

Mayor Worley read the proclamation proclaiming the month of March, 2002, as "Professional Social Work Month" in the City of Asheville. He presented the proclamation to Ms. Dotty Saxon and Ms. Tracy Carrington who briefed the Council on some activities that will take place during the month.

B. PRESENTATION OF USS ASHEVILLE MEMORABILIA

Mr. Ken Vasilik, Chairman of the Asheville USS Asheville Committee, gave a brief background of the PG-21. He said that a video of the memorial ceremony conducted by the SSN-758 has been given to the City. He concluded his presentation with reading the certificate from the SSN-758 commemorating the event, presenting it together with the duplicate wreath and photo plaque of the wreath in the water at the site superimposed with an image of the PG-21.

On behalf of City Council, Mayor Worley thanked Mr. Vasilik, Mr. Walter Ashe, LCDR Scott Maple of the USN Reserve Center, and the entire USS ASHEVILLE Committee for this memorabilia.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 26, 2002, AND THE WORKSESSION HELD ON MARCH 5, 2002

A. RESOLUTION NO. 02-39 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM DAMON ROUSE TO PURCHASE DISPOSAL PARCEL 146 ON LINCOLN STREET IN THE EAST END/VALLEY STREET COMMUNITY

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcel 146 in the East End/Valley Street Community to Damon Rouse in the amount of $3,200.

Disposal Parcel 146 is a substandard lot located on the north side of Lincoln Street comprising 3,659± square feet. The lot is irregular in shape and mostly flat about street level then sloping up sharply to the rear. The bid in the amount of $3,200 from Damon Rouse includes the proposal to combine the property with adjoining property currently owned by Mr. Rouse on Jordan Street.

On February 26, 2002, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 146. The advertisement ran in the Asheville Citizen-Times on March 1, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Damon Rouse in the amount of $3,200 was not upset and the sale to Damon Rouse should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 82

C. RESOLUTION NO. 02-40 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO BLACK MOUNTAIN

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System (City of Asheville) in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

In no event will the City of Asheville be required to contribute financially to this route. All financing will be provided by the State (maximum of $92, 708), the Town of Black Mountain ($13,360), Mountain Mobility ($5,000), and Fare Box Revenue ($3,882). The total budgeted cost is $114,950. The City of Asheville is specifically exempted from any liability towards operating costs. If funds budgeted are not sufficient, the operation will either be additionally funded by some combination of the above, or it will be terminated. The City of Asheville will not be liable for any additional cost of operation under this contract.

The contract has a period of performance of 14 months - from March 1, 2002, through May 1, 2003. During that time, the Asheville Transit System must provide 12 consecutive months of service, within the above financial constraints.

The NC DOT requires the Mayor to sign the contract for this service, and will then return a copy signed by the state Secretary of Transportation. Commencement of service is contingent upon receiving this signed contract from the NC DOT. Service will start as soon as possible after receipt of the fully executed contract.

Black Mountain will be served four times a day, six days a week, except for holidays during which the transit system does not operate. Thus, Black Mountain will be served 306 days during the twelve-month period.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 - PAGE 83

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D. **RESOLUTION NO. 02-41 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON GALAX AVENUE**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Galax Avenue in the West Asheville community.

Michael A. Pressley submitted a bid in the amount of $25,800 for the purchase of land on Galax Avenue in the West Asheville Community. Said bid is not less than the tax appraisal of $25,800.

The land on Galax Avenue is a residential zoned lot beyond the end of the street improvements of Galax Avenue. Said lot is 0.94 acre. The bid from Michael A. Pressley includes the proposal to combine the property with adjacent property he owns and construct nine units of affordable housing on the property. Mr. Pressley's project has been recommended for a Housing Trust Fund Loan and is consistent with the policy of encouraging infill development.

The property was designated as surplus property in 1997 and has been available for sale since that time.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 84

E. **RESOLUTION NO. 02-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO ASSIST WITH THE DEVELOPMENT OF AZALEA ROAD PARK PHASE I**

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road in east Asheville. If this grant is received, the funds will be used to assist with the construction of the first phase of the Park. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise $3 million to build the first phase of the Park.

The Parks and Recreation Department is requesting $500,000 in grant funds from the Land, Water and Conservation Fund, which requires a 50% cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation via the John B. Lewis Family Foundation, and the in-kind match is available in labor, equipment, and project management in the Parks and Recreation Department.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds to assist with the construction of Azalea Road Park Phase I.

RESOLUTION BOOK NO. 27 – PAGE 85

F. RESOLUTION NO. 02-43 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "MYRA PLACE" OFF EAST STARNES COVE ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Myra Place."

Dave Ball, owner of lots in Maple Grove Subdivision, has petitioned the City of Asheville to accept the street name " Myra Place." The new street will begin at East Starnes Cove Road and end at cul-de-sac on Myra Place.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 86

G. RESOLUTION NO. 02-44 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO LEASE SPACE AT 45 WALL STREET TO THE ASHEVILLE PERFORMING ARTS ALLIANCE

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed lease with the Asheville Performing Arts Alliance for space at 45 Wall Street.

The property at 45 Wall Street is located in the Wall Street Parking Garage owned by the City of Asheville. The City has previously leased the space, but currently the space is vacant.

The Asheville Performing Arts Alliance (APAA) has offered to enter into a lease for the space. The proposed lease will enable APAA to operate offices and a small performing theater at the site. There is a provision which allows either the Lessor or the Lessee to terminate the agreement upon 180 days notice. The term of the License Agreement will be 9 years and 11 months. APAA will pay rent in the amount of $1,050 for the first six years the rent will increase annually thereafter based on the Consumer Price Index compared to the date the lease originated. In addition to the rent, APAA will up-fit the space at its own expense.

Approval of the resolution will authorize the City Clerk to publish a Notice of Intent to enter into the Lease.

Finance Department and Planning Department staffs recommend adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 87

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

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III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE FLOODPLAIN REGULATIONS

ORDINANCE NO. 2902 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDIANNCE REGARDING REVISIONS TO THE FLOODPLAIN REGULATIONS

Mayor Worley opened the public hearing at 5:21 p.m.

Ms. Natalie Berry, Stormwater/Erosion Control Coordinator said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) regarding floodplain regulations. This public hearing was advertised on March 1 and 8, 2002.

Below are the recommended amendments to the City's flood control standards. All of the revisions are housekeeping in nature.

- Revising the ordinance to give the City Engineer authority to enforce this section of the UDO in place of the Planning and Development Director, adding a few definitions, amending a few definitions and changing the name of the Erosion Control Review Committee to Specifications Review Committee.
- Expanding the duties of the Specifications Review Committee to be able to interpret and make recommendations on variances to the flood ordinance to the Board of Adjustment, leaving final authority vested in the Board of Adjustment.
- Delete the paragraph entitled "exemptions" out of the flood ordinance. The National Flood Insurance Program Western Coordinator recommends the deletion due to non-compliance with Federal Emergency Management Agency (FEMA) regulations.
- Adding an option under the unnumbered "A" zone section. When the base flood elevation (BFE) is not known this is known as an unnumbered "A" zone. A structure may be constructed if the lowest finished floor is built at least three (3) feet above the highest adjacent grade. This option will help the property owner(s) who could not afford to hire a professional engineer to do a flood study to determine the base flood elevation (BFE).
- Remove wet flood proofing option "c" under the flood proofing heading in Section 7-12-1(i)(2). The National Flood Insurance Program Western Coordinator recommends the removal of this option for the City of Asheville's UDO. This is not an option under FEMA model ordinance. A property owner can still use this option if they apply for a variance with the Board of Adjustment and follow strict guidelines.
- Include the flood ordinance under the enforcement and penalties for civil penalties when violations occur - $100.00 per day for each day the violation continues.

The Planning and Zoning Commission voted 6 to 1 to recommend approval of the proposed ordinance amendment. The opposing vote was due to the changes in no longer allowing wet flood proofing on structures in the floodway.

Staff recommends that City Council adopt the proposed amendments to the Floodplain Regulations of the Unified Development Ordinance.

Dr. Ned Guttman, representing Coalition of Asheville Neighborhoods, commented on the major issues regarding floodplain management that this ordinance does not address. He felt the Task Force was created to modify the ordinance so that adequate flood protection could be afforded to the community, but this ordinance does not address that. He briefed Council on the several suggestions he made as a member of the Task Force, but staff ignored. He said that City staff does not have the specialized training to approach these issues. He stressed that City Council is responsible for floodplain management in Asheville.

When Mayor Worley asked Dr. Guttman if he agreed with the ordinance with regard to housekeeping issues. Dr. Guttman replied he did, however, he stressed that in the definition section for historic structures, the ordinance only refers to national and state listings - nothing about local historic sites or sites under formal study. That should be included in the proposed ordinance.

Ms. Berry said that she did take into consideration all comments from the Task Force. With regard to the definition for historic structures that Dr. Guttman noted, she said that she intended to include that in the ordinance and it was her omission. She agreed that should be added as well.

City Engineer Cathy Ball responded to the comments from Dr. Guttman. She stressed that staff considered all comments from the Task Force, appreciated their feedback and respected their opinions. However, there is a balance between trying to keep the community safe and being able to have property that can be developed. We do have an ordinance that does meet federal requirements and when we look at stricter regulations, our property becomes unable to be developed, especially on the riverfront. Again, they did have to balance the ability to develop in the area vs. stricter compliance.

Ms. Ball responded to several questions Vice-Mayor Bellamy raised. She explained that the role of the committee was to review the ordinance and make recommendations.

Mr. Guttman said that what he is proposing would not restrict development. Basically, what he asked for was to provide information to the community to be able to judge whether or not there is a flood hazard.

Mr. Marvin Slosman, member of the Task Force, supported the ordinance in that this is an example where the program is in compliance and it works for the community and developers. The ordinance is not so burdensome that it doesn't allow progress.

Ms. Margaret Shook, Crowfields resident, said that each year there are new developments and the increased resulting Stormwater velocity are causing three creeks, Pebble Creek, Dingle Creek and Turtle Creek, to jeopardize personal safety, create road hazards, plus greater and greater damage to properties contiguous to these creek's entire waterways. In every area of Asheville there will continue to be a growing problem of flash flooding of streets, properties and inadequate floodplain areas – all going hand-in-hand with rapid development construction without an impact study to the downstream areas. Please consider including the amendment for new development construction to provide a stormwater impact study before "City approval" to build within all Asheville watersheds impacted with rapid development including the extremely fragile Busbee Mountain Watershed.

Mr. Don Yelton, property owner, said that vacant property, undeveloped, serves as a way to soak up water and has value to the taxpayer. He encouraged Council to consider looking at stormwater and run-off together.

Mayor Worley closed the public hearing at 6:04 p.m.

Councilman Peterson felt the City does need to look at going beyond the minimum requirements and encouraged the City Engineer to seriously look at that issue. He hoped that staff would look at some of the ideas Dr. Guttman suggested with stricter standards.

Vice-Mayor Bellamy suggested the Task Force continue to meet to address some of the specific concerns brought up today and report back to Council in about six months.

Councilman Mumpower felt that if the City was going to use the services of a Task Force, they should take their recommendations seriously. He suggested that in the future there be a larger presence of Task Force members so City Council can get their opinions.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2902, with the addition of adding a subsection to the definition of historic structure to include locally designated historic structures. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE [redacted] 426

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ARTIST'S STUDIOS AND WORKSHOPS AS HOME OCCUPATIONS IN RESIDENTIAL DISTRICTS AND TO ESTABLISH STANDARDS FOR THESE USES

ORDINANCE NO. 2903 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY ARTIST'S STUDIOS AND WORKSHOPS AS HOME OCCUPATIONS IN RESIDENTIAL DISTRICTS AND TO ESTABLISH STANDARDS FOR THESE USES

Mayor Worley opened the public hearing at 6:08 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance to identify artist's studios and workshops as home occupations in residential districts and to establish standards for these uses. This public hearing was advertised on March 1 and 8, 2002.

The Planning and Zoning Commission is recommending adoption of an amendment to the City's zoning standards to identify artist's studios and workshops as home occupations and to establish standards for these uses. Home occupations are currently permitted in all residential districts and although many artists have studios or workshops in their homes, these uses are not specifically identified in the City's zoning code. As a result of the City of Asheville's popularity as an arts center, the number of artist's studios and workshops located in residential areas will continue to increase. Artist's studios and workshops often require more space than traditional home occupations due to the need to store materials and for larger work areas. The proposed amendment addresses this need by allowing artist's studios and workshops to be larger than other home occupations. In order to protect adjacent residential uses from potential adverse impacts of artist's studios and workshops, a larger lot size is required for larger studios and workshops. Larger studios and workshops, when constructed as a separate building, must be setback a greater distance from the property lines. The studios and workshops must also adhere to the other standards for home occupations set forth in the City's zoning ordinance. These standards address:

- The display of goods and products as well as other advertising;
- Prohibition on retail sales from the home;
- Restriction on uses that create odor, noise, glare, etc.; and
- Standards for signs and parking.

Staff worked with a group of artists and craftspeople in developing the standards set forth in the draft ordinance amendment. No comments in opposition to the proposed revisions have been received.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mayor Worley closed the public hearing at 6:10 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2903. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE [redacted] 435

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REVISIONS TO THE SIDEWALK REGULATIONS

ORDINANCE NO. 2904 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDIANNCE REGARDING REVISIONS TO THE SIDEWALK REGULATIONS

RESOLUTION NO. 02-45- RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Worley opened the public hearing at 6:11 p.m.

City Engineer Cathy Ball said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) related sidewalk regulations. This public hearing was advertised on March 1 and 8, 2002.

In May of 1997, sidewalks requirements were adopted as part of the final adoption of the UDO. In March of 2000, the sidewalk requirements were revised to include the provisions for allowing a "fee in lieu of" constructing sidewalks under certain conditions.

In 2000, staff began working with the development community to review the conditions for allowing a fee in lieu of constructing sidewalks. This group consisted of developers, affordable housing advocates and staff. The group agreed that some additional changes needed to be made in the sidewalk requirements (Section 7-11-17) for the following reasons:

- The group had concerns regarding the fact that the ordinance did not have an exemption for properties that had low pedestrian impact and were on relatively low vehicular volume streets.
- The development community, while not happy to pay additional costs of sidewalks, supported paying the fee in lieu of constructing the sidewalk so long as the money was used to install sidewalks in places where it was needed. Developers requested more flexibility in being able to pay the fee in lieu of constructing the sidewalk.
- Staff was concerned about maintenance issues that would arise from having sidewalks installed piecemeal. This means that the sidewalks would age at varying degrees and

need to be replaced at different times, thus increasing the maintenance and replacement costs.

- The development community requested that a more expedient appeal process be developed. Currently they are required to go to City Council for a waiver to the sidewalk requirements.
- The group requested that clarification be made as it relates to sidewalk requirements on private and public streets.

As a result of these concerns, staff began exploring ways of improving the sidewalk requirements. The revisions that you are being asked to approve include most of the concerns of the task force.

The revisions include the following changes:

- Establishing a threshold for requiring sidewalks or a fee in lieu of constructing sidewalks. We recommend that this threshold be 300 Average Daily Traffic (ADT) volume currently or projected for the next 5 years. (Provided the street is not listed on the Pedestrian Thoroughfare Plan.)
- Requiring sidewalks to be constructed on all new and improved streets. A large cost of the sidewalk includes mobilization and grading. When a street is being constructed or reconstructed, the mobilization and grading for the sidewalk can occur in conjunction with the roadway.
- Allowing developers to pay the fee in lieu of constructing the sidewalk unless the sidewalk is on the Pedestrian Thoroughfare Plan.
- Providing for an appeal process that allows the develop to appeal to a committee consisting of the City Manager, or his designee, and two other Department Directors, excluding the City Engineer.
- Clarifying that public and private streets have the same requirements with regard to sidewalks.

In addition, an amendment to the Fees and Charges Manual is requested. She said the amendment would be to add the following sentence: "In the event that a fee is allowed for an economic development project, the developer will be allowed to pay 50% of the fee, provided that the project is eligible for the City of Asheville Economic Development Incentive Grant as defined by the City of Asheville Economic Development Incentive Policy and administered by the Economic Development Director."

Nothing in the revised ordinance would prohibit a developer from installing sidewalk as opposed to paying the fee in lieu of constructing the sidewalk. The developer always has the option of installing the sidewalk adjacent to their project.

The Planning and Zoning Commission approved the revisions to the sidewalk regulations on February 6, 2002. The approval vote was unanimous with the following two suggested changes:

(1) Allow the developer to pay the fee in lieu of constructing sidewalk if the sidewalk is listed on the Pedestrian Thoroughfare Plan so long as the project is on a N. C. Dept. of Transportation or City of Asheville funded project.
(2) Request an easement from the developer for future sidewalk installation even if they are exempt from installing the sidewalk or paying the fee in lieu of constructing the sidewalk.

Staff presented the concept of this proposal at the Development Issues Forum in September 2001 and at the February meeting of the Council of Independent Business Owners. Both groups had a favorable response to the revisions.

Staff requests that City Council adopt the revisions to Section 7-11-7 of the Unified Development Ordinance related to sidewalk regulations and adoption of the amendment to the Fees and Charges Manual.

Upon inquiry of Councilman Dunn, Ms. Ball explained how the $20 per linear feet was derived, noting that the City feels that amount is very fair.

After responding to several questions from Councilman Peterson, Ms. Ball said that the City is in the process of updating the Pedestrian Thoroughfare Plan and it should be brought before Council in approximately six months.

Mayor Worley noted that one of the uses in the fee in lieu of provisions is to allow us to construct sidewalks in other areas where they are identified.

Upon inquiry of Councilman Mumpower, Ms. Ball said that this ordinance will allow more flexibility in working with developers and it also provides the necessary linkages that we need in the City.

Mayor Worley closed the public hearing at 6:28 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and resolution and they would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2904. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Peterson stressed that we need to require sidewalks and hoped that City staff will exercise proper discretion where sidewalks should be installed. Even though it looks like we are requiring "sidewalks to nowhere," those need to be built now so development in the future doesn't balk at installing their portion of the sidewalk.

ORDINANCE BOOK NO. 19 – PAGE 438

Councilman Mumpower moved for the adoption of Resolution No. 02-45. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 88

B. PUBLIC HEARING TO CONSIDER THE SALE OF 9-13 BILTMORE AVENUE

RESOLUTION NO. 02-46 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM THE ASHEVILLE AREA ARTS COUNCIL TO PURCHASE 9-13 BILTMORE AVENUE (MINUS THE AIR RIGHTS OVER THE REAR PARKING LOT)

Mayor Worley opened the public hearing at 6:30 p.m.

Field Services Coordinator Ed Vess said that this is the consideration of a resolution authorizing the Mayor to convey 9-13 Biltmore Avenue (minus the air rights over the rear parking lot) to the Asheville Area Arts Council in the amount of $462,500.

On February 26, 2002, City Council scheduled a public hearing for March 12, 2002, and directed the City Clerk to publish a notice of said public hearing in connection with a proposal from the Asheville Area Arts Council to purchase 9-13 Biltmore Avenue (PIN No. 9649.18-40-1091), minus the air rights over the parking lot on South Lexington Avenue, for the sum of $462,500. The notice ran in the Asheville Citizen-Times on March 1 and 8, 2002, as provided in N. C. Gen. Stat. sec. 160A-475 (4).

Mr. Vess said this property is located 125 south of Pack Square. The property was acquired in 1985 as part of the Pack Square Redevelopment Project. It was leased to the Arts Council in 1987 and they invested about $100,000 in the property in return for reduced rent. He said that the City does have a bid in hand for the air rights, which will be coming before Council in their next worksession. The Arts Council has proposed to purchase the property using a cash payment of $399,000 and financing from the City in the amount of $123,500. The Arts Council proposal equals the appraised value for the property (minus the air rights). Their investment in, and presence on, Biltmore Avenue has contributed to the redevelopment of the area. Their presence on Biltmore Avenue is consistent with, and complimentary to, the present development in that area and will continue to be an asset for that area in the foreseeable future.

Staff recommends acceptance of the Art Council's bid and that evidence of financing be required within 60 days of the acceptance.

Upon inquiry of Mr. Walter Plaue, Mr. Vess said that the Arts Council will be using a portion of the property to generate income and they will be required to pay taxes on it.

Mr. George Saenger, Chairman of the Arts Council, said that this would allow them to expand their arts and education program in addition to providing a headquarters for the Urban Trail.

Mayor Worley closed the public hearing at 6:38 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 02-46. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 90

At 6:40 p.m., Mayor Worley announced a short break.

IV. UNFINISHED BUSINESS:

A. DISCUSSION OF AMENDMENT TO CITY COUNCIL POLICY ON RULES FOR BOARDS AND COMMISSIONS REGARDING U.S. CITIZENSHIP AS A QUALIFICATION FOR APPOINTMENT

Vice-Mayor Bellamy, Chair of the Council Boards & Commissions Committee, said that the issue regarding U.S. Citizenship as a qualification for appointment to a board or commission was remanded to this Committee. Their charge was to tweak the list received from the City Attorney of boards and commissions having some degree of independence or autonomy. Those boards include the Airport Authority, the ABC Board, the Board of Adjustment, the Civil Service Board, the Historic Resources Commission (HRC), the Metropolitan Sewerage District, the Planning & Zoning Commission, the Regional Water Authority, the School Board, the Tourism Development Authority (TDA) and the WNC Air Quality Board. This list represents 11 out of the 35 boards the City makes appointments to.

Councilman Mumpower, member of the Committee, also stated that there was an original unanimous vote in favor of requiring citizenship for boards and commission that make decisions for citizens. He said the Committee did not vote in favor of requiring citizenship of advisory boards.

Vice-Mayor Bellamy confirmed Councilman Mumpower's statement that the Committee originally made the recommendation that governing and policy-making boards were the ones they recommended U.S. Citizenship.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the 11 boards perform a governmental function; the chief criterion used to identify those boards was whether they had the power to consider and determine the rights of others in a way that could be final, without recourse to the City Council or some other City board. In his follow-up memorandum to Council dated February 19, 2002, he recommended the HRC be removed from consideration for application of the citizenship requirement because its decisions are appealable to the Board of Adjustment. That recommendation stands to be consistent with the other boards. Also in his memorandum, he recommended the TDA be removed because its function is only marginally political in the sense that it is important for purposes of the law, and because legal aliens play an important role in the local tourism industry. With regard to the TDA, he would leave that up to Council's discretion to keep it on the list or remove it.

When Councilman Peterson asked why the Planning & Zoning Commission was included on his list, City Attorney Oast said that they have final approval authority with respect to some subdivisions and under statute they can perform some of the functions of the Board of Adjustment, if Council assigns those functions to them.

When Councilman Peterson asked if wording on the proposed amendment had been drafted, Vice-Mayor Bellamy said that City Attorney Oast would draft that amendment based on Council's direction tonight.

Upon inquiry of Councilwoman Jones, City Attorney Oast said that some of the 11 boards Vice-Mayor Bellamy named have other bodies making appointments to those same boards and they are free to establish their own qualifications for appointment.

Councilman Mumpower said that since the February 19, 2002, privileged and confidential memorandum from City Attorney Oast to City Council is the only written material before Council for discussion and is therefore their working document, Mayor Worley asked for a motion that authorized the release of this privileged memorandum. This motion was seconded by Councilman Mumpower and carried unanimously.

The following individuals spoke in favor of amending the City Council policy on Rules for Boards and Commission to require U.S. Citizenship as a qualification for appointment to boards and commissions:

Ms. Helen Morrison, City resident
Mr. Walter Plaue, Buncombe County resident
Mr. Zed Mackey, City of Asheville property owner
Mr. Terry Elniff, City resident
Mr. Robert Grant, Veteran
Mr. Danny Roberts, City resident
Mr. Don Yelton, City taxpayer
Mr. Chad Nesbitt
Mr. Cecil Beumer, City resident
Mr. Bill Stamey, City resident
Mr. Tom Glanville, City resident
Ms. Mary Glanville, City resident

The following individuals spoke in opposition of amending the City Council policy on Rules for Boards and Commission to require U.S. Citizenship as a qualification for appointment to boards and commissions:

Mr. Bud Howell, City resident
Ms. Pauline Kaltsunis, member on the Greenway Commission
Ms. Hazel Fobes, City resident
Ms. Sharon Martin, City resident
Ms. Rebecca Campbell, City resident
Mr. Robert Fitch, City resident
Mr. Peter Salvucci
Mr. John Gaynor, City resident
Mr. Willie Rosencrans, City resident
Ms. Allie Morris, City resident

Councilman Dunn said that he raised this issue and it had nothing to do with fear or the terrorist attack on September 11, 2001. He felt that "our founding fathers would be happy to see everyone in this room upset and wanting to take care of minorities. In 1776 a lot of people decided they were tired of being told what to do by someone across the ocean. It's called self-determination. That is what the revolutionary war was all about – self-determination. This is not an issue – it's a principle. This country has gotten to the point where it wants to be fuzzy and feel-good and it's forgotten some of the principles on which it was founded. Self-determination was one of them. The newspapers, the Asheville Citizen-Times and the Mountain Xpress love to express their attitudes. This time I think they are wrong. Their own polls showed over 400 people wanted to see this change. Only 20 said they didn't want to. I heard the comment about a lot of hurt people in this City. I think you will hurt an awful lot of people if you don't vote for this. I have been sitting here listing to the press and have been reading the Letters to the Editors for about two months. People ask me why I brought this up. I did not bring this up to attack a member who was on the Board of Adjustment. I never really attacked him personally. I attacked the principle. Why did I bring it up? I felt the people in Asheville needed to know about it. A lot of them did not know that this is a policy that we have been doing for a long time. We have a politically correct country now and sooner or later we are going to have to start thinking about the basics on what this country was founded on. This policy discriminates. There are people on this Council and others who do not like discrimination and I don't either. This policy, if we don't pass it, discriminates on people who are U.S. citizens. They have lived here, worked here and pay their taxes and they can't be on a board. This is discrimination when we are allowing and worrying about a handful of people who can become a citizen and be working on everything we hold dear. Then what is the problem? We are taking about a few years to become a citizen. Is that asking too much? We all stood up and said the Pledge of Allegiance to the flag. We put our hands across our hearts and said "I pledge allegiance to the flag of the United States of America." We weren't talking about the 'United Nations.' We were talking about the 'United States of

America.' 'One nation under God.' It's not talking about a bunch of nations – it's talking about "one nation", our nation. There are hundreds of thousands of American people who have given their lives to keep this country the way it is. We are taking God out of it too. 'One nation under God.' God sure doesn't seem to have much of a place anymore in this country and we seem to be too worried about a lot of other things. Talk is cheap. Go over to Normandy, France, and you look at those dead Americans that came across on the Normandy invasion. I'd like you to ask them what they thought about this. They would tell you they didn't storm ashore to get their heads shot off for someone who doesn't belong to this country and is going to make decisions for them. The soldiers that defended this country from 1776 to Afghanistan do know what is involved here. Go ask them. You have heard some things about we want the best folks in Asheville to be on our boards. I do too. I want Asheville to be the best it can be. But this is an elitist idea because of the fact that we put Asheville's needs way above what that flag stands for – citizenship. Where do we get off on thinking Asheville is more important than what this country was founded on. You will also hear that this is not a big deal, not a big issue – that Council can change it anytime they want to. And that's true. It can be changed. But, it's a principle. When are we going to start taking a stand on things and how much more are we going to give away in this nation that we haven't already given away. Before you know it, there's not going to be anything left to give away. Property rights, family issues, family values – they don't seem to have as much of an issue now as it used to be. I've heard that a lot of people are going to be hurt. I think if this isn't passed, there are going to be a lot of citizens in Asheville very upset. It's not like we're banning people from these boards. We have 38 of them in the City and we're only talking about 11. We're not trying to keep people from having a say-so. They can walk up here and stand at the podium and say anything they want to say. They can go to church. They are protected under our Constitution for everything so why are we so worried about this one little issue. You're right. We have other things in the City more important. I am proud of the people that came up here. These veterans. Those folks in the USS Asheville who we just heard about that died in World War II. Let's think about what they did, what their sacrifices have been. One man made a comment about what is so significant about a piece of paper. I'll tell you - it's called citizenship and you go ask our veterans what they paid the price for. They may give you a different answer than what significance really is. Significance is that they gave their lives to defend this country and that's darn significant. I've heard we are not really serving the needs of the residents of Asheville. Where is Asheville? It's in the United States of America. I don't think this is divisive. I think if we don't vote for this, it's going to divide the City a little more. Again, what is so difficult about being a citizen? What is so bad about this? What is so wrong for someone to just simply raise their right hand, learn what the Constitution is and join the rest of us – all of us in this room. We welcome them, but let's draw the line in the sand somewhere. If we don't draw the line in the sand somewhere, we're not going to have anything left. I was asked to apologize to this Council and to this City for my issues. I'll never apologize to anyone for what I've said. And I will say one more thing 'God Bless America.'"

Councilman Mumpower felt that all things should be discussed. He said we have worked out a compromise. "When thing first landed on the table, it was no non-citizens on any boards or commissions. We narrowed that down by 1/3 to what to some of us is the core of the issue. Roughly 20 of our boards are advisory boards and a non-citizen can serve on those. My personal belief is that those who have governmental authority over citizens should in fact be citizens. I have trouble looking beyond that. Somewhere between disenfranchising minorities and disenfranchising majorities is a middle ground. We are not going to support minority issues by disenfranchising our majority. We have to work together. I think this is an imperfect effort to move in that direction. We are a community of standards that has worked well for the most part. Some of us are interested in validating and improving that community and hesitant to support the drift toward, what we view, is a less constructive course. I think we didn't spend a lot of time on this and I'm sorry it's become divisive but I've been proud of this Council's effort to try to find a reasonable, practicable place to land on. I frankly, do not think that this will contribute to the devicenes in the community. Whether we wished it would have come up this way or not, it has, and I've enjoyed the opportunity to work with these folks and find a good place to land."

Councilman Peterson felt this issue "has gotten sidetracked by a lot of symbolic and divisive issues. I think we've got 500 to 1,000 people on boards and commissions and we've had probably one non-citizen. We probably may not have another one apply for another 10 years, but it's a very symbolic issue and a hot button issue. I know folks feel very strongly about it. I hoped this Council would focus on more practical matters we face and significant problems, but symbolic issues are hard to get away with once they've been opened up. There was a lot of criticism that the prior Council spent too much time on issues that weren't affecting folks on a daily basis. I also think that if this is adopted, we're going to have lawsuits and we've going to waste a lot of money. Our attorney has informed us that these kinds of issues frequently attract costly lawsuits. So, the issue is, if we adopt this policy, are we going to lay off a fireman or layoff a policeman to defend against it. Because, we all know, Asheville is the kind of City that attracts an awful lot of lawsuits. I just wish we could focus on more practical issues and we could actually solve some of the City's problems that we actually deal with on a regular everyday basis. I also think it sends a message. Some of the comments are about we don't like aliens making decisions for us. In Sunday's paper I saw where French company was looking to bring several hundred jobs here. Volvo, Square D - I think we are potentially sending those folks a message saying we don't want your jobs here because we don't like people in foreign countries or even foreigners living here telling us what to do. I think that if we're going to adopt a policy, I don't see the distinction between some of the boards. They are all very important boards and commissions."

Councilwoman Jones said she "was grateful for the subcommittee's work on moving towards a compromise. I think when I first heard this discussion I thought the compromise would be a much more limited body. From some people's perspective, 1/3 is a small number. In my perspective, it's a large number. I think I do want us to continue to have that type of dialogue and try to come together. I do believe that how we go outside these doors, whatever happens on either side – I think it's our choice how much we separate from each other. It's our choice how hurt we are. And that's going to be a choice I personally make, one way or the other." She said in Councilman Mumpower's prayer, it was a call to see the best in others. "I think that I believe that everybody on this table is struggling through that. It's unfortunate that we are not going to have the same vote, but it is belief that's where we are all coming from – to see the best in others. The thing that made me so sad after September 11, regardless of how you felt about the comments that were made, was that all around the country communities were coming together. They were embracing each other and holding each other's hands and crying on each other's shoulders. We somehow managed to make each other made. At that moment, we should have been united nationally. So it's our choice whether we hear this one way or the other. I do hope we can go forward like that. I do think this opens us up for legal issues and anybody that was on the campaign trail knows that I really hate litigation and any way that we can cut it off at the pass, we have a good stewardship to the City to try to do that. That's my personal belief and part of the frustration that I express. I really want to understand legal matters to protect the City's resources down the line. That's a huge concern for me - the legality of it. In terms of the founding fathers and founding mothers, I think self-determination is a big part. And I think part of what we need to do is to be able to vote our conscious. If you vote your conscious, you might get voted out of office. That's okay. That's about being a public official with integrity, with conscious. I think on either side of the fence is that what you probably want at the end of the day. You want somebody with a conscious that is working from a place of integrity. I hope everybody can be open to all seven of us in that regard. I'm not saying you have to vote for all of us, but understand where we are coming from."

Vice-Mayor Bellamy said as Chair of the Boards and Commissions Committee we were presented with an awesome task of deciding on what boards and what commissions we could possibly comply with the request regarding U.S. citizenship. "There are 35 boards that the City actually appoints to. Of those 36 boards, 206 people are appointed by the City of Asheville. That is not counting the ones who are appointed by other entities – just the ones that solely are appointed by this City Council. The seven of us being up here represent 69,739 citizens and in that process we don't always go with everyone's views. Because there are close to 70,000 people in our City, we are asked to make decisions on behalf of them every other Tuesday, and sometimes every Tuesday. In the process of decision-making, some decisions that we make, everyone doesn't agree with and some decisions we make, some people do agree with. Someone told City Council 'it's your job to counsel the people.' Then tonight someone came in and said we're serving all the residents of the City of Asheville. That means that some of the citizens who we serve may be in the minority and some may be in the majority in decision-making processes. It's important tonight that as we cast our vote that everyone understands there are some people in our community who believe in whatever way that we choose to vote tonight, that there are people who believe in either non-citizens, or all citizens. So it's important that as we have this awesome task to make these decisions, that we do represent all citizens and all citizens don't agree with some of the people who come before you and stand. We get e-mails, faxes, phone calls, and we go out and talk to people – we just don't stay in the ivory tower. We believe in grassroots efforts and in talking and communicating. Carl will even invite you for breakfast – he even pays for it. What I'm trying to say is we reach out and so it's imperative that you hear where we're coming from and hear the hearts of this Council that we are here to serve you. And that the decision that we make is not based on people who come just before us today or just before us in the moment. It's about decision-makings and hearing people at all times – in the grocery stores, in the car wash, the cleaners, the day-cares, it doesn't matter. We're here for you. So as we make our decisions tonight, please keep that in mind."

Councilman Ellis said that he is a veteran, having served four years during the Korean War and so he does come from that perspective. "Asheville is facing many serious challenges tonight and to spend time debating whether a taxpaying resident of Asheville or Buncombe County must be a citizen to voluntarily contribute their time, talents and efforts to improve our lives is at best questionable. Earlier this year, Council authorized adding a question about citizenship to every application for any board or commission. On an individual basis, along with all other qualifications, I feel the applicant's citizenship can be considered. I have serious reservations about approving a policy that prohibits qualified city and county residents from serving based solely on that one qualification. I have a few examples to share. We are blessed to have the world headquarters for Volvo International in Asheville. Volvo is a Swedish company and if the president of Volvo is willing to serve on our Economic Development Board and try to encourage additional European companies to locate here, that individual has my vote to serve. Some in this room may remember when American Enka employed over 5,000 area residents. Enka was owned and built by a company from the Netherlands. We welcomed their investment in our community. Similarly, Akzona, the corporate giant that built their world headquarters in downtown Asheville was owned by a Danish company. Would we exclude an official from that company from serving on one of our boards or commissions? We want and need jobs in Asheville. If we approve this policy, what message are we sending to companies like BMW, Michelin and hundreds of others regarding locating their companies in Asheville. I have heard it said that anyone not supporting the citizenship requirement is not patriotic and un-American. I feel differently. To tell the world we will not welcome foreign companies and jobs to Asheville along with the participation of their company officials is shortsighted. Americans pride ourselves on being inclusive not exclusive. Let me repeat, I feel by adding the citizenship question to the application form, this Council has already taken all the action necessary and I cannot support the proposal that citizenship is mandatory. In addition, it has brought up that we truly have a potential legal problem and I'm simply not willing to vote for something that will put the citizens of this City at risk for money that is just totally being wasted."

Upon inquiry of Councilman Dunn, City Attorney Oast said his reading of the cases that he has looked at suggest that there is a political function exception to the strict scrutiny test that may apply in situations involving appointments to boards and commissions that exercise some degree of authority and final, in the sense of administrative finality, over folks who are citizens. That really does draw from the recognized principles of self-determination. What he provided Council with is a list of boards and commissions with respect to which he felt the policy would be legally defensible. He couldn't guarantee that the City would win if we were sued and he couldn't guarantee that the City wouldn't get sued. The best he could do is to put the City in a position of legal defensibility.

City Attorney Oast concurred with Councilman Peterson's statement that other cities have been sued over issues similar to this and potentially have gone to not just Superior Court, but courts of appeals and supreme courts. However, he said he didn't think this issue has been addressed by appellate court in North Carolina.

When Councilman Mumpower asked if there have been successful suits filed against policy changes similar to this, City Attorney Oast said there have been cases that have recognized that legal aliens have certain rights of citizenship, even though they are not citizens. Where a governing body has taken some action to limit those rights, such as by service like this, there have been, in some cases, successful lawsuits. He didn't remember a case exactly on point with what City Council is proposing now.

Vice-Mayor Bellamy asked if the question on our application form of whether you are a U.S. Citizen or not is discrimination. She doesn't want the City to be in a position of having something on the application form and then still exclude people based on what is on the form. She would prefer the question not be on the form. She wanted it to be clear to people when they apply for a board. City Attorney Oast said that the key thing he would caution Council about is adopting a policy that is a blanket exclusion of non-citizens from all boards. He felt the citizenship question is an appropriate question to ask.

Councilman Dunn agreed with Vice-Mayor Bellamy in that we will discriminate against a lot of people who are citizens of this country. He was more worried about what they think than even our good friends who come over and bring business. These people came to this country to bring business to the City because they know this is the fairest and greatest, most economically healthy nation in the world. That's why they came. He doesn't think we will scare anybody off by changing this policy. When they come, they realize there are a few rules we have to follow. He didn't think that's sending a bad message.

Mayor Worley said that "based on the way this Council and past Councils have done business, this issue has no significance. Let me explain what I mean. First of all, it has significance. It has significance to each one of you who have come and spoken for or against the issue. But what is that significance based on? It's based on a feeling. It's based, perhaps for many of you, on the waive of patriotism that is sweeping our nation – and we should be patriotic. We have every reason in the world to be patriotic. For some of you the significance is based on the fear of discrimination. Discrimination against a class of people who are amongst us and who contribute to us in many, many ways. So yes, it has significance, but in the context of the way this Council and the past Councils have done business, it has no significance, because it is a policy decision. It is a policy that no matter what we do in terms of that policy, we can do something different immediately thereafter. We can adopt this policy tonight and tomorrow we can appoint a non-citizen to a board. We cannot adopt this policy tonight and tomorrow we can refuse to appoint a non-citizen to a board. So, in that context, it has no significance. I have really struggled in my own mind over what position I would take with respect to this issue. As soon as the issue came up I realized it had no significance in terms of the City Council's actions. I've also recognized that the question or the issue of citizenship is a very popular one to discuss. It's easy to lose site of the context of the issue and jump on the patriotic bandwagon and wave the flag and say 'we don't want any non-citizens participating on our boards and commissions.' It's real easy to do that in particularly in light of September 11, it's even easier. Is citizenship a consideration, and a serious consideration? I believe it is. Is it something we should put into our policy? I don't think so because of what I said a moment ago where I said it has no significance. I don't think so because we're not doing it across the board. I don't think we ought to separate out our various boards and commissions. I know there are legal reasons to do so. If we're going to adopt the policy like that, we ought to adopt it with respect to every board or commission, or we ought to adopt it to none of them. I think it's a little sweeping and over-broad to adopt it to all of our boards and commissions, so I don't necessarily support going that way. We have wasted a lot of time. We are closing in on the two hour range tonight, about an hour and forty minutes by my calculation. We have a lot of very important issues that do have significance to this Council and to this community. I think we ought to be addressing those issues. We've got serious budget problems. We've got other things on the horizon that we have needs for. We don't need to spend a lot of time. Okay, it's easy to say we've spent the time, let's pass this thing and get on with it. But I don't think the time stops there. I think even though I am very satisfied with our attorney's research and opinion that we would win a lawsuit, I think there is a risk that we would suffer a lawsuit. That's more time and more money and more attention directed away from the important things that are facing us. So those are the reasons that I will not support a change in the policy. Does that mean that I want to go out and appoint a non-citizen to our boards and commissions? No, it means that I will continue to take, as I have, citizenship as a serious issue and one of the criteria upon which I base the qualifications that I will select someone to a board or commission. I think each one of us on Council has the right and the duty and the obligation to develop our own set of criteria and qualifications. And citizenship will be certainly one of my criteria. I don't think any member of this Council who either votes in favor of changing the policy, or who votes against a change in the policy should be either held up or ridiculed. These are matters that are important to you, in terms of your perception. It's important to the Council in terms of how we do business. I think we need to get on with the business of taking care of our City. I've given you my criteria. I am concerned about citizenship – don't misunderstand me. I am concerned about citizenship and I am as patriotic as anybody in this room. I just don't believe it's in the best interest of the City of Asheville to adopt the change in the policy."

Councilman Mumpower moved to approve a policy change that makes U.S. citizenship a requirement for participation on the following decision-making boards, authorities and commission: Airport Authority, the ABC Board, the Board of Adjustment, the Civil Service Board, the Historic Resources Commission (HRC), the Metropolitan Sewerage District, the Planning & Zoning Commission, the Regional Water Authority, the School Board, the Tourism Development Authority (TDA) and the WNC Air Quality Board. This motion was seconded by Councilman Dunn. Said motion failed on a 3-4 vote with Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting "yes" and Mayor Worley, Councilwoman Jones, Councilman Ellis and Councilman Peterson voting "no."

Vice-Mayor Bellamy moved to remove from the boards and commissions application the questions of "Are you a U.S. Citizen?" This motion was seconded by Councilman Mumpower.

Councilman Brian felt that question should remain on the application because it is a factor we should consider. He personally couldn't imagine appointing a non-citizen to an important regulatory board and I would like to know that. That will be only one of many factors in his decision.

Councilman Mumpower felt it should be up-front or not at all. He made a promise to any non-citizen who wants to be appointed to one of our boards, he won't pay any attention to that question. He said they are welcome based on the earlier vote.

Vice-Mayor Bellamy agreed with Councilman Mumpower. On the application we currently ask race, sex, address and if you are a City or County resident. We do take that

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criterion into consideration when we deliberate on appointments. It's clear and it's important. If we ask if they are a U.S. citizen and we say we are not going to appoint them, I think that's discrimination. If we keep the question on there, we should consider them just like any other applicant. If it's not an issue enough to change the policy, it shouldn't be on the application.

Councilwoman Jones interprets this differently than Vice-Mayor Bellamy. She feels the U.S. citizenship question is an important factor. In terms of the regulatory boards, she felt there is a higher bar in terms of some of the requirements, so she would ask harder questions.

Mayor Worley felt the question should remain on the application because it is one of the criteria we look at and he doesn't want to make decisions in the absence of knowledge of some qualifications.

The motion made by Vice-Mayor Bellamy and seconded by Councilman Mumpower failed on a 2-5 vote, with Vice-Mayor Bellamy and Councilman Mumpower voting "yes" and Mayor Worley, Councilman Dunn, Councilwoman Jones, Councilman Ellis and Councilman Peterson voting "no."

At 8:40 p.m., Mayor Worley announced a brief recess.

V. NEW BUSINESS:

A. ORDINANCE NO. 2905 - ORDINANCE PROHIBITING PEDESTRIANS TO STAND ON ANY CITY STREET OR MEDIAN AND SOLICIT MONEY, EMPLOYMENT, BUSINESS OR A RIDE FROM PASSING OR STOPPED MOTORISTS WITHIN THE CITY LIMITS

Deputy Police Chief Ross Robinson said that this is the consideration of an ordinance prohibiting pedestrians to stand on any city street or median and solicit money, employment, business or a ride from passing or stopped motorists within the City limits.

The Asheville Police Department has determined that there is a potential danger allowing persons to solicit money, employment, rides or business from the streets and mediations within the City. Currently, there any many busy intersections where persons regularly use to beg for money, rides or employment. It is the Asheville Police Department's (APD) contention that this type of behavior near a busy intersection creates a dangerous situation for the pedestrian and the motorists.

This ordinance will make it a class 3 misdemeanor and a fine no more that $500.00 for a pedestrian to stand on any city street or median and solicit money, employment, business or a ride from passing or stopped motorists within the City limits.

In addition, APD has determined that at certain intersections, homeless persons have formed "gangs" to enforce the exclusive right to beg at certain intersections and will resort to violence if another group or person tries to beg at said intersection.

The APD has checked with the N. C. Dept. of Transportation and they fully support this ordinance.

Currently, the cities of Charlotte, Gastonia, Wilmington, Greenville and Garner have some form of a street solicitation prohibition. Durham is currently in the process of adopting such an ordinance.

City staff recommends approval of the ordinance.

Councilman Peterson asked exactly where is the dividing line of what is getting in the street and what is off the street. Deputy Chief Robinson said they try to apply a commonsense approach to that question. They are frequently governed by what the right-of-way is of the highway and we generally know the road features of how many feet that is, but we realize private property owners can grant someone permission to be on their property. There is a certain amount of judgment involved and a certain amount of right-of-way expectation. They are trying to determine that everyone is safe and not in harms way. They realize there are a lot of well-intentioned people and organizations collect money, but we feel they can find a safer location by moving onto private property, with the permission of the property owner.

Deputy Chief Robinson agreed with Councilman Peterson in that there is nothing to prevent people from advertising on private property.

Mayor Worley asked if, for example, school groups on sidewalks notifying people of a car wash would be prohibited. Deputy Chief Robinson said that would not be prohibited because it makes specific allowance for use of a sidewalk.

The following individuals spoke in favor of the ordinance and made various comments, some being, but are not limited to: requesting Police restraint when issuing citations or arrests, give pedestrians a two week warning period, need money to take care of the indigent, and this ordinance is being proactive before someone is injured:

Mr. Fred English, City resident
Mr. Danny Roberts
Mr. Mickey Mahaffey, City resident and representing Peacemakers
Ms. Hazel Fobes, City resident
Mr. Walter Plaue
Mr. Cecil Beumer, City resident

Mr. Robert Grant and Mr. Salvucci spoke in opposition of the ordinance for various reasons, some being, but are not limited to, lay-offs and plant closing in Western North Carolina will drive homelessness up, churches can't help everybody, jails are already over-crowded, and wait until the economy picks up and then pass the ordinance.

Mr. Karl Rogozenski, District Director of the Muscular Dystrophy Association, understands the need for an ordinance of this nature, but since 1954 firefighters have collected funds for Jerry's Kids on the street. Asheville firefighters are strong good-will ambassadors for the City of Asheville. The organization does not put their staff members, volunteers, patients or their families on the street. We use safety professionals. We also have extensive training and conferences where we meet and emphasize safety. We will not compromise the safety of these professionals. Firefighters do not stop traffic – red lights do. And once they are stopped, then they solicit. We have helped craft ordinances where there are exceptions. He would be disappointed in seeing a blanket ordinance adopted that will eliminate firefighters from soliciting for his organization. He suggested City Council table this issue. He offered his organization's resources to help Council craft an ordinance to fit it to the needs of the firefighters of Asheville. They provided $13,327 last year and they are a source of pride for the City of Asheville.

City Attorney Oast gave Council a letter from Mr. Gene Hampton, who had to leave the meeting. Said letter hoped "this Council will act with both courage and compassion and restore some 'faith' in our government."

Councilwoman Jones, member on the Housing & Community Development Committee, said that they have proposed to not only fully fund the Hospitality House, but funding them at a higher level recognizing the extent of the problem. She knows this is a small step, but it may help.

Upon inquiry of Councilman Peterson, Assistant City Attorney Curt Euler said that he did review the ordinances in Raleigh, Charlotte, Gastonia, and other North Carolina cities and saw no exceptions for charities. City Attorney Oast also noted that he felt there might be some legal difficulties in discriminating between charities and other types of organizations.

Councilman Peterson did wish we could provide something for the firefighters and other non-profit groups, but understood.

When Councilman Mumpower asked that the procedure would be for non-profits to ask for an amendment to the ordinance for exceptions, City Attorney Oast said they could contact the City Attorney's Office, the Police Department or an individual Council member.

Vice-Mayor Bellamy recently attended a conference with the Secretary of Housing & Urban Development and he said that HUD is working on homelessness. Our citizens need to write Secretary Martinez to get more money for our community. In President Bush's proposed budget for 2003, there is $1.13 Billion set aside for homeless assistance grants. We need to get our share. Also there is no money allotted for drug elimination grants. We need those grants because it helps the police officers and Housing Authority deal with drug elimination to provide programs and alternatives to homelessness. She encouraged people to write to Secretary Mel Martinez, 451 7th Street SW, Washington, DC, 20410 - Phone 202-708-0417.

Councilman Mumpower said that one unfortunate consequence of this ordinance is that it does penalize groups that depend on this kind of activity. He encouraged Mr. Rogozenski to meet with staff and present them with some legitimate exceptions.

Councilwoman Jones said the public safety and the training is a really strong case and if there is a way to present that to staff, she would be open to hearing an amendment.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2905. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE [redacted] 444

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 22-28, 2002: George Benning (Water), Viola Thompson (Inspections) and Josef Zaengerle (Water).

The following claims were received by the City during the period of March 1-7, 2002: Charles Norman (Water), William Yelton (Civic Center) and Ernest Conner (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Campaign Finance Reform

Upon inquiry of Councilman Peterson of the status of the 3 member Council subcommittee, Mayor Worley said that he has one more member to ask if they would serve.

Campaign Finance Reform

Mr. Lewis Langford, representing Citizens for Campaign Finance Reform, presented City Council with a petition containing 194 signatures. Said petition read "Whereas, the cost of running for and winning elective office has been escalating throughout our nation, and Whereas, this escalation has reached to municipal election level, and Whereas, this escalation essentially limits access to public office to those with wealth or access to the wealth of others, and Whereas, this escalation seriously erodes the principle of one person, one vote. We citizens of Asheville, North Carolina, do hereby resolve to petition the City Council to appoint a Citizens Committee to study alternative methods of municipal campaign finance, and to recommend adoption of a specific ordinance for comprehensive campaign finance reform to the City Council by July, 2002." He felt the 3 member Council subcommittee being established to determine the parameters of study is a mistake. He felt the citizen study committee should be appointed as soon as possible, with no limits.

Comments from Mr. Fred English

Mr. Fred English, Haw Creek resident, was disappointed that City Council did not vote in favor of requiring U.S. citizenship on boards and commissions.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:48 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 19, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

REPORT FROM THE FUTURE OF THE CIVIC CENTER TASK FORCE

Mr. Edward Hay, Chair of the Future of the Civic Center Task Force, briefly explained why the Task Force recommends City Council, at the appropriate time, adopt the Heery International Report as the strategic plan for the Civic Center. He explained that it was the Task Force's intent to submit a full report to Council at this meeting, however, City Engineer Cathy Ball, lead staff person with the Task Force, had to leave unexpectedly due to a family emergency and the report was not quite in final form. He hoped to have that final report to Council shortly.

Mr. Ian Vingoe, Project Director for Heery International, explained to Council their team's qualifications, this mission and their process, which was very inclusive. He stressed that the Arena is structurally solid and the building is of sufficient volume. He then talked about the market overview, physical plan, costs and funding options. He responded to the several frequently asked questions, e.g., why renovate the arena, why not renovate the Thomas Wolfe Auditorium, why expand, why not build a new arena, why not convert the arena to a performing arts facility, why not separate facilities, why not 10,000 seats and why not build at another site.

Mr. Joe Baker, Project Manager, pointed out the Civic Center's functional disabilities: substandard ice floor, inadequate sightings, poor circulation, woefully inadequate backstage for auditorium, temporary ice and outdated audio and rigging. Physical disabilities include: roof in very poor condition, 1930's electrical system in auditorium, cooling tower at end of useful life, inoperable smoke vents, poor and noisy lighting, worn seating, improperly functioning mechanical systems and severe water damage in auditorium. The cost to repair and maintain the Civic Center is $10 million and the result would still be a 1975 arena, an auditorium with no acoustics and no backstages and exhibit hall in basement of building.

Mr. Jerry McClendon, Strategic Advisory Group, showed Council a market overview of the arena trends. He explained how our arena was impacted by the Bi-Lo arena in that it is a newer, larger arena in a bigger market (5 times bigger). Our family shows were hardest hit and it will require significant improvements to win shows back. He then showed a trend line of family show attendance. He explained how building a new, larger arena will not compete with the Bi-Lo Center and that overall, our arena has held up well in the face of new competition. He then showed a trend line of total attendance in the arena.

Mr. McClendon explained that the theatre is doing very well: all event types are exhibiting strong performance - the Symphony, Bravo, concerts, touring and local performing arts, special events and graduations, etc.; and promoters like the 2,400 seating size. However, the Thomas Wolfe Auditorium cannot achieve it's potential with its physical shortcomings. A new theatre can expect better results. Many view a new theatre as a key to Asheville's vibrancy as a community.

He said the primary driver is consumer shows, both in the Exhibit Hall and the full building. It will provide pedestrian activity and economic impact in downtown, which was important to the Task Force and other community leaders. Convention and trade show activity is moderate in that Asheville has a lack of air access, small hotel supply and a small market limits large conventions. Many meeting planners are turned off by the existing Civic Center, but would consider Asheville. We need a mix of exhibit, ballroom and meeting rooms. A ballroom would be for special events, banquets and civic events.

Their recommendation would be (1) to renovate the arena to include a full size built-in ice floor; 5-6,000 seats, with good sight-lines; adequate support spaces; improved circulation; and new service dock (addition); (2) to build a new performance arts center; 2,400 seat auditorium; multi-use community performance space; and symphony rehearsal spaces; (3) renovate the Exhibit Hall to include 40,000 square feet of leasable floor area; pre-function space (addition); and adequate truck dock (addition); and (4) convert the Thomas Wolfe Auditorium to include a ballroom with pre-function to seat 900 for banquets; full kitchen and adequate support space; and six break-out meeting rooms (addition).

Mr. McClendon then gave Council the following menu of potential funding options: naming rights, suite sales, lease of ground floor retail, CP&L (to relocate power station), community fund-raising campaign, other private equity and debt; and spin-off development. Public sector options include: project cost afforded by bonding revenue steam; countywide sales tax, citywide sales tax; countywide prepared food and beverage tax; countywide hotel tax; and product development fund.

Mr. Vingoe then showed Council a vehicular travel analysis, pedestrian travel analysis and then a view analysis.

Mr. Baker then explained to Council the different completed project cost options. He said the level of completion can be determined by the community. He showed illustrations of the levels and explained the different Completed Project (CP) levels and what those levels would contain.

CP-1 – site improvements, including utilities, grading and roadwork; Lexington Street motor court; performance center auditorium; lower bowl seating and lower concourse in arena; rotunda; service plaza for arena. Total cost of $72.8 million (includes construction cost of $54.8 million).

CP-2 – conversion of Thomas Wolfe Auditorium to Great Hall ballroom, including kitchen support; expand and improve of arena support and operations space. Total cost $13.1 million.

CP-3 - new construction-operation and service addition; construction of meeting rooms; renovation and expansion of exhibit hall. Total cost of $13.7 million (includes construction cost of $11.4 million).

CP-4 - new construction – performance center addition, including community multi-use performance space and Symphony support spaces; modification and reinforcement of the arena catwalk and roof structure. Total cost of $8.3 million (includes construction cost of $6.9 million).

CP-5 - renovation of the arena upper concourse and balcony seating area; modification and reinforcement of the arena catwalk and structure room. Total cost of $7.2 million (includes construction cost of $6.0 million).

Mr. Baker explained that every CP is a complete project.

Project costs include: arena renovation - $24 million; theatre - $35 million; exhibit/meeting function - $16.7 million; rotunda - $5.8 million; general site work - $8.6 million, power station relocation - $5 million; land acquisition - $2 million, fees, fixtures and equipment - $9 million; and fees -- 9,000. Grand total is $115.1 million.

Mr. Hay explained that with regard to private funding, they have spent a good part of the fall meeting with people and feels confident that $20 million in private fund-raising is a minimum number. However, they need a plan first and this plan represents the most affordable way to meet the needs of our City. Again, he said the Task Force recommends this report be adopted as the strategic plan for the Civic Center. He hoped the City would commit to proceed with CP-1 as it meets the basic needs of the community. Also, CP-2 brings in the extra convention facilities in a big way. As funding becomes available, he urged City Council to proceed with CP-2.

Heery team members responded to various questions/comments from Council, some being, but are not limited to: how were the fees determined; is there a contingency built into the construction costs and designs; what does state-of-the-art mean and why is it necessary to have a state-of-the-art building; is private funding a reality; why are all three elements important; was the flat land by the river an option for building a new arena; using the existing Civic Center land, is there anything underground that we need to be concerned about; is there adequate parking around the Civic Center; what are some of the other economic benefit spin-offs; what will the seating be in the arena, the performing arts center and the banquet hall; what is the level of commitment for suite boxes; and what does other private equity mean.

Mayor Worley said that if Council adopts this report, we are at least a year away from developing sources of funding, given the State budget crisis. We cannot expect to approach the legislature and ask for any funding sources this year. During that time, we will have time to digest the information, to gage the community support, and to begin the process of the fund-raising efforts. So, when we do go to the legislature a year from now, we will have all the pieces together with a plan in place.

Upon inquiry of Councilman Mumpower, Mayor Worley said that after Council has an opportunity to review this report thoroughly, we can place it on an agenda in approximately two months.

Mayor Worley thanked Mr. Hay and the Task Force members, along with the Heery team for their hard work with regard to this project.

At 5:30 p.m., Mayor Worley announced a short break.

CLERK TO ADVERTISE OFFER TO PURCHASE AIR RIGHTS OVER REAR PARKING LOT AT 9-13 BILTMORE AVENUE

Field Services Coordinator Ed Vess said that this is the consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase the air rights to the parking lot on South Lexington Avenue at the rear of 9 -13 Biltmore Avenue.

The land area comprises 7,940 square feet located on the east side of South Lexington Avenue, about 150 feet south of the intersection with Patton Avenue. It is at the rear of 9 - 13 Biltmore Avenue and is improved with marked parking spaces on an asphalt surface. The lot is rectangular in shape and slopes up from street level access. It is part of a proposed sale to the Asheville Area Arts Council, which includes the building at 9 - 13 Biltmore Avenue but minus the air rights over the rear parking lot. The appraisal of the property reflects a land value for the parking lot of $135,000. The value of the air rights over the property is calculated at 50% of the land value or $67,500.

Robert Camille, Jr., Peter Y. Alberice and Robert M. Todd have submitted a proposal to purchase the air rights in the amount of $67,500. The bid from Camille, Alberice and Todd includes the proposal to construct a new mixed use building containing parking, retail, offices and residential units which would connect to the building proposed to be constructed on the adjoining lot to the north. The new building would contain approximately 8 stories and the estimated cost of the proposed improvement is about $2.4 million.

Approval of the resolution will establish the air rights value and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled for April 9, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Amendment to the Residential Level I Thresholds

Urban Planner Carter Pettibone said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to increase the threshold for Level I administrative review of residential projects from 7 units to 50 units.

Currently, by-right residential development projects containing 8 to 50 units are required to be reviewed by the Technical Review Committee (TRC), while residential developments containing three to seven units are reviewed administratively as Level I projects. This amendment would increase the Level I threshold to include these projects containing up to 50 units

This ordinance amendment will help streamline the review process for smaller residential developments by removing the requirement for these projects to go before the TRC. These projects would still be reviewed by all applicable city departments but only administratively. Applicants would also not have to wait until the submission deadline since Level I projects may be submitted anytime.

The ordinance amendment would also provide for a more equitable treatment of smaller residential projects as compared to commercial, office, or institutional uses at the current threshold levels for Level II review in terms of traffic impact. The current residential minimum of 8 units for Level II review generates about 53 trips per day while the minimum levels of commercial, office, and institutional generate 385 to 3,903 trips per day.

Staff believes this ordinance amendment provides a more streamlined and equitable alternative for review of smaller residential projects.

At their March 6, 2002, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Councilman Peterson was concerned that this would eliminate an avenue for public comment at the TRC meeting. Chief Planner Gerald Green responded that the City reviews only approximately 4-5 projects a year that this would fall into and over half of those are subdivisions and they go to TRC and the Planning & Zoning Commission.

Amendment to the Flexible Development Standards

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify lot size, lot width, off-street parking, and landscaping as categories for modification by design review boards using flexible development standards and to identify alternative landscape compliance as a flexible development standard.

Flexible development standards allow minor modifications to be approved administratively or as part of the standard review process rather than requiring a separate hearing by the Board of Adjustment to grant a variance. This procedure streamlines and simplifies the review process for all involved. Currently, design review boards are authorized to modify structure floor area and height and setbacks when structures or lots subject to design review are found to comply with the applicable design guidelines. The proposed ordinance amendment identifies two new dimensional categories, lot area and lot width, as well as off-street parking and landscaping, for the application of flexible development standards. In addition, the proposed amendment identifies alternative landscape compliance as a flexible development standard. Alternative landscape compliance is a tool that has been in place for almost 5 years. This change will not result in any change in the tool; it will only bring it under the umbrella of flexible development standards, possibly resulting in increased use of the tool.

This ordinance amendment encourages infill development that follows historic development patterns within the design review areas of Montford, Biltmore Village, Albemarle Park, Downtown Asheville, and the River District. This flexibility will allow development on lots that do not conform to the UDO standards, helping to implement the City's smart growth policies. The revision should also result in increased use of the alternative landscape compliance tool.

Staff believes that this ordinance provides needed flexibility to evaluate and approve reasonable adjustments to lot dimensions, off-street parking and landscape requirements.

Councilman Dunn hoped that staff and developers will work together regarding alternative landscaping compliance.

At their March 6, 2002, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on April 9, 2002.

BOARDS/COMMISSIONS

City Council instructed the City Clerk to arrange for interviews for vacancies on the following boards: Board of Electrical Examiners, Civic Center Commission, Educational Access Channel Commission, Film Commission, and the Historic Resources Commission.

City Council instructed the City Clerk to re-advertise the vacancy on the Citizens-Police Advisory Committee. That appointment must be a Central resident and no applications were received from that area.

After discussion, it was the consensus of City Council to reappoint Andrew Reed and Marianna Bailey to the Public Access Channel Commission and that the two remaining vacancies be brought back before City Council in approximately three months. Prior to that time the Commission can update City Council on their incorporation to a non-profit organization.

City Council narrowed the questions to be sent to School Board candidates.

MISCELLANEOUS

Campaign Finance Reform

Mayor Worley announced that the Council subcommittee to look at a citizen study committee for campaign finance reform will consist of Vice-Mayor Bellamy, Councilman Mumpower and Councilman Peterson.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:30 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 26, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 13, 2002, AND THE WORKSESSION HELD ON MARCH 19, 2002**

B. **RESOLUTION NO. 02-47 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM MICHAEL A. PRESSLEY TO PURCHASE PROPERTY ON GALAX AVENUE**

Summary: The consideration of a resolution authorizing a lease of space at 45 Wall Street to the Asheville Performing Arts Alliance.

City Council authorized publication of a notice of intent to lease the space at 45 Wall Street to the Asheville Performing Arts Alliance on March 12, 2002. A notice of intent was duly published in the Asheville Citizen-Times on March 15 and 22, 2002. The term of the lease will be for nine years and 11 months.

The leased premise comprises of approximately 2,520 square feet. The rent reflects an annual rent of $5.00 per square foot. The rental amount is believed to be appropriate considering the location, condition of the space and the lease terms.

The Lessee is responsible for renovating the space. The Lessee is also responsible for paying utilities and maintenance of the interior of the premises including cleaning, glass breakage, electrical, heating, plumbing and air conditioning equipment. The Lessor is responsible for maintenance of the exterior.

Approval of the resolution will authorize the Mayor to execute the lease with the Asheville Performing Arts Alliance for the space at 45 Wall Street.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 91

C. **RESOLUTION NO. 02-48 - RESOLUTION AUTHORIZING THE CITY TO LEASE SPACE AT 45 WALL STREET TO THE ASHEVILLE PERFORMING ARTS ALLIANCE**

Summary: The consideration of a resolution authorizing a lease of space at 45 Wall Street to the Asheville Performing Arts Alliance.

City Council authorized publication of a notice of intent to lease the space at 45 Wall Street to the Asheville Performing Arts Alliance on March 12, 2002. A notice of intent was duly published in the Asheville Citizen-Times on March 15 and 22, 2002. The term of the lease will be for nine years and 11 months.

The leased premise comprises of approximately 2,520 square feet. The rent reflects an annual rent of $5.00 per square foot. The rental amount is believed to be appropriate considering the location, condition of the space and the lease terms.

The Lessee is responsible for renovating the space. The Lessee is also responsible for paying utilities and maintenance of the interior of the premises including cleaning, glass breakage, electrical, heating, plumbing and air conditioning equipment. The Lessor is responsible for maintenance of the exterior.

Approval of the resolution will authorize the Mayor to execute the lease with the Asheville Performing Arts Alliance for the space at 45 Wall Street.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 92

D. RESOLUTION NO. 02-49 - RESOLUTION AUTHORIZING THE CITY TO LEASE THE ROCK HOUSE AT 324 CHARLOTTE STREET TO THE PRESERVATION SOCIETY OF ASHEVILLE AND BUNCOMBE COUNTY

Summary: The consideration of a resolution authorizing a lease of the "Rock House" at 324 Charlotte Street to the Preservation Society of Asheville and Buncombe County.

City Council previously approved leasing the subject property. A notice of intent was duly published in the Asheville Citizen-Times on March 15 and 22, 2002.

The leased premises comprise of a 1,158 square foot rock building known as the Rock House along with the yard around the building. The rent reflects an annual rent of $5.70 per square foot. The rental amount is believed to be appropriate considering the location, condition of the space and the lease terms. This lease would be for nine years and eleven months.

The Lessee is responsible for renovating the space. A rent credit will be given for renovations costs. The Lessee is also responsible for paying utilities and all maintenance of the premises including cleaning, glass breakage, electrical, heating, plumbing and air conditioning equipment, interior and exterior repairs. The Lessor is not responsible for any maintenance.

Approval of the resolution will authorize the Mayor to execute the lease with the Preservation Society of Asheville and Buncombe County for the house at 324 Charlotte Street.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 93

E. RESOLUTION NO. 02-50 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE THE AIR RIGHTS TO THE PARKING LOT ON SOUTH LEXINGTON AVENUE AT THE REAR OF 9-13 BILTMORE AVENUE

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase the air rights to the parking lot on South Lexington Avenue at the rear of 9 -13 Biltmore Avenue.

The land area comprises 7,940 square feet located on the east side of South Lexington Avenue, about 150 feet south of the intersection with Patton Avenue. It is at the rear of 9 - 13 Biltmore Avenue and is improved with marked parking spaces on an asphalt surface. The lot is rectangular in shape and slopes up from street level access. It is part of a proposed sale to the Asheville Area Arts Council, which includes the building at 9 - 13 Biltmore Avenue but minus the air rights over the rear parking lot. The appraisal of the property reflects a land value for the parking lot of $135,000. The value of the air rights over the property is calculated at 50% of the land value or $67,500.

Robert Camille, Jr., Peter Y. Alberice and Robert M. Todd have submitted a proposal to purchase the air rights in the amount of $67,500. The bid from Camille, Alberice and Todd includes the proposal to construct a new mixed use building containing parking, retail, offices and residential units which would connect to the building proposed to be constructed on the adjoining lot to the north. The new building would contain approximately 8 stories and the estimated cost of the proposed improvement is about $2.4 million.

Approval of the resolution will establish the air rights value and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 - PAGE 94

F. ORDINANCE NO. 2906 - ORDINANCE REDUCING THE FILM COMMISSION MEMBERSHIP FROM 15 TO 13 MEMBERS

Summary: The consideration of an ordinance reducing total membership of Asheville Film Commission from 15 to 13.

This amendment, which is self-explanatory, has been suggested by staff and the Film Commission members as a way to help ensure regular attendance and quorums at meetings.

City staff recommends City Council adopt the ordinance reducing the membership of the Film Commission.

ORDINANCE BOOK NO. 19 – PAGE 446

G. MOTION SETTING A PUBLIC HEARING ON APRIL 9, 2002, TO CONSIDER THE CONSOLIDATE COMMUNITY DEVELOPMENT BLOCK GRANT/HOME ACTION PLAN

H. RESOLUTION NO. 02-51 - RESOLUTION REAPPOINTING MEMBERS TO THE PUBLIC ACCESS CHANNEL COMMISSION

Summary: The consideration of appointing members to the Public Access Channel Commission.

Mark Rosenstein and Raphael Peter have resigned from the Public Access Channel Commission. The terms of Andrew Reed and Marianna Bailey expired on March 1, 2002.

On March 19, 2002, City Council instructed the City Clerk to bring back the two resignation vacancies in three months.

Also, on March 19, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Andrew Reed and Marianna Bailey to each serve an additional three year term respectively, terms to expire March 1, 2005, or until their successors have been appointed.

Staff recommends City Council reappoint Andrew Reed and Marianna Bailey to the Public Access Channel Commission.

RESOLUTION BOOK NO. 27 – PAGE 95

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Peterson and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR WESTMONT COMMONS (FORMERLY KNOWN AS WESTRIDGE COMMONS) LOCATED ON LEICESTER HIGHWAY AND ELIADA HOME ROAD

ORDINANCE NO. 2907 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR WESTRIDGE COMMONS LOCATED ON LEICESTER HIGHWAY AND ELIADA HOME ROAD

City Attorney Oast reviewed with Council the conditional use permit process by stating that City Council will first hear from staff that will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. He said that there would be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:05 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Jeff Tacy, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Tacy said that this is the consideration of a conditional use permit for a proposed 180-unit apartment development known as Westmont Commons (formerly known as Westridge Commons) located on Leicester Highway, just north of Eliada Home Road.

The project applicant is Bostic Brothers Development with Timmons Consulting Engineers acting as the agent. The project site is located within the corporate city limits on the northeastern side of Leicester Highway approximately 530 feet north of its intersection with Eliada Home Road (Location Map – Attached to City Exhibit 3). The project site is located in an area of mixed commercial, single-family detached, manufactured housing, multi-family residential, and institutional type land uses. There are six different zoning districts found in the immediate area, including: Institutional, Highway Business, Commercial Business II, RM-6 (Residential Multi-family), RM-16 (Residential Multi-family), and RS-8 (Residential Single-family).

The project site contains 17.5 acres (portion of PIN No. 9629.14-43-2879) and is currently zoned HB (Highway Business) and Institutional. The HB district allows for multi-family developments with a maximum density of 32 units per acre and the Institutional district allows for a maximum density of 16 units per acre. The project proposes a total of 180 units for a density of 10.3 units per acre. Based on the plans submitted, the project will contain seven (7) three-story apartment buildings consisting of a total of 72 one-bedroom units, 90 two-bedroom units, and 18 three-bedroom units. The plan also depicts a 2,700 square foot club house/office building, outdoor pool, playground area, and communal dumpster. The project is required to provide a minimum of 202 parking spaces and a maximum of 389 spaces. The plan depicts a total of 293 spaces including 11 handicap spaces. A private driveway extending from a cul-de-sac entrance road will access the development.

The project site has some existing vegetation including mature trees, shrubs, and wild growth. The landscape plan depicts type A & B buffers surrounding the property, street trees along the access road and parking lot landscaping throughout the parking areas. The plan also depicts sidewalks throughout the project site and along the access road.

This project was reviewed at the February 18 Technical Review Committee (TRC) meeting and was recommended for approval at that time. There were some technical issues identified at the meeting and the applicant has agreed to work with the necessary authorities to meet the various requirements. The project was also reviewed at the March 6 Planning & Zoning Commission public hearing and was recommended for approval.

City Council must take formal action as set forth in section 7-5-5 (e) of the Unified Development Ordinance (UDO), and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]:

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The project will meet all of the code requirements and incorporate any necessary measures to ensure the protection of public health, safety and welfare.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site;

The project will provide reasonably priced housing in a rapidly developing area of the City where there is a great need.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

It is recommended that the proposed development be designed and constructed with materials that will be long lasting and in a manner that will contribute to and enhance the surrounding community. If developed in this manner, it is not anticipated that the development would injure the value of adjoining property. Due to the intensity of the uses in the immediate area, the proposed development will be compatible.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

There are a variety of commercial, institutional and multi-family residential developments in the area that would be consistent with the scale, bulk, coverage, density, and character of the proposed development.

5) That the proposed use or development of the land will generally conform to the Comprehensive Plan and other official plans adopted by the City.

It appears that the Asheville City 2010 Plan indicates multi-family residential use for this area.

6) That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the city.

The proposed development is located in a developing area. The project received conditional approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department and Public Works Department. The TRC recommended certain conditions, which have been met.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The project applicant has been working with the City Engineering staff to devise a plan that will adequately address any traffic impact issues resulting from the project site.

The Planning & Development Department has reviewed the proposed development and is satisfied, with the understanding that the project must meet the conditions set forth at the TRC meeting. Based on information available to the Planning & Development Department in advance of the public hearing, staff recommends approval of the conditional use rezoning.

Upon inquiry of Councilman Peterson, Mr. Tacy said that in Phase II they might address a second access off of Eliada Home Road for traffic distributions and safety issues.

Mr. Mike Hartnett, representing Bostic Brothers Development, asked Council to support this request in that it is a good working plan.

Upon inquiry of Vice-Mayor Bellamy, Mr. Hartnett said that the price range of the apartments would be approximately $50 below market rents. He felt they would be moderately priced to fit the market.

When Councilman Mumpower asked about a Phase II, Mr. Hartnett said that he contemplates Phase II being 60-70 units at a later date.

Mr. Doug Annonsen, resident at 61 Webb Cove Road, said that as a North Carolina licensed building contractor, he is in favor of this development.

Vice-Mayor Bellamy said that this is a good example where 10% of the project could have been set aside for affordable housing. We need the support of our legislature to have that provision enacted. Planning & Development Director Scott Shuford responded that the incentive that we currently have is not sufficient to draw market interest and Planning staff is looking at other ways to address this issue.

Vice-Mayor Bellamy said that this project is a good example of smart growth development and will bring needed economic development to our community.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:22 p.m.

Vice-Mayor Bellamy moved to grant a conditional use permit to construct a 180-unit apartment development known as Westmont Commons (formerly known as Westridge Commons) located on Leicester Highway, just north of Ellada Home Road subject to the conditions set forth at the TRC meeting. This motion was seconded by Councilman Peterson and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE ZONING OF FIVE LOTS LOCATED ON CARROLL AVENUE (TRIED STONE MISSIONARY BAPTIST CHURCH) FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL/CONDITIONAL USE AND ISSUANCE OF A CONDITIONAL USE PERMIT

ORDINANCE NO. 2908 – ORDINANCE TO REZONE FIVE LOTS LOCATED ON CARROLL AVENUE (TRIED STONE MISSIONARY BAPTIST CHURCH) FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL/CONDITIONAL USE

ORDINANCE NO. 2909 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR FIVE LOTS LOCATED ON CARROLL AVENUE (TRIED STONE MISSIONARY BAPTIST CHURCH)

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:26 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Jeff Tacy, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Tacy said that this is the consideration of a request to rezone property located on the north and south sides of Carroll Avenue from RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Institutional and of a motion to issue a Conditional Use Permit for the proposed use of a place of worship with accessory parking and a six-unit multi-family development.

The project site is located in a predominantly residential area including single-family and multi-family residential developments (Location Map – Attached to City Exhibit 3). The portion of the project site located on the northern side of Carroll Avenue is approximately 2.11 acres and the portion on the southern side is .76 acres (PIN Nos. 9648.07-58-4342, 6372, 4195, 5192, & 6190). Based on the site plan and information submitted by the applicant, the applicant is proposing a two phase project with Phase I to reconstruct a place of worship with approximately 350 seats and parking lots containing a total of 100 spaces and Phase II a six unit multi-family residential development. The RM-8 and RS-8 districts allow churches as a use by right, subject to special requirements. When applied, the special requirements create a hardship and eliminate the possibility of reconstructing a church comparable to the one that previously existed on the site. In an effort to reconstruct a church facility that meets the needs of the church, it was determined that Institutional zoning would be most appropriate. In addition, the Planning and Development Director has determined that Phase I of the project qualifies for a vested rights provision. Due to this determination, the applicants have been given building permits to begin construction on the project. However, in order to bring the project site into compliance with the Unified Development Ordinance (UDO) requirements, it is still necessary that the project be rezoned to the Institutional district. The conditional use process will provide city authorities with a mechanism to ensure compliance with the UDO and compatibility with adjacent and surrounding properties. In addition, the conditional use permit will prevent to the possibility of incompatible developments in the future.

Per the Planning and Development Department's request, Phase II of the project includes a six (6) unit multi-family development located on .76 acres on the south side of Carroll Avenue. Phase II will also include thirteen (13) off-street parking spaces and an interior network of sidewalks. All buffer yards and landscaping incorporated into Phase I will remain throughout Phase II.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance, and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's preliminary opinion, absent the benefit of public input, is that all seven standards appear to be met.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

All public health and safety concerns have been addressed through the site plan development process and it appears that the proposed use and development will not materially endanger the public health or safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and in the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project site has been designed with every consideration for the natural and topographic features on the site and in the immediate vicinity. The development was designed to provide for the minimum changes and alterations to the existing conditions on the site.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Places of worship are considered low impact uses as well as residential type uses in the area. City authorities will ensure the use of compatible building materials, buffering, and landscaping.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   There are a variety of building types and developments in the area, most of which appear to be comparable in scale, bulk, coverage, density, and character.

5. That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City.

   The 2010 plan appears to designate this area for low to medium density type developments.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed development is located in a developing area. The project received conditional approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department and Public Works Department. The Technical Review Committee recommended certain conditions, which have been met.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The project applicant has been working with the city engineering staff to devise a plan that will adequately address any traffic impact issues resulting from the project site.

The Technical Review Committee reviewed the proposed project at their February 18, 2002, public meeting and recommended approval. A Transportation Impact Analysis was not required for this project.

The Planning and Zoning Commission reviewed the requested conditional use rezoning and the site plan for the proposed use at their March 6, 2002, public hearing and recommended approval subject to the conditions recommended by staff.

Based on the information submitted by the applicant, the proposed project does meet all of the UDO standards required for approval. Based on a field investigation of the project site, the proposed project will function appropriately with the natural characteristics and topography. Based on a field investigation of the surrounding area, the proposed project is consistent with other developments in the area.

Based on information available to the Planning and Development Department in advance of this public hearing, staff recommends that the City Council approve the requested conditional use rezoning and issue the Conditional Use Permit with the following conditions:

1. Allow Phase II development at a maximum density of 12-units instead of the proposed 6-unit density.
2. The project applicant shall coordinate with the City to design a drainage plan for the property located on the south side of Carroll Avenue.
3. The project applicant shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development process.
4. The project applicant shall meet all other requirements as deemed necessary by local officials and authorities throughout the development of the project.
5. The applicant shall comply with all applicable codes, ordinances, and filing procedures that are in place at the time of Phase II development.

Mr. Tacy noted that during the Planning & Zoning Commission meeting there was some discussion about the security and lighting at the site. The applicants have been asked to work with the Planning and Police Departments to design security for a safe site where lighting will not be intrusive on adjoining properties.

Pastor Alfred Blount, Tried Stone Missionary Baptist Church, said that in 1994 their church was destroyed due to a fire and since that time they have been working diligently to raise money to not only restore their worship facility but to also develop a place that would be a greater asset to the East End community. They would like to continue their legacy through the rebuilding of their church, as well as providing an attractive and safe affordable housing to residents.

Mr. Cornell Proctor, Chairman of the Building Committee, also spoke in support of this project.

Mr. Jerry Young, Project Coordinator, spoke in support of the project and presented City Council with a site plan (Applicant Exhibit 1).

There was some discussion about the adequacy of parking.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:46 p.m.

Councilman Mumpower moved to adopt Ordinance No. 2908 to rezone property located on the north and south sides of Carroll Avenue from RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Institutional/Conditional Use. This motion was seconded by Councilwoman Jones and carried unanimously.

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Vice-Mayor Bellamy moved to adopt Ordinance No. 2909 to issue the conditional use permit for the proposed use of a place of worship with accessory parking and a six-unit multi-family development, subject to the following conditions: (1) Allow Phase II development at a maximum density of 12-units instead of the proposed 6-unit density; (2) The project applicant shall coordinate with the City to design a drainage plan for the property located on the south side of Carroll Avenue; (3) The project applicant shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development process; (4) The project applicant shall meet all other requirements as deemed necessary by local officials and authorities throughout the development of the project; and (5) The applicant shall comply with all applicable codes, ordinances, and filing procedures that are in place at the time of Phase II development. This motion was seconded by Councilman Dunn and carried unanimously.

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C. PUBLIC HEARING RELATIVE TO REZONING TWO LOTS LOCATED AT THE INTERSECTION OF MILLS GAP ROAD AND HENDERSONVILLE ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2910 - ORDINANCE TO REZONE TWO LOTS LOCATED AT THE INTERSECTION OF MILLS GAP ROAD AND HENDERSONVILLE ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:52 p.m.

Urban Planner Jeff Tacy said that this is an ordinance to consider the rezoning of property located at southeast corner of Hendersonville Road and Mills Gap Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on March 15 and 22, 2002.

The Planning and Development Department has initiated this rezoning request (PIN Nos. 9655.09-25-1134 and 2170) in an effort to maintain the commercial character of the Hendersonville Road corridor. The Highway Business District is established to address the needs of commercial development along major thoroughfares. The district permits a wide range of residential, recreational, institutional, public/semi-public, office/business and other land uses. The majority of the properties in the vicinity that front on Hendersonville Road are zoned Highway Business. There are no industrial uses fronting on Hendersonville Road in the immediate area. Based on the purpose of the Highway Business District and the development patterns along Hendersonville Road, Highway Business zoning would be more appropriate than the current Commercial Industrial. Highway Business zoning would prevent the location of incompatible uses in the area and promote the location of uses similar to those in existence.

It should be noted that the property owner has submitted a letter of consent and desire for the rezoning request.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the southeast corner of Hendersonville Road and Mills Gap Road from Commercial Industrial District to Highway Business District. The Planning and Development staff recommends approval of the requested rezoning.

Mayor Worley closed the public hearing at 5:57 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2910. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Council Miscellaneous Items

Councilman Dunn and Councilman Mumpower asked about the status of the extraterritorial jurisdiction issue. Their interest is in seeing some movement, with the intent that we work with the County on a positive basis and within our limits of liability. City Manager Westbrook responded that a report will be given City Council in approximately two weeks.

Upon inquiry of Councilwoman Jones, Councilman Peterson said that the Council subcommittee on campaign finance reform will hopefully be meeting before the next worksession and they will report back to Council as soon as possible.

Councilman Dunn and Councilman Mumpower each suggested a closed session regarding the lawsuit with the police officers.

Councilman Peterson asked the City Manager to provide city Council with information on the financial aspects of annexation so that members of Council can be better informed about all aspects of annexation.

Councilman Peterson suggested that perhaps at a worksession every other month Council members can bring up items they would like to see reviewed or if there is an issue they would like to discuss.

Claims

The following claims were received by the City of Asheville during the period of March 8-21, 2002: John Smith (Water), Gretchen Clasby (Civic Center), Teresa Johnson (Sanitation), BellSouth (Water), BellSouth (Water), and Stephen Aldrich (Civic Center).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City filed the following Complaint on March 13, 2002: City of Asheville vs. Kenneth Bowman, et al. This is a complaint to vacate for lack of subject matter jurisdiction or to remand this matter involving a pay increase back to the Civil Service Board for a fair hearing before an impartial board. This matter will be handled in-house.

The City filed the following Petition on March 13, 2002: City vs. Civil Service Board. This is a petition to rescind the Board's March 3, 2002, order and to remand the matter back before the Board for a new hearing due to a conflict of interest. This matter will be handled in-house.

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The City was served with the following Petition on March 18, 2002: Noccalula M. Moon v. City. This is a petition for an order setting aside the adoption of Ordinance No. 2894 – Ordinance granting conditional use permit (Long Street recycling center and farmers market). This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English, Haw Creek resident, hoped City Council does not put any more money into the aging Civic Center.

Comments by Andy Reed

Mr. Andy Reed, City resident, representing Citizens for Campaign Finance Reform, said that this organization now includes the Asheville-Buncombe County League of Women Voters, Common Cause 11th District, Taxpayers for Accountable Government, Coalition of Asheville Neighborhoods, Council of Independent Peacemakers and the West Asheville Business Association. Their vision is that if the citizens study committee is appointed that they will study the issue of campaign finance and make recommendations to Council for an ordinance that will reduce the cost of campaigning. They hoped the committee would investigate a full range of possible changes, up to and including, public financing of local campaigns and maybe even free public access channel television appearances. They understand the Council subcommittee is to set parameters for such a citizens study committee. They urged Council not to set restrictions on a public citizens committee that would tie a committee's hands, but you set parameters that (1) ensure that a broad cross-section of the public is appointed to serve on the committee; (2) charge the committee to investigate all possible improvements in ways we finance campaigns for local office; and (3) set a target date for the committee to make a report back to City Council with its recommendations. He presented City Council with a petition containing 58 names, asking Council "to appoint a Citizens Committee to study alternate methods of municipal campaign finance, and to recommend adoption of a specific ordinance for comprehensive campaign finance reform to the City Council by July, 2002." He urged Council to proceed without delay.

Comments by Peter Dawes

Mr. Peter Dawes urged City Council to move quickly on getting the public access channel up and running.

Comments by Walter Plaue

Mr. Walter Plaue, Buncombe County resident, requested City Council include in their staff reports regarding land, that two items be addressed: (1) the implications for City property tax (whether it will be added or deleted from the tax rolls); and (2) that whenever land is set aside for another project, that we look at the implications of whether or not we are taking land that may be used for affordable housing away from that market.

Mr. Plaue also suggested that City Council hold a public Memorial Day ceremony on the City-County Plaza. He felt sure that a lot of veterans groups would like to participate in that event.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:19 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 2, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Next Community Meeting on April 30, 2002, at the North Asheville Community Center beginning at 7:00 p.m.

A short discussion took place regarding the process of community meetings.

Parking Study Update

Summary: The consideration of an up-to-date Status Report Spreadsheet that is used to track the progress of the Parking Study Implementation.

The City's Comprehensive Parking Study was adopted by the City Council in December 1998. The Parking Study Implementation Team was formed and the LX Team Charter was signed in June 1999. The study made about 60 recommendations for potential changes that would improve parking issues within the City. In addition, a few other recommendations have been made by other groups including the Asheville Downtown Association and the Implementation Team itself. A total of 68 recommendations have been incorporated into a single Status Report Spreadsheet. This spreadsheet is used to track the progress on evaluating and implementing the recommendations. Beginning in July 1999, updates have been provided to the City Council twice each year. The most recent report to City Council was on August 21, 2001.

Many of the items on the list are now completed resulting in less overall action each month. At this time, the team has agreed that meetings will be held quarterly rather than monthly, because there is often little progress to discuss on a monthly basis. Likewise, the team would like to report to City Council once per year instead of twice per year, unless Council has objections.

A few issues have been completed in the past 8 months and some are nearing completion. Item B4 in the status report spreadsheet identifies a need to look for opportunities to add additional on-street parking in various areas of downtown. The redesign of streets and sidewalks around the Grove Arcade includes a reconfiguration of the parking resulting in increased on-street parking availability. The final result of this improvement should be visible in the next several months. Items C1 and D1 indicate a need to encourage bicycling and walking in downtown and Biltmore Village. Many bike racks have recently been installed in downtown and more are on their way. All of the planned bike racks have been installed in Biltmore Village. Item D4 addresses the optimization of the timing of the downtown traffic signals. The signal timing throughout downtown has been updated and the final report has been received from the Consultant. Item H2 indicates a need to make crosswalk improvements at the intersection of Lodge Street, All Souls Crescent and the McDowell Street Viaduct. In late 2001, the N. C. Dept. of Transportation installed pedestrian signals and pedestrian pushbuttons at this intersection.

The spreadsheet outlines the continuing work being done by employees from several departments to implement many of the remaining recommendations.

Staff recommends that Council review the Status Report Spreadsheet and direct staff to continue implementing the Parking Study.

Traffic Engineer Michael Moule responded to various questions/comments from Council, some being, but are not limited to: what are the City's parking plans for around the City-County Plaza; has the City looked at raising the rates at some of the parking decks and parking meters; why are there no parking meters in Biltmore; some parking meters need to have placards that say parking is enforced on Saturdays; need for a pedestrian button at the intersection of Montford Avenue and Cherry Street.

Clerk to Advertise an Offer for Upset Bids on 17 Kendall Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at 17 Kendall Street in the West Asheville community.

A bid has been received from Neighborhood Housing Services of Asheville in the amount of $10,000 for the purchase of land at 17 Kendall Street in the West Asheville Community.

The land at 17 Kendall Street is a rectangular shaped residential zoned lot comprising 0.11 acre±. It is level at street grade and slopes down from front to rear. The property was acquired at a tax foreclosure sale in 2000 to recover on a demolition lien and has been available for sale since that time. The property was acquired at the tax foreclosure sale for the amount of $3,700.00. Of that amount $634.13 was remitted back to the City for the City's share of delinquent taxes. The amount of the demolition lien which included asbestos removal and removal of abandoned furniture was $7,842.44 bringing the City's total cost related to the property to $10,908.31. The previous tax value was $4,700. The bid from Neighborhood Housing Services in the amount of $10,000 includes a request for short term financing of $9,500 of the purchase price and the proposal to construct an affordable house on the property for sale. The purchase money loan would be due on sale of the completed structure. Staff recommends that if the bid is accepted the following terms be added: (1) the loan be due on sale or within 24 months of closing whichever comes first, (2) the loan bear interest at the rate of 2% per annum. The proposed construction is consistent with the policy of encouraging infill development.

The current tax appraisal on the subject parcel is $14,300 ($2.98 per square foot). That amount is almost triple the previous tax appraisal and more than double the per square foot price of recent appraisals of comparable parcels on Choctaw Street (0.22 ac. each @ $11,800 or $1.23 per square foot) which were twice as large, but clearly more buildable. The upset bid process will provide the opportunity for the market to produce the true value of the property.

Planning & Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DRAFT CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT/HOME ACTION PLAN

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing submission of the City's Consolidated Action Plan for 2002/03, allocating federal Community Development Block Grant (CDBG) and HOME funds.

The City expects to have available $1,902,224 in CDBG funds and $1,506,326 in HOME funds to allocate for housing and community development activities in the fiscal year beginning

July 1, 2002. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 21 CDBG-assisted and 13-HOME assisted projects.

If approved, the funding will assist in adding or preserving 92 affordable housing units in the City and 109 units in the rest of the Consortium area. CDBG funds will also help provide 150 Asheville residents with employment or business training and over 3,000 residents with other needed services. CDBG will also continue to support revitalization of the WECAN and South Pack Square neighborhoods.

Notice of the public hearing and a summary of the draft plan were published on March 22. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD by May 15, 2002.

City staff recommends City Council hold a public hearing on April 9, 2002, to consider the Consolidated Action Plan for 2002-03. No action is needed at the public hearing. Approval of the draft Action Plan is recommended at the April 23, 2002, Council meeting.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Ms. Caplan responded to several questions/comments from Council, some being, but are not limited to: what projects are funded from the sale of properties on Biltmore Avenue; what type of renovations are taking place in the Eagle/Market Street area and do they have a Master Plan; and what is the makeup of the Asheville Regional Housing Consortium.

Councilman Mumpower, member of the Housing & Community Development Committee, felt the Committee made a good effort to not waste the monies allocated to the City of Asheville. He was impressed with what most people are trying to do with the money.

Councilwoman Jones, Chair of the Housing & Community Development Committee, agreed with Councilman Mumpower in that the City is being a good steward with the taxpayers money. She explained why she personally felt that the City should look at a future work plan of additional staff in the Community Development Division.

Councilman Dunn, member of the Housing & Community Development Committee, stated that this year more money was allocated to address the homeless problem in Asheville.

ANNEXATIONS

Resolutions of Intent to Annex

Urban Planner Paul Benson said that this is the consideration of adopting resolutions stating the intent of the City to annex seven areas.

Mr. Benson said that the State of North Carolina enables cities to grow by annexation, and provides incentives in the form of various shared revenues tied to population and street mileage.

This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

In a growing urban area, annexation becomes an equity issue. This stems from the fact that the true "City of Asheville" (like most cities) is always growing and at any given time is larger than the area in the current city limits. North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population. The fact is that people living in close proximity to cities benefit from the cities, and state annexation law is designed to include these people in the costs and benefits of governing and servicing the City.

The City of Asheville has initiated annexations for the past two years – five areas in 2001 and five areas in 2002. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

Mr. Benson then showed Council a chart for the past two year annexations which showed annual revenue, annual expenditures and capital costs for each of the areas. In the past two years, ten areas have been annexed (two are pending court decisions). In total, the estimated annual revenue from these areas is $2,199,869, with estimated annual costs of $281,987.

The following steps and dates meet the process required by State law:

Adoption of Resolutions of Intent	April 9, 2002
Adoption of Plans of Services	April 23, 2002
Public Informational Meeting	June 3, 2002
Public Hearings	June 11, 2002
Adoption of Annexation Ordinances	June 25, 2002
Effective Date of Annexations	June 30, 2003

Mr. Benson under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

City staff has identified the following seven areas with the potential for being annexed:

Leicester Highway – This is a one mile corridor along Leicester Highway. This has 68 lots, is 64 acres, and has an estimated population of 113. It has a mixture of commercial and residential development and provides a more rational City boundary. Current boundary excludes a pocket on east side of the highway. There is a one-time capital cost of $160,000 for improvements in fire protection water service.

Sherwood Heights – This is a subdivision in North Asheville. This is the only pocket of development out of the City in this area and their only access is through the City of Asheville. This has 50 lots, is 97 acres and a population of 73.

Huntington Chase – This is a new subdivision in Haw Creek and forms isolated pocket out of the City. Their only access is through the City of Asheville. This has 41 lots, is 63 acres and a population of 68. There is a one-time capital cost of $105,000 for some sewer and fire protection water service improvements which are planned.

Bell Road – This is a section of Bell Road between two existing sections of the City in Haw Creek. There is currently a service delivery problem. This has 14 lots, 22 acres and a population of 32. There is a one-time capital cost of $116,000 for fire protection water service improvements which are planned.

Forest Lake – This is a large subdivision in South Asheville off of Sweeten Creek Road. Its access is only through the City. This has 128 lots, is 53 acres and a population of 250.

Mill Stone – This is a subdivision off Round Top Road and is in a corner formed by the City limits. This has a population of 51. There is a one-time capital cost of $30,000 for some sewer improvements which are planned.

Kensington-Windsor – This is a large residential area off Sweeten Creek Road and Mills Gap Road. It includes two apartment complexes (Kensington Place and Pine Ridge Apartments) and the Windsor Park Subdivision. This has 30 lots, is 67 acres and has a population of 500.

Under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

City staff recommends that the seven Resolutions of Intent be adopted. They have been working on these areas since last fall and City staff feels they can handle these annexations with existing staff and equipment.

Councilman Dunn stressed that there should be financial benefits to the community when annexation occurs, just not to City government. Mr. Benson explained some benefits to property owners include reduction of fire insurance ratings, bigger water lines to support fire hydrants, solid waste collection, improved level of police protection, and increased code enforcement protection for property owners.

City Manager Westbrook pointed out that there is a book entitled "Cities without Suburbs" that contains definitive work on why annexation of an urban area is the way to spread the cost to provide urban services to people who live in an urban environment. The book points out all kinds of factors, noting that they all can't be measured in dollars and cents.

Upon inquiry of Councilman Peterson, City Manager Westbrook said that in addition to property taxes, the City receives additional Powell Bill funds, State intangible taxes, inventory taxes, sales tax, and utility franchise taxes.

Councilman Mumpower asked for a summation of figures on how much it cost the City to provide actually provide services to the 2001 annexations. Planning & Development Director Scott Shuford responded in that he would provide Councilman Mumpower with the Annexation Plan for Services for 2001.

Councilman Dunn was upset that the Metropolitan Sewerage District does not extend sewer lines and that the burden is placed upon the City of Asheville.

Upon inquiry of Councilman Dunn, Mr. Benson said that all of seven areas are in the City's extraterritorial jurisdiction, except for Kensington-Windsor which is in the Limestone Township.

Discussion surrounded the City's not providing trash collection service to multi-family apartments and some condominiums.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook said that staff is working on the issue of recycling at apartments.

Councilwoman Jones thanked staff for this informative presentation on annexation and hoped the City and news media would try to educate the public about annexation to dispel some myths.

When Councilman Dunn expressed concern that property owners taxes will almost double when they are annexed, Councilman Peterson stressed they are saving money in other ways.

Councilman Mumpower felt the City needed to be direct with the citizens in that taxes will go up, but there are compensations.

Resolution of Consideration for Potential Future Annexation Areas

Urban Planner Paul Benson said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation.

State law provides that a Resolution of Consideration may be adopted by cities as a preliminary step in the annexation process. While not required, the Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the city may, within the reasonably near future, be subject to annexation. After being in effect for a least one year, the Resolution of Consideration also has the benefit of reducing the time period required between adoption of the annexation ordinance and the effective date of that ordinance from a minimum of 1 year to a minimum of 40 days. The Resolution of Consideration is effective for 2 years.

The map staff has prepared in connection with the Resolution of Consideration basically includes areas with the potential for urbanization, such as the areas along major thoroughfares, areas within the City's existing extraterritorial jurisdiction, areas with existing infrastructure or areas where utility extensions are feasible, such as areas that are within drainage basins with existing sewer service, and other areas with potential for urban development. The map includes many areas that may not experience urban development in the near future, because the boundaries are drawn to be expansive enough so that any possible near term (1-5 years), annexation areas will be within the boundaries.

City staff recommends that the Resolution of Consideration be adopted.

City Attorney Oast stated that just because you may have property in the area, the property still must quality under the statutes for annexation.

Councilman Dunn felt that the City should be sensitive to industry when thinking about annexation.

Upon inquiry of Councilman Peterson, Mr. Benson said that even with this resolution of consideration, the City still could give property owners from 40 days to 400 days within which to make the effective date of the annexation. However, Mr. Benson felt that June 30 should be the date for effective annexations for tax billing purposes.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

At 5:40 p.m., Mayor Worley announced a short break.

ASHEVILLE SCHOOL BOARD

It was the consensus of City Council to only consider applicants who submitted written responses to Council's questions and that only City residents who live in the Asheville School District be considered.

City Council instructed the City Clerk to arrange interviews for the following individuals for the vacancy on the Asheville School Board: Allison Jordan, Keith Thomson, Marsha Bate, Pegi O'Hagan and Roxie Wynn.

MISCELLANEOUS ITEMS

Board Appointments

It was the consensus of the City Council to go to a monthly appointment process until the end of December, 2002. At that time the Boards and Commissions Committee will review the monthly vs. quarterly process. It was also the consensus of City Council to only keep board and commission applications for one year instead of two years.

Council Subcommittee on Campaign Finance Changes

Councilman Peterson, Chair of the Council Subcommittee on Campaign Finance Changes ("Subcommittee"), said that he, Vice-Mayor Bellamy and Councilman Mumpower met on April 1, 2002. He summarized the following report: The Subcommittee recommends that City Council explore options to improve campaigns for Council and Mayor by appointing a Citizens Study Committee for Campaign Finance Reform. The Subcommittee members believe that recommendations to improve local campaigns should come from Asheville citizens and not from individual members of Council or from City staff. The Subcommittee further recommends that consideration of changes in the process for conducting City elections be postponed until a later time.

Make-Up of the Citizens Study Committee – To begin the process, the Subcommittee recommends that Council appoint a Citizen Study Committee ("Committee") composed of seven voting members and a few additional ex-officio members to represent interested civic organizations. For the voting members of the Committee, each member of Council and the Mayor shall nominate one individual to serve on the Committee. The Subcommittee believes that there are several local civic organizations that have a special involvement in local government and would be able to provide valuable information to the Committee. Therefore, the Subcommittee recommends that the Committee include several ex-officio members that are appointed by these civic organizations. City Council can decide which civic groups will be allowed to nominate ex-officio representatives to the Committee. The Subcommittee discussed including groups such as the League of Women Voters, Common Cause, and the NAACP.

Operations of the Citizens Study Committee – The Subcommittee recommends that the operations of the Committee be left to the members of the Committee. The Committee members should elect a Chair, Secretary, and other positions (i.e. facilitator, parliamentarian) as they see necessary. The Subcommittee recommends that the City Attorney's office provide any staffing and administrative support that the Committee may require. As this is an official City Committee, it will be subject to the Open Meetings Law. The Subcommittee recognizes that City staff may need to provide some limited clerical assistance such as mailing notices and copying material. The Subcommittee also recommends that the City provide adequate meeting space for the Committee to conduct their meetings. The meeting space should be at a location that is accessible to the public. The Subcommittee encourages the Committee to establish, if possible, a regularly scheduled meeting time and place. The Subcommittee recommends that the

Committee allow reasonable public comment at each of their meetings. The Subcommittee will be available to the Committee should they need any additional guidance or assistance with process or administrative issues.

Goals for the Citizens Study Committee – The Subcommittee recommends that we ask the Committee to provide Council with a written Final Report within 120 days of their appointment. This time-line may be extended by the Subcommittee upon request of the Committee. Following the submission of their written report, the Committee should make a presentation to City Council of their recommendations. The Subcommittee recommends that the Final Report include (1) possible options to improve the financing of city elections; (2) the Committee's recommendations and rationale as to the best option or options; (3) steps to implement their recommendations; and (4) relevant research material they gathered. The Subcommittee recommends that the Committee research the following specific issues: (1) What ordinance or campaign limits would be permitted under current North Carolina law; (2) What have other cities (in North Carolina and in other states) done to address the problems of campaign finance reform; (3) What Constitutional limits would the City face; and (4) What federal regulations would the City face. The Subcommittee recommends that the Committee consider the following possible campaign finance changes: (1) public funding for local campaigns (A) what threshold should there be to quality for public funding (i) funding candidates in the primary; (ii) funding only candidates in the general; (B) how much to fund candidate; (C) how much could it cost; and (D) how could it be funded; (2) voluntary spending limits (A) what should the limits be; and (B) how to enforce the limits; (3) voluntary limits on contributions (A) what should the limits be; and (B) how to enforce the limits; (4) ways to reduce campaign spending and improve voter education (A) better coverage by media outlets; (B) free coverage by media outlets; (C) coverage by the Government Channel; and (D) other means to reduce campaign costs; (5) increased reporting requirement of contributions; (6) non-public funding options; (7) the role of the political action committees (PACs); and (8) any additional options.

After discussion, it was the consensus of Council that (1) clerical assistance from City staff means providing paper, copying and mailing; (2) the City-provided meeting space might be Stephens-Lee Community Center; (3) there be no ex-officio members; (4) if one person from the Committee drops out, the Council member who nominated that person will be allowed to nominate another one; and (4) add the issue of the amount of filing fees to the Committee's charge.

It was the consensus of Council for each Council member to give their suggested name to City Clerk Burleson and that this report and the seven Committee members will be reviewed and appointed at the next formal meeting.

Memorial Day Observance

After a brief discussion, it was the consensus of City Council to hold a Memorial Day event at City-County Plaza. Mayor Worley appointed Councilman Mumpower as Chair and Councilmen Dunn and Ellis to begin the process. This event is to move forward with the understanding that Buncombe County has agreed to be the City's co-sponsor, no City funds will be used, and that the event be coordinated with other groups that have events, such as the VA Hospital and Cemetery.

Closed Session

At 7:00 p.m., Councilman Mumpower moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including proceedings involving the following parties: Buncombe County; Henderson County; Regional Water Authority of Asheville,

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Buncombe and Henderson; and the City of Asheville – G.S. 143-31-8.11 (a) (3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 8:00 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 9, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTH OF APRIL, 2002, AS "CHILD ABUSE PREVENTION MONTH"

Vice-Mayor Bellamy read the proclamation proclaiming April, 2002, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Bill McGuire, director of the WNC Child Advocacy Center, who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING THE MONTH OF APRIL, 2002, AS "PARKINSON'S DISEASE AWARENESS MONTH"

Mayor Worley read the proclamation proclaiming April, 2002, as "Parkinson's Disease Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Tom Fitzpatrick, President of the Parkinson Support Group of Asheville, who briefed City Council on some activities taking place during the month.

C. RESOLUTION NO. 02-52 – RESOLUTION OF CONCERN REGARDING STATE BUDGET

Councilman Mumpower read the following resolution: "The City of Asheville relies heavily on annual state reimbursements to fund critical services for our citizens. The Governor of the State of North Carolina has withheld local reimbursements for inventory and intangibles taxes, homestead exemptions, and utility franchise taxes as a means to balancing the state budget. This action was initiated without warning or proper sensitivity to the budgetary impact on the City of Asheville. The withheld amount of $2.7 million is locally generated revenue that is being utilized to address a revenue shortfall in the state budget. This action has served to further erode the trust between the citizens of Asheville and the leadership of the State of North Carolina. The leadership of the State of North Carolina holds a trusted position intended to serve as a model of good stewardship, responsible and predictable action, and accountability. These actions are shifting a burden to our City that may result in reductions of service, and the imposition of additional tax burdens that are ultimately servicing the budget of the State of North Carolina, the effect of which is to require local governments to impose taxes to solve the State's budget crisis. This is the third time in 10 years that reimbursements have been withheld from Asheville and other cities and counties in North Carolina, all leading to inability of local governments to reliably budget. Now, therefore, be it resolved by the City Council of the City of Asheville that we express strong concern to the Governor of the State of North Carolina regarding these actions. We hereby request release of funds withheld for fiscal 2001-2002 and further seek legislative action

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to assure that the reimbursement revenues or replacement revenues will be reliably available to local governments in the 2002 - 2003 fiscal year."

All Council members spoke in support of the resolution and thanked Councilman Mumpower and Councilwoman Jones for taking the initiative to draft the resolution.

Upon inquiry of Councilman Mumpower, Mayor Worley said that the resolution would be distributed as widely as possible, but in particular to the Metro Coalition, our local delegation in Raleigh, the North Carolina City and County Managers Association, and the N. C. League of Municipalities.

Councilman Mumpower moved for the adoption of Resolution No. 02-52. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 96

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 26, 2002, AND THE WORKSESSION HELD ON APRIL 2, 2002

B. RESOLUTION NO. 02-53 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM ROBERT CAMILLE JR., PETER ALBERICE AND ROBERT TODD TO PURCHASE THE AIR RIGHTS TO THE PARKING LOT ON SOUTH LEXINGTON AVENUE AT THE REAR OF 9-13 BILTMORE AVENUE

Summary: The consideration of authorizing the Mayor to convey air rights to parking lot on South Lexington Avenue at rear of 9 - 13 Biltmore Avenue to Centrino, LLC.

On March 26, 2002, the City Council of the City of Asheville directed the City Clerk to advertise for upset bids regarding an offer to purchase the air rights to the parking lot on South Lexington at the rear of 9 - 13 Biltmore Avenue (PIN No. 9649.18-40-1091) for the sum of $67,500. The notice ran in the Asheville Citizen-Times on March 29, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No upset bids were received in response to said advertisement.

Planning Department staff recommends adoption of the resolution to authorize the sale of the property to Centrino, LLC, for the amount of $67,500.

RESOLUTION BOOK NO. 27 – PAGE 97

C. RESOLUTION NO. 02-54 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT 17 KENDALL STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at 17 Kendall Street in the West Asheville community.

A bid has been received from Neighborhood Housing Services of Asheville in the amount of $10,000 for the purchase of land at 17 Kendall Street in the West Asheville Community.

The land at 17 Kendall Street is a rectangular shaped residential zoned lot comprising 0.11 acre±. It is level at street grade and slopes down from front to rear. The property was acquired at a tax foreclosure sale in 2000 to recover on a demolition lien and has been available for sale since that time. The property was acquired at the tax foreclosure sale for the amount of $3,700.00. Of that amount $634.13 was remitted back to the City for the City's share of delinquent taxes. The amount of the demolition lien which included asbestos removal and removal of abandoned furniture was $7,842.44 bringing the City's total cost related to the property to $10,908.31. The previous tax value was $4,700. The bid from Neighborhood Housing Services in the amount of $10,000 includes a request for short term financing of $9,500 of the purchase price and the proposal to construct an affordable house on the property for sale. The purchase money loan would be due on sale of the completed structure. Staff recommends that if the bid is accepted the following terms be added: (1) the loan be due on sale or within 24 months of closing whichever comes first, (2) the loan bear interest at the rate of 2% per annum. The proposed construction is consistent with the policy of encouraging infill development.

The current tax appraisal on the subject parcel is $14,300 ($2.98 per square foot). That amount is almost triple the previous tax appraisal and more than double the per square foot price of recent appraisals of comparable parcels on Choctaw Street (0.22 ac. each @ $11,800 or $1.23 per square foot) which were twice as large, but clearly more buildable. The upset bid process will provide the opportunity for the market to produce the true value of the property.

Planning & Development staff recommends adoption of the resolution, which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 27 – PAGE 98

D. RESOLUTION NO. 02-55 - RESOLUTION SCHEDULING A CITY COUNCIL COMMUNITY MEETNG ON TUESDAY, APRIL 30, 2002, AT 7:00 P.M. IN THE NORTH ASHEVILLE COMMUNITY CENTER, 37 E. LARCHMONT ROAD, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 27 – PAGE 99

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING ON THE CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT/HOME ACTION PLAN

Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this issue due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Mayor Worley opened the public hearing at 5:21 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing submission of the City's Consolidated Action Plan for 2002/03, allocating federal Community Development Block Grant (CDBG) and HOME funds. This public hearing was advertised on March 29, 2002.

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The City expects to have available $1,902,224 in CDBG funds and $1,506,326 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2002. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 21 CDBG-assisted and 13-HOME assisted projects.

If approved, the funding will assist in adding or preserving 92 affordable housing units in the City and 109 units in the rest of the Consortium area. CDBG funds will also help provide 150 Asheville residents with employment or business training and over 3,000 residents with other needed services. CDBG will also continue to support revitalization of the WECAN and South Pack Square neighborhoods.

Notice of the public hearing and a summary of the draft plan were published on March 22. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD by May 15, 2001.

Mr. James Judd, City resident, hoped that the HOME funds to Mountain Housing Opportunities would help meet some of the community goals with Ross Creek Commons.

Mayor Worley closed the public hearing at 5:37 p.m.

Mayor Worley said that the resolution to adopt the Consolidated Action Plan will be considered at Council's April 23, 2002, meeting.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO INCREASE THE THRESHOLD FOR LEVEL I ADMINISTRATIVE REVIEW OF RESIDENTIAL PROJECTS FROM 7 TO 50 UNITS

ORDINANCE NO. 2911 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO INCREASE THE THRESHOLD FOR LEVEL I ADMINISTRATIVE REVIEW OF RESIDENTIAL PROJECTS FROM 7 TO 50 UNITS

Mayor Worley opened the public hearing at 5:38 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to increase the threshold for Level I administrative review of residential projects from 7 units to 50 units. This public hearing was advertised on March 29 and April 5, 2002.

Currently, by-right residential development projects containing 8 to 50 units are required to be reviewed by the Technical Review Committee (TRC), while residential developments containing three to seven units are reviewed administratively as Level I projects. This amendment would increase the Level I threshold to include these projects containing up to 50 units.

This ordinance amendment will help streamline the review process for smaller residential developments by removing the requirement for these projects to go before the TRC. These projects would still be reviewed by all applicable city departments but only administratively. Applicants would also not have to wait until the submission deadline since Level I projects may be submitted anytime.

The ordinance amendment would also provide for a more equitable treatment of smaller residential projects as compared to commercial, office, or institutional uses at the current threshold levels for Level II review in terms of traffic impact. The current residential minimum of 8 units for Level II review generates about 53 trips per day while the minimum levels of commercial, office, and institutional generate 385 to 3,903 trips per day.

Staff believes this ordinance amendment provides a more streamlined and equitable alternative for review of smaller residential projects. There is an estimated timesaving for a developer of 2-5 weeks. This will only apply to by-right residential development projects that have appropriate zoning in place and subdivision will still go to the TRC.

At their March 6, 2002, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Councilman Peterson said that presently when a project from between 8-50 units is being considered, the developer has to go through the TRC with a notice being sent out to adjoining property owners within 400 feet of the property and also a sign posted on the property. With this proposed amendment, he was concerned that adjoining property owners will not know when a project of 8-50 units is being proposed near their property because no notices are sent out to advise people of the TRC meeting. If these projects are going to be handled administrative, there is no opportunity for public comment or questions.

Upon inquiry of Vice-Mayor Bellamy, Mr. Pettibone said that Planning staff is looking at enlarging the signs posted on the property. He also noted that the public still has an opportunity to bring up concerns after they see the signage posted on the property.

Planning & Development Director Scott Shuford stressed that these projects will still be reviewed by all the applicable departments and still have to meet all standards.

The following individuals spoke against the proposed amendment for several reasons, some being, but are not limited to: the neighboring properties should be notified because only people in the neighborhood can provide valuable information regarding infrastructure, etc.; no notification will further distance the community from having input on what is happening in their neighborhoods; this amendment will cause more contention between developers and neighborhoods; a 50 unit development would have an impact on neighboring properties and they should be notified; neighborhoods have a lot of knowledge and not notifying them of a meeting eliminates their ability to voice their concerns; this amendment is an attempt by City officials to silence neighbors and keep them in the dark; if the project is good the development will go through so don't cut the citizens out of the process; surrounding neighbors should be involved as decisions are being made by developers for projects; residents need to have oversight on these projects; citizens want to have input into politics; neighborhoods need to be involved at the early stages; and staff shouldn't look at public comment as bothersome:

Ms. Barber Melton, Haw Creek resident and President of the Coalition of Asheville
  Neighborhoods
Ms. Jean Penland, City resident
Mr. Andrew Brown, City resident
Mr. James Judd, City resident
Ms. Patty Robertson
Ms. Terri Finch, Chunns Cove resident
Ms. Carol Collins, City resident
Mr. Jeff Burleson, property owner in Chunns Cove
Mr. Carl Nyberg, Kenilworth resident
Mr. Dick Washam, Chunns Cove resident
Ms. Rebecca Campbell, West Asheville resident
Mr. Mark Legard, City resident

Mayor Worley closed the public hearing at 6:20 p.m.

Mr. Shuford stressed that Planning staff does value public input. However, public input at the TRC meeting is often frustrating in that if the project meets all the technical review standards, the TRC should approve the project whether the neighborhood thinks it's a good project or not. At the TRC meeting, residents talk about a variety of things that are not technical issues. Planning staff will work on the signage that will provide notification of these type projects and as a part of the review process, residents can either call or visit the Planning Office to give input.

Councilman Peterson was opposed to the ordinance amendment and suggested a compromise to raise the threshold from 7 units to 12 or 15 units because 50 units are too many to not let people know what is going to be developed in their neighborhood. He felt that by having somewhat of a public process, the City would get a better development. He felt that people who live in the area have knowledge about issues that City staff might not be aware of.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that his Chief Planner noted that he didn't recall a single case where there has been a change to the TRC's decision with regard to what the public brought up at the TRC meeting and it applying to the technical standards.

There was discussion with regard to public input from citizens at the TRC level and the most effective and efficient way to notify them when projects are being considered.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2911. This motion was seconded by Councilman Dunn and carried on a 6-1 vote with Councilman Peterson voting "no".

ORDINANCE BOOK NO. 19 – PAGE 460

At 6:55 p.m., Mayor Worley announced a short break.

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO IDENTIFY LOT SIZE, LOT WIDTH, OFF-STREET PARKING, AND LANDSCAPING AS CATEGORIES FOR MODIFICATION BY DEISGN REVIEW BOARDS USING FLEXIBLE DEVELOPMENT STANDARDS AND TO IDENTIFY ALTERNATIVE LANDSCAPE COMPLIANCE AS A FLEXIBLE DEVELOPMENT STANDARD

ORDINANCE NO. 2912 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO IDENTIFY LOT SIZE, LOT WIDTH, OFF-STREET PARKING, AND LANDSCAPING AS CATEGORIES FOR MODIFICATION BY DEISGN REVIEW BOARDS USING FLEXIBLE DEVELOPMENT STANDARDS AND TO IDENTIFY ALTERNATIVE LANDSCAPE COMPLIANCE AS A FLEXIBLE DEVELOPMENT STANDARD

Mayor Worley opened the public hearing at 7:12 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify lot size, lot width, off-street parking, and landscaping as categories for modification by design review boards using flexible development standards and to identify alternative landscape compliance as a flexible development standard. This public hearing was advertised on March 29 and April 5, 2002.

Flexible development standards allow minor modifications to be approved administratively or as part of the standard review process rather than requiring a separate hearing by the Board of Adjustment to grant a variance. This procedure streamlines and simplifies the review process for all involved. Currently, design review boards are authorized to modify structure floor area and height and setbacks when structures or lots subject to design review are found to comply with the applicable design guidelines. The proposed ordinance amendment identifies two new dimensional categories, lot area and lot width, as well as off-street parking and landscaping, for the application of flexible development standards. In addition, the proposed amendment identifies alternative landscape compliance as a flexible development standard. Alternative landscape compliance is a tool that has been in place for almost 5 years. This change will not result in any change in the tool; it will only bring it under the umbrella of flexible development standards, possibly resulting in increased use of the tool.

This ordinance amendment encourages infill development that follows historic development patterns within the design review areas of Montford, Biltmore Village, Albemarle Park, Downtown Asheville, and the River District. This flexibility will allow development on lots that do not conform to the UDO standards, helping to implement the City's smart growth policies. The revision should also result in increased use of the alternative landscape compliance tool.

Staff believes that this ordinance provides needed flexibility to evaluate and approve reasonable adjustments to lot dimensions, off-street parking and landscape requirements.

At their March 6, 2002, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Upon inquiry of Ms. Hazel Fobes, Mr. Green explained the makeup of the River District Design Review Committee, the Downtown Commission and the Asheville-Buncombe Historic Resources Commission.

Mr. James Judd, resident on Rollingwood, voiced his concerns on alternative landscape compliance. He also felt there was an oversight in the ordinance because it states that only the developer can appeal.

Mr. Green responded to Mr. Judd's concerns and said that he will review the ordinance to see if there is an error with regard to only the developer having the right to appeal, and will correct it accordingly.

Councilman Dunn hoped that the City and private landscape architects would work out a compromise if disagreements occur.

Mayor Worley closed the public hearing at 7:30 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2912. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 463

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 02-56 – RESOLUTION RECEIVING REPORT ON SUBCOMMITTEE ON CAMPAIGN FINANCE CHANGES

Councilman Peterson thanked Vice-Mayor Bellamy and Councilman Mumpower for working with him on the Council Subcommittee on Campaign Finance Changes. He said that he has amended the following report to be consistent with Council discussion on April 2, 2002: The Subcommittee recommends that City Council explore options to improve campaigns for Council and Mayor by appointing a Citizen Study Committee for Campaign Finance Reform. The Subcommittee members believe that recommendations to improve local campaigns should come from Asheville citizens and not from individual members of Council or from City staff. The Subcommittee further recommends that consideration of changes in the process for conducting City elections be postponed until a later time.

Make-Up of the Citizens Study Committee – To begin the process, the Subcommittee recommends that Council appoint a Citizen Study Committee ("Committee") composed of seven voting members. Each member of Council and the Mayor shall nominate one individual to serve on the Committee.

Operations of the Citizens Study Committee – The operations of the Committee shall be left to the members of the Committee. The Committee members should elect a Chair, Secretary, and other positions (i.e. facilitator, parliamentarian) as they see necessary. The City shall provide limited clerical assistance such as mailing notices and copying material that the Committee may require. The City Attorney's office shall provide legal or other administrative support. As this is an official City Committee, it will be subject to the Open Meetings Law. The City shall provide adequate meeting space for the Committee to conduct their meetings. The meeting space should be at a location that is accessible to the public. The Subcommittee encourages the Committee to establish, if possible, a regularly scheduled meeting time and place. The Subcommittee recommends that the Committee allow reasonable public comment at each of their meetings. The Subcommittee will be available to the Committee should they need any additional guidance or assistance with process or administrative issues.

Goals for the Citizens Study Committee – The Subcommittee recommends that we ask the Committee to provide Council with a written Final Report within 120 days of their appointment. This time-line may be extended by the Subcommittee upon request of the Committee. Following the submission of their written report, the Committee should make a presentation to City Council of their recommendations. The Subcommittee recommends that the Final Report include (1) possible options to improve the financing of city elections; (2) the Committee's recommendations and rationale as to the best option or options; (3) steps to implement their recommendations; and (4) relevant research material they gathered. The Subcommittee recommends that the Committee research the following specific issues: (1) What ordinance or campaign limits would be permitted under current North Carolina law; (2) What have other cities (in North Carolina and in other states) done to address the problems of campaign finance reform; (3) What Constitutional limits would the City face; and (4) What federal regulations would the City face. The Subcommittee recommends that the Committee consider the following possible campaign finance changes: (1) public funding for local campaigns (A) what threshold should there be to quality for public funding (i) funding candidates in the primary; (ii) funding only candidates in the general; (B) how much to fund candidate; (C) how much could it cost; and (D) how could it be funded; (2) voluntary spending limits (A) what should the limits be; and (B) how to enforce the limits; (3) voluntary limits on contributions (A) what should the limits be; and (B) how to enforce the limits; (4) ways to reduce campaign spending and improve voter education (A) better coverage by media outlets; (B) free coverage by media outlets; (C) coverage by the Government Channel; and (D) other means to reduce campaign costs; (5) increased reporting requirement of contributions; (6) non-public funding options; (7) the role of the political action committees (PACs); (8) filing fee costs; and (9) any additional options.

Councilman Peterson moved to adopt Resolution No. 02-56 receiving the report of the Council Subcommittee on Campaign Finance Changes. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

For the Citizen Study Committee, Councilman Peterson nominated Wanda Adams; Councilman Mumpower nominated Kent Wolff; Vice-Mayor Bellamy nominated Rod Whiteside; Councilwoman Jones nominated Marie Colton; Councilman Dunn nominated Christina McCormick; Councilman Ellis nominated Max Haner and Mayor Worley nominated Lou Bissette.

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V. NEW BUSINESS:

A. RESOLUTIONS OF INTENT TO ANNEX THE LEICESTER HIGHWAY AREA, SHERWOOD HEIGHTS AREA, HUNTINGTON CHASE AREA, BELL ROAD AREA, FOREST LAKE AREA, MILL STONE AREA AND KENSINGTON-WINDSOR AREA AND SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Mr. Paul Benson, Urban Planner, said that the State of North Carolina enables cities to grow by annexation, and provides incentives in the form of various shared revenues tied to population and street mileage.

This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

In a growing urban area, annexation becomes an equity issue. This stems from the fact that the true "City of Asheville" (like most cities) is always growing and at any given time is larger than the area in the current city limits. North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population. The fact is that people living in close proximity to cities benefit from the cities, and state annexation law is designed to include these people in the costs and benefits of governing and servicing the City.

The City of Asheville has initiated annexations for the past two years – six areas in 2001 and five areas in 2002. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

Mr. Benson reviewed with Council the past two year annexations which showed annual revenue, annual expenditures and capital costs for each of the areas. In the past two years, ten areas have been annexed (two are pending court decisions). In total, the estimated annual revenue from these areas is $2,199,869, with estimated annual costs of $281,987.

The following steps and dates meet the process required by State law:

Adoption of Resolutions of Intent	April 9, 2002
Adoption of Plans of Services	April 23, 2002
Public Informational Meeting	June 3, 2002
Public Hearings	June 11, 2002
Adoption of Annexation Ordinances	June 25, 2002
Effective Date of Annexations	June 30, 2003

Mr. Benson under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas. He passed out a chart of "Growth of Largest (at 2000 Census) Municipalities from April 1990 to April 2000."

Mr. Benson stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 3rd day of June , 2002, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 11th day of June, 2002, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

City staff has identified the following seven areas with the potential for being annexed:

Leicester Highway – This is a one-mile corridor along Leicester Highway. This has 68 lots, is 64 acres, and has an estimated population of 113. It has a mixture of commercial and residential development and provides a more rational City boundary. Current boundary excludes a pocket on east side of the highway. There is a one-time capital cost of $160,000 for improvements in fire protection water service.

Sherwood Heights – This is a subdivision in North Asheville. This is the only pocket of development out of the City in this area and their only access is through the City of Asheville. This has 50 lots, is 97 acres and a population of 73.

Huntington Chase – This is a new subdivision in Haw Creek and forms isolated pocket out of the City. Their only access is through the City of Asheville. This has 41 lots, is 63 acres and a population of 68. There is a one-time capital cost of $105,000 for some sewer and fire protection water service improvements, which are planned.

Bell Road – This is a section of Bell Road between two existing sections of the City in Haw Creek. There is currently a service delivery problem. This has 14 lots, 22 acres and a population of 32. There is a one-time capital cost of $116,000 for fire protection water service improvements, which are planned.

Forest Lake – This is a large subdivision in South Asheville off of Sweeten Creek Road. Its access is only through the City. This has 128 lots, is 53 acres and a population of 250.

Mill Stone – This is a subdivision off Round Top Road and is in a corner formed by the City limits. This has a population of 51. There is a one-time capital cost of $30,000 for some sewer improvements, which are planned.

Kensington-Windsor – This is a large residential area off Sweeten Creek Road and Mills Gap Road. It includes two apartment complexes (Kensington Place and Pine Ridge Apartments) and the Windsor Park Subdivision. This has 30 lots, is 67 acres and has a population of 500.

Under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

City staff recommends that the seven Resolutions of Intent be adopted. They have been working on these areas since last fall and City staff feels they can handle these annexations with existing staff and equipment.

Upon inquiry of Councilman Mumpower, Mr. Benson said that as to the level of service, state law requires the City provide the same level of service that we provide to people living within in the existing City limits. He felt that there are no areas bordering the City of Asheville that have the same level of service, but recognized there are areas that probably have all the services that people there require.

Upon inquiry of Councilman Dunn, Mayor Worley stressed that City Council will make the determination on whether to annex all or some of these areas on June 25, 2002. Adoption of the resolutions of intent will direct City staff to start gathering specific information and start the process to involve the public.

The following individuals spoke against annexation for several reasons, some being, but are not limited to: the City needs to maintain what they already have; the City shouldn't annex if neighborhoods currently have all their needs met; has the City ever not annexed even if the area met the technical requirements; the City has nothing to offer Forest Lake Subdivision residents; don't annex because the City needs more money; affordable housing is needed; annexation will place a severe burden on residents when people are struggling to make ends meet; there should be better ways for the City to make money than to annex especially when areas are not getting any services; and now is not the City for the City to consider annexing, especially after the County has just completed their re-evaluation of property and we are still in a serious economic downturn:

Mr. Fred English, City resident
Ms. Nancy Williams
Mr. Dennis Seeney, Forest Lake resident

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RESOLUTION NO. 02-60 - RESOLUTION OF INTENT TO ANNEX THE BELL ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 02-60. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 02-61 - RESOLUTION OF INTENT TO ANNEX THE FOREST LAKE AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Ellis moved for the adoption of Resolution No. 02-61. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 02-62 - RESOLUTION OF INTENT TO ANNEX THE MILL STONE AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 02-62. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 02-63 - RESOLUTION OF INTENT TO ANNEX THE KENSINGTON-WINDSOR AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Ellis moved for the adoption of Resolution No. 02-63. This motion was seconded by Councilman Peterson and carried unanimously.

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B. RESOLUTION NO. 02-64 - RESOLUTION IDENTIFYING THE AREA DESCRIBED HEREIN AS BEING UNDER CONSIDERATION FOR ANNEXATION

Mr. Barry Siegle, Manager of KP Investments which is the owner of Kensington Place Apartments

Mr. Mark Rusko, President of the Huntington-Chase Homeowners Association

Councilman Peterson spoke in support of annexation noting that the effective date will not take effect until June 30 of next year and taxes won't be due until the end of that year. He noted that County residents do enjoy City amenities. He did say that he would visit all the areas proposed for annexation to see if they meet the qualification of an urbanized area.

Councilman Mumpower didn't like the concept of annexation and felt it was forced participation. However, he perceived annexation as a necessary evil. He felt that if the City is not growing, it's dying. He felt the City is annexing mostly pockets around the City and they are being very selective and strategic about their choices. He doesn't favor annexation, however he has come to understand the factors and the scale tips more toward annexation than against it.

Councilman Dunn felt that he would be in a better position regarding his stance on annexation after the budget process is over.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 02-57 - RESOLUTION OF INTENT TO ANNEX THE LEICESTER HIGHWAY AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Mumpower moved for the adoption of Resolution No. 02-57. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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RESOLUTION NO. 02-58 - RESOLUTION OF INTENT TO ANNEX THE SHERWOOD HEIGHTS AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 02-58. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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RESOLUTION NO. 02-59 - RESOLUTION OF INTENT TO ANNEX THE HUNTINGTON CHASE AREA, SETTING A PUBLIC INFORMATION MEETING ON JUNE 3, 2002, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON JUNE 11, 2002, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Jones moved for the adoption of Resolution No. 02-59. This motion was seconded by Councilman Ellis and carried unanimously.

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Urban Planner Paul Benson said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation.

State law provides that a Resolution of Consideration may be adopted by cities as a preliminary step in the annexation process. While not required, the Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the city may, within the reasonably near future, be subject to annexation. After being in effect for a least 1 year, the Resolution of Consideration also has the benefit of reducing the time period required between adoption of the annexation ordinance and the effective date of that ordinance from a minimum of 1 year to a minimum of 40 days. The Resolution of Consideration is effective for 2 years.

The map staff has prepared in connection with the Resolution of Consideration basically includes areas with the potential for urbanization, such as the areas along major thoroughfares, areas within the City's existing extraterritorial jurisdiction, areas with existing infrastructure or areas where utility extensions are feasible, such as areas that are within drainage basins with existing sewer service, and other areas with potential for urban development. The map includes many areas that may not experience urban development in the near future, because the boundaries are drawn to be expansive enough so that any possible near term (1-5 years), annexation areas will be within the boundaries.

City staff recommends that the Resolution of Consideration be adopted.

Councilman Mumpower supported the concept of giving people advance notice. However, he felt that even though with the Resolution of Consideration on file and Council could make the annexation effective within the window of 70-400 days after adoption of the annexation ordinance, there should be at least a one year effective date after the annexation ordinance is adopted.

Councilman Peterson felt perhaps the ordinance should take effect after six months especially since making the effective date at the beginning of a new fiscal year makes budgeting more predictable.

Councilman Dunn asked what kinds of options were available to major employers if the City annexes them and that step forces them to go out of business. Mr. Benson said that the only thing he was aware of was that the City has some economic development incentives that may be used to mitigate the tax burden for a period of time. However, if that is a major concern, then City Council always have the discretion to exclude that industry, provided the City still meet the other standards.

Upon inquiry of Mr. Doug Birch, Mr. Benson said that if the City successfully annexes the entire boundary of this Resolution of Consideration it would be adding approximately 60 square miles to the current City, which is presently 40 square miles now.

Mayor Worley called for a short recess.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved to adopt the Resolution of Consideration with the addition that in the name of consistency we do not make the annexation ordinances effective until at least one year after adoption of the ordinance.

City Attorney Oast said that he didn't think that addition was appropriate for inclusion in the Resolution of Consideration. He felt Council's views have been made very clear and when the time comes when Council is considering annexation of other areas, then if Council then wants to implement that additional delay, that would be the appropriate time to include that language.

Councilman Mumpower didn't feel comfortable in moving for adoption of the Resolution of Consideration without the delayed effective date language and therefore withdrew his motion.

Planning & Development Director Shuford explained how every annexation is different and perhaps separate guidelines could be drawn up to follow the longer schedule. He hoped City Council would not tie their hands because some exceptional event may occur in the future to where the Council might want to make the effective date sooner than one year.

Councilman Ellis moved to adopt Resolution No. 02-64. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Mumpower voting "no".

It was the consensus of Council to instruct the City Attorney to work with the Planning Department to develop some guidelines that would allow the effective date of annexation ordinances be delayed.

RESOLUTION BOOK NO. 27 – PAGE 133

C. RESOLUTION NO. 02-65 - RESOLUTION APPOINTING A MEMBER TO THE BOARD OF ELECTRICAL EXAMINERS

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Board of Electrical Examiners.

There currently exists a vacancy for an electrical contractor on the Board of Electrical Examiners until July 1, 2003.

On March 26, 2002, City Council interviewed Tommy Wilson.

Councilman Mumpower moved to appoint Tommy Wilson to the Board of Electrical Examiners to fill the position for an electrical contractor. Said term will expire on July 1, 2003, or until his successor has been appointed. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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D. RESOLUTION NO. 02-66 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing three members to the Civic Center Commission.

Mr. Dan Breneman and Dr. Carl Mumpower have resigned their positions on the Civic Center Commission thus leaving two expired terms until June 30, 2004. In addition, Robert Dungan has resigned, thus leaving an unexpired term until June 30, 2003.

On March 26, 2002, City Council interviewed Kathryn Nash and James Grant. On April 2, 2002, City Council interviewed John Hutchby. On April 9, 2002, City Council interviewed Dan Breneman and Jerri Goldberg.

Kathryn Nash received 0 votes, James Grant received 7 votes, John Hutchby received 7 votes, Dan Breneman received 0 votes and Jerri Goldberg received 7 votes. Therefore, James Grant and John Hutchby were each appointed to serve unexpired terms until June 30, 2004, respectively, or until their successors have been appointed. In addition, Jerri Goldberg was appointed to fill the unexpired term of Mr. Dungan, term to expire June 30, 2003, or until her successor has been appointed.

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E. RESOLUTION NO. 02-67 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Educational Access Channel Commission.

Adam Baylus has resigned from the Educational Access Channel Commission, thus leaving an unexpired term until June 1, 2003.

On April 2, 2002, City Council interviewed Frank Dastoli and Nat Myers.

Frank Dastoli received 1 vote and Nat Myers received 6 votes. Therefore, Nat Myers was appointed to serve the unexpired term of Mr. Baylus, term to expire June 1, 2003, or until his successor is appointed.

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F. RESOLUTION NO. 02-68 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Film Commission.

Sarah Blankenship, David Quinn, Diana Bilbrey and Jerry Birdwell have expired from the Film Commission, thus leaving four unexpired terms. Two unexpired terms are until November 1, 2003, and two unexpired terms are until November 1, 2004.

On March 5, 2002, the Asheville Film Commission requested City Council reduce the membership of the Film Commission from 15 to 13 members. City Council agreed with that recommendation and the ordinance was amended on March 26, 2002.

In addition, on March 5, 2002, the Film Commission recommended City Council appoint Leni Sitnick and Kathi Petersen to serve the two of the unexpired terms – one until November 1, 2003; and one until November 1, 2004.

On April 2, 2002, City Council interviewed Marcianna Miller, Terry Adams and Kathi Petersen. Leni Sitnick is also a candidate, however, she was not brought in for an interview.

Marcianna Miller received 0 votes, Terry Adams received 1 vote, Kathi Petersen received 6 votes and Leni Sitnick received 6 votes. Therefore, Kathi Petersen was appointed to serve an unexpired term until November 1, 2003,or until her successor has been appointed. In addition, Leni Sitnick was appointed to serve an unexpired term until November 1, 2004, or until her successor has been appointed.

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G. RESOLUTION NO. 02-69 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Asheville-Buncombe Historic Resources Commission.

Annamarie Rickman has resigned from the Historic Resources Commission, thus leaving an unexpired term until July 1, 2004.

On March 26, 2002, City Council interviewed Marsha Shortell and Laurie Rotundo. On April 2, 2002, City Council interviewed Stephen Olin. On April 9, 2002, City Council interviewed Alice Keller.

Marsha Shortell received 2 votes, Laurie Rotundo received 4 votes, Stephen Olin received 0 votes, and Alice Keller received 1 vote. Therefore, Laurie Rotundo was appointed to fill the unexpired term of Ms. Rickman, term to expire July 2, 2004, or until their successor is appointed.

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VI. OTHER BUSINESS:

Memorial Day Task Force

Councilman Mumpower reported that Mayor Worley appointed him, Councilman Dunn and Councilman Ellis to serve as the Council Memorial Day Committee ("Committee"). The Committee met on April 5, 2002, and with their mission in mind to develop a Memorial Day Task Force that will focus on coordinating a Memorial Day event at the City-County Plaza in cooperation with Buncombe County, the Committee made the following recommendations: (1) that each member of Council and County Commissioners be permitted to select one person for the Memorial Day Task Force; (2) that Mr. Walter Plaue be appointed to the Task Force in view of his commendable efforts to bring this issue up for consideration; (3) that, with the approval of the County Commissioners, Jerome Jones be appointed as the Chair of the Task Force; and (4) that the respective recreation directors of Buncombe County and the City of Asheville be asked to serve as ex-officio consultants to the Task Force. The Committee's recommendation to the Task Force includes (1) that care should be taken to not overlap with other pre-planned Memorial Day events (VA Hospital, Veterans Cemetery, etc); (2) that an effort should be made to incorporate police, fire and emergency care personnel into the event; and (3) that this event be conducted with a minimum of City and County monies due to the current budgetary crisis – donations, support from Veteran organizations, and business investment should be encouraged as much as possible.

Councilwoman Jones moved to accept the recommendations of Council Memorial Day Committee with the exception that the Committee be empowered to make the appointments to the Task Force and oversee the process. This motion was seconded by Councilman Ellis and carried unanimously.

Budget Worksession Rescheduled

At the request of City Manager Westbrook, Councilman Mumpower moved to reschedule the budget worksession from May 16, 2002, until May 13, 2002, beginning at 1:00 p.m. in the First Floor North Conference Room. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Claims

The following claims were received by the City of Asheville during the period of March 22-April 4, 2002: Brooks Howell Home (Water), WCQS (Streets), Annelore McMahan (Streets), Blue Ridge B&J (Inspections), Holly Elledge (Water), Marlin Harbin (Water), Thomas Tuten (Water), Jeffrey D. Shepherd (Police), Chester Davis (Parks & Recreation) and Maggie Guyton (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English felt that the City of Asheville should not annex people who do not wish to become City residents.

Ms. Rebecca Campbell was disappointed with Council's decisions at the meeting regarding less public comment on projects being built in neighborhoods and also an accelerated involuntary annexation process.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:33 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 16, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Renewal of License Agreements with Morris Communications Inc.

Summary: The consideration of a resolution directing the City Clerk to publish notices of intent regarding renewal of License Agreements with Morris Communications, Inc. for antennas at 36 Reservoir Road and Peach Knob Reservoir.

The properties at 36 Reservoir Road (White Fawn) and Peach Knob Reservoir are the sites of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

Morris Communications, Inc., has operated an antenna and related equipment at each of the sites since December, 1996. There are three towers at 36 Reservoir Road and the Morris antenna is located on the tower known as the "U. S. Cellular Tower" which is immediately east of the proposed Sister Cities Park. The proposed License Agreements will enable Morris to continue operating antennas at each site; however, there is a provision which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreements will be 3 years with 2 renewal periods of 3 years. Morris will pay a License Fee of $6,300 for the White Fawn site and $5,100 for the Peach Knob site, the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee, Morris will pay a Utility Fee of $150.00 per annum at each site.

Approval of the resolution will authorize the City Clerk to publish notices of intent to renew the License Agreements.

Planning Department staff recommends adoption of the resolution authorizing the City Clerk to publish notices of intent to renew license agreements with Morris Communications Inc.

FAA Grant Agreement

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $366,676.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $366,676, is for reimbursement of security operational costs as provided under Public Law 107-117.

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Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-26.

Amendment to the Municipal Records Retention & Disposition Schedule

Summary: The consideration of a resolution authorizing the Mayor to sign an amendment to the 1997 Municipal Records Retention & Disposition Schedule.

On September 23, 1997, by Resolution No. 97-158, the City approved the Municipal Records Retention and Disposition Schedule issued August 15, 1997, by the N. C. Department of Cultural Resources, Division of Archives and History.

The N. C. Department of Cultural Resources has now amended said Schedule. The first amendment to Standard 3 (Budget and Fiscal Records) adds Powell Bill records to the schedule and amends Payroll and Payroll Deduction records. The second amendment to Standard 13 replaces the entire Personnel Records schedule.

It is in the best interest of the City of Asheville to promote municipal records management as provided by the N. C. Department of Cultural Resources, Division of Archives and History by adopting these amendments.

Staff recommends City Council authorize the Mayor to execute an amendment dated February 25, 2002, to the Municipal Records Retention and Disposition Schedule.

Mowing Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a grass mowing contract for the East and West mowing districts.

In an effort to provide mowing services for grass areas throughout the City of Asheville, City staff divided the grass areas into five separate mowing districts and solicited sealed bids from ten Commercial Lawn Mowing Contractors, four of which were minority contractors, to provide mowing services for each and/or all of the five mowing districts. City staff reviewed the bids and concluded that Donna Spratt, d/b/a Donnie Appleseed's Landscaping, was the responsive low bidder for the East and West mowing districts at $68,000, combined for both districts and recommends acceptance of the bid.

Approved funding is available in the Park and Recreation operating fund account to pay for these mowing services.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for $68,000 with Donna Spratt, d/b/a Donnie Appleseed's Landscaping.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE FROM THE HAW CREEK PEDESTRIAN TASK FORCE

Mr. Chris Pelly, President of the Haw Creek Community Association, briefed Council on the years the Association has been working with the City on pedestrian issues in Haw Creek. He stressed there is only 1/3 of a mile of sidewalks serving the entire Haw Creek valley and the lack of sidewalks is the number one road concern for the residents.

Mr. Calvin Underwood, Co-Chair of the Haw Creek Pedestrian Task Force, said that in April of 2001, City Council adopted a resolution establishing the Haw Creek Pedestrian Task Force. The criteria in the Pedestrian Thoroughfare Plan for sidewalks include: ½ mile of school, ½ mile of community center, ½ mile of church, commercial or business center, along major corridor, and high use area/pedestrian generator.

Mr. Underwood described the work of the Task Force: (1) met monthly since June 2001; (2) developed short term goal which is to install sidewalk between the library, Park and school; and (3) developed long term goals which are (a) install greenway connections in the valley; (b) develop an educational/awareness program; and (c) sidewalks the length of the valley.

He showed a slide of where there are existing sidewalks in Haw Creek, where there are no sidewalks and proposed sidewalk areas in Haw Creek.

He explained the Avon Road project as follows: (1) design is complete for approximately 1,100 linear feet of sidewalk by City staff; (2) exploring options for funding; (3) preparing easements for sidewalk; (4) contracting for easement acquisition; and (5) estimated cost of $220,000 which is unfunded.

He explained the Trinity Chapel Road project as follows: (1) design complete for approximately 1,800 linear feet of sidewalk by City staff; (2) exploring options for funding; (3) preparing easements for sidewalk; (4) contracting for easement acquisition; and (5) estimated cost is $280,000 which is unfunded.

He then explained New Haw Creek Road project from Beverly Road to Arco Road: (1) design complete for approximately 1,700 linear feet of sidewalk by City staff; (2) exploring options for funding; (3) preparing easements for sidewalk; (4) contracting for easement acquisition; (5) State road – qualifies for NC DOT Small Urban Funds – proposed for approval on NC DOT May Board agenda; and (6) estimated cost of $300,000 – with potential for $150,000.

Mr. Underwood explained the New Haw Creek Road project from Arco Road to Tunnel Road: (1) design in progress for approximately $1,200 linear feet of sidewalk by City staff; (2) exploring options for funding; (3) preparing easements for sidewalk; (4) contracting for easement acquisition; (5) State road – qualifies for NC DOT Small Urban Funds – requested in Fiscal Year 2002-03 budget; and (6) estimated cost of $400,000 – with potential for $150,000.

He explained the Task Force's goals: (1) in Fiscal Year 2002-03, the New Haw Creek from Beverly Road to Arco Road Sidewalk Project and the Avon Road Sidewalk Project be completed by any combination of the following: money, labor from Public Works crews to complete the projects, or dedication of "fee in lieu of" construction money for this area; and (2) City support for a TEA 21 grant application to complete sections of the sidewalk due June 28, 2002.

Mr. Underwood explained some new developments in the Haw Creek Valley, which consist of The Village at Haw Creek in December of 2002, and a new 15-lot subdivision on Bell Road – both of which will contribute additional vehicular and pedestrian traffic.

Mr. Underwood requested City Council set aside the $40,000 in the City's funds from "fee in lieu of" payments be set aside for these two projects in Haw Creek.

Upon inquiry of Councilman Mumpower, Mr. Pelly said that because the State has assured them of a grant in the amount of $150,000 from the Small Urban Fund for the New Haw Creek Road Project from Beverly Road to Arco Road, he felt if they had to choose between projects, this would be the one they would chose to complete first.

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City Engineer Cathy Ball said that the $150,000 from the Small Urban Fund is limited only to curb and gutters.

In response to Councilman Mumpower, Mr. Pelly said that the only existing sidewalk in Haw Creek was installed in 1990.

When Councilman Peterson asked about easements, Mr. Pelly said that a majority of owners along Avon Road are willing to give easements to the City for these sidewalks, but want some type of a commitment from the City first.

City Manager Westbrook said that since City Council has adopted a priority needs list for sidewalks, City Council may want to revisit the whole list because neighborhoods near the top of the list expect their sidewalks to be built. Ms. Ball noted that Hendersonville Road sidewalks are number one on that list and the Haw Creek area is number two.

Councilwoman Jones said that during this budget crisis, it's more imperative to leverage the City's money with other funds. The Haw Creek community is an active partner and they have done their part in working with property owners to obtain easements and other community solutions.

It was the consensus of City Council to ask the City Manager to come back with recommendations on how the City can help fund a sidewalk project in Haw Creek.

ORDINANCE NO. 2913 – BUDGET AMENDMENT REGARDING THE ASHEVILLE YOUTH SPORTS PROGRAM

Vice-Mayor Bellamy presented City Council with a letter dated April 11, 2002, from Lamont Bellamy, Commissioner 2002, which read "On Thursday, November 22, 2001, while most of us were enjoying Thanksgiving with our family and friends, Asheville Youth Sports Program suffered a significant loss to our athletic program. The storage facility that housed our organization's sports equipment, which is used by over 160 little league football players and cheerleaders, went up in flames at McCormick Stadium. Asheville Youth Sports Program is known for being a training organization for football players who have played and are playing at Asheville High School, TC Roberson High School, AC Reynolds High School, Erwin High School as well as for the National Football League. Our league has helped to train – Leonard Little, John Avery, Ray Roberts and many others. We were able to provide them with a safe and fun experience, while participating in organized sports. Today we endeavor to continue this practice with all the children who come through our program. Each year, over 160 young boys and girls come to participate in our sports program, many of them have never played or cheered in an organized sport prior to coming to the Asheville Youth Sports Program. While under our supervision, we work on their football and cheering talents; as well as their attitudes. We understand that being a good athletic is only possible if a child has good support from coaches, parents and the community. We need your help in order to continue to provide a safe and fun experience for the youth who desire to participate in our program. We are asking you to act today by making a contribution of $25,000 to help us replace over $30,000 worth of equipment we lost. You can send your contribution to: Asheville Youth Sports Program Fire Fund, Asheville Savings Bank, Post Office Box 652, Asheville, NC, 28802. Thank you in advance for your support."

Vice-Mayor Bellamy urged City Council to support this request. She said that most children come from low-income families and they children have held many fund-raisers. She said the fire that destroyed their equipment was an electrical fire. The insurance covered the building, but not the contents of the building and they had no renter's insurance. She said the Program is asking for a one-time appropriation of $25,000 to be combined with their $6,232 contributions to date. A total amount of $33,795 is needed to replace the items lost in the fire.

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Upon inquiry of Councilman Dunn about the most important items needed, Mr. Bellamy said that uniforms are the most important.

When Mayor Worley asked if any equipment has been donated, Mr. Bellamy replied that approximately 45 should pads have been donated, but they need to be refurbished at a cost of $20-25 each.

Upon inquiry of Councilman Mumpower, Mr. Bellamy said there is an additional $15,000 pledge that is outstanding but they have not heard from that person since approximately three months ago. Mr. Bellamy said that time is important because uniforms need to be ordered and there is a deposit required.

At the request of Councilwoman Jones, Mr. Bellamy explained how the Program works in cooperation with education through the youth and parents.

Councilman Dunn suggested sharing some of the equipment, however, Mr. Bellamy said that games are played right behind each other and because of the weight difference and quick dress change, there is little potential for sharing.

City Manager Westbrook said that if Council wishes to appropriate funds for this purpose, the funds would have to come from contingency.

When Councilman Dunn felt this might create a precedent for other teams to request money from the City, Vice-Mayor Bellamy said that in 1999-00, there was an appropriation to the North Asheville Youth League. City Manager Westbrook responded that the 1999-00 appropriation was for the North Asheville Park.

Mr. Jim Drummond, former Commissioner of the North Asheville Sports Program, urged City Council to support this request.

When Councilman Dunn asked if the City could make an interest-free loan to the Program, City Manager Westbrook felt the City of Asheville could not make that type of an investment by law.

All of Council was sympathetic and discussion surrounded the type of support the City could offer, e.g. amount of support, matching support, contingent support, donations, etc.

Councilman Mumpower suggested a $12,000 match.

Vice-Mayor Bellamy supported a $15,000 appropriation.

Mayor Worley suggested City staff work with the Program representatives to see what the absolute minimum needs are because we are in a very tight budget year. He felt that the City is being asked to be the insurer of this loss since the Program did not have insurance for their equipment. He felt there is a real need out there and would support of $12,000 with no match required.

Councilman Peterson supported a $15,000 appropriation and felt that other City departments might be able to donate their popcorn machine, coffee maker, etc.

Councilman Ellis at first suggested the City postpone action on this to see if the community and foundations will step up to help pay for their loss. Vice-Mayor Bellamy then said that there already has been publicity out there and they only have raised $6,232. Councilman Ellis then felt that he could support the $15,000 allocation.

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Peterson and carried unanimously.

Councilwoman Jones moved to appropriate a one-time $15,000 allocation to the Asheville Youth Sports Program. This motion was seconded by Vice-Mayor Bellamy and carried on a 4-3 vote, with Vice-Mayor Bellamy, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn and Councilman Mumpower voting "no."

City Manager Westbrook said that an agreement would be drawn up between the City and the Asheville Youth Sports Program.

ORDINANCE BOOK NO. 19 – PAGE 465

Vice-Mayor Bellamy said that it is important that if a Council member wants to have an issue placed on the agenda, it should be listed on the agenda.

REGIONAL WATER AUTHORITY

City Manager Westbrook announced that today Mayor Worley was appointed as Vice-Chair to the Regional Water Authority of Asheville, Buncombe and Henderson.

At 4:30 p.m., Mayor Worley moved to recess the meeting until 5:00 p.m., in the Council Chamber of the City Hall Building for School Board interviews.

SCHOOL BOARD INTERVIEWS

At 5:00 p.m., City Council began interviewing Allison Jordan, Marsha Bate, Roxie Wynn, Pegi O'Hagan and Keith Thompson for a vacancy on the Asheville School Board.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:30 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 23, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY, 2002, AS "MOTORCYCLE AWARENESS MONTH"

Mayor Worley read the proclamation proclaiming May, 2002, as "Motorcycle Awareness Month " in the City of Asheville. He presented the proclamation to Mr. Eldon Moore, who briefed City Council on some activities taking place during the month.

II. CONSENT:

Mayor Worley announced that Consent Agenda Item C has been removed from the Agenda due to an upset bid being received.

Vice-Mayor Bellamy asked that Consent Agenda Item B be removed from the Consent Agenda due to her conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 9, 2002, AND THE WORKSESSION HELD ON APRIL 16, 2002

B. RESOLUTION APPROVING THE CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT/HOME ACTION PLAN

Vice-Mayor Bellamy removed this item from the Consent Agenda due to a conflict of interest.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM NEIGHBORHOOD HOUSING SERVICES TO PURCHASE 17 KENDALL STREET

This item was removed from the Consent Agenda due to an upset bid being received.

D. RESOLUTION NO. 02-70 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING RENEWAL OF LICENSE AGREEMENTS WITH MORRIS COMMUNICATIONS INC. FOR ANTENNAS AT 36 RESERVOIR ROAD AND PEACH KNOB RESERVOIR

Summary: The consideration of a resolution directing the City Clerk to publish notices of intent regarding renewal of License Agreements with Morris

Communications, Inc. for antennas at 36 Reservoir Road and Peach Knob Reservoir.

The properties at 36 Reservoir Road (White Fawn) and Peach Knob Reservoir are the sites of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

Morris Communications, Inc., has operated an antenna and related equipment at each of the sites since December, 1996. There are three towers at 36 Reservoir Road and the Morris antenna is located on the tower known as the "U. S. Cellular Tower" which is immediately east of the proposed Sister Cities Park. The proposed License Agreements will enable Morris to continue operating antennas at each site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreements will be 3 years with 2 renewal periods of 3 years. Morris will pay a License Fee of $6,300 for the White Fawn site and $5,100 for the Peach Knob site, the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee, Morris will pay a Utility Fee of $150.00 per annum at each site.

Approval of the resolution will authorize the City Clerk to publish notices of intent to renew the License Agreements.

Planning Department staff recommends adoption of the resolution authorizing the City Clerk to publish notices of intent to renew license agreements with Morris Communications Inc.

RESOLUTION BOOK NO. 27 – PAGE 140

E. RESOLUTION NO. 02-71 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $366,676.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $366,676, is for reimbursement of security operational costs as provided under Public Law 107-117.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-26.

RESOLUTION BOOK NO. 27 – PAGE 141

F. RESOLUTION NO. 02-72 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN AMENDMENTS TO THE 1997 MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE

Summary: The consideration of a resolution authorizing the Mayor to sign an amendment to the 1997 Municipal Records Retention & Disposition Schedule.

On September 23, 1997, by Resolution No. 97-158, the City approved the Municipal Records Retention and Disposition Schedule issued August 15, 1997, by the N. C. Department of Cultural Resources, Division of Archives and History.

The N. C. Department of Cultural Resources has now amended said Schedule. The first amendment to Standard 3 (Budget and Fiscal Records) adds Powell Bill records to the schedule and amends Payroll and Payroll Deduction records. The second amendment to Standard 13 replaces the entire Personnel Records schedule.

It is in the best interest of the City of Asheville to promote municipal records management as provided by the N. C. Department of Cultural Resources, Division of Archives and History by adopting these amendments.

Staff recommends City Council authorize the Mayor to execute an amendment dated February 25, 2002, to the Municipal Records Retention and Disposition Schedule.

RESOLUTION BOOK NO. 27 – PAGE 142

G. RESOLUTION NO. 02-73 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH DONNA SPRATT, d/b/a DONNIE APPLESEED LANDSCAPING, FOR MOWING THE EAST ASHEVILLE AND WEST ASHEVILLE DISTRICTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a grass mowing contract for the East and West mowing districts.

In an effort to provide mowing services for grass areas throughout the City of Asheville, City staff divided the grass areas into five separate mowing districts and solicited sealed bids from ten Commercial Lawn Mowing Contractors, four of which were minority contractors, to provide mowing services for each and/or all of the five mowing districts. City staff reviewed the bids and concluded that Donna Spratt, d/b/a Donnie Appleseed's Landscaping, was the responsive low bidder for the East and West mowing districts at $68,000, combined for both districts and recommends acceptance of the bid.

Approved funding is available in the Park and Recreation operating fund account to pay for these mowing services.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract for $68,000 with Donna Spratt, d/b/a Donnie Appleseed's Landscaping.

RESOLUTION BOOK NO. 27 – PAGE 143

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 02-74 - RESOLUTION APPROVING THE CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT/HOME ACTION PLAN

Councilman Mumpower moved to excuse Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Peterson and carried unanimously.

Summary: This is the consideration of a resolution authorizing submission of the City's Consolidated Action Plan for 2002/03, allocating federal Community Development Block Grant (CDBG) and HOME funds.

The City expects to have available $1,902,224 in CDBG funds and $1,506,326 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2002. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 21 CDBG-assisted and 13-HOME assisted projects.

If approved, the funding will assist in adding or preserving 92 affordable housing units in the City and 109 units in the rest of the Consortium area. CDBG funds will also help provide 150 Asheville residents with employment or business training and over 3,000 residents with other needed services. CDBG will also continue to support revitalization of the WECAN and South Pack Square neighborhoods.

Notice of the public hearing and a summary of the draft plan were published on March 22. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD by May 15, 2001. City Council held their public hearing on April 9, 2002.

Councilman Peterson moved for the adoption of Resolution No. 02-74. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 144

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 26 WEDGEFIELD DRIVE FROM COMMUNITY BUSINESS I DISTRICT TO REGIONAL BUSINESS DISTRICT

ORDINANCE NO. 2914 - ORDINANCE TO REZONE 26 WEDGEFIELD DRIVE FROM COMMUNITY BUSINESS I DISTRICT TO REGIONAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:15 p.m.

Urban Planner Jeff Tacy said that this is the consideration of an ordinance to rezone 26 Wedgefield Drive from Community Business I District to Regional Business District. This public hearing was advertised on April 12 and 19, 2002.

The project applicant, Spake Real Estate, has requested a rezoning from Community Business I to Regional Business to allow for an expansion of an existing business. The purpose of the CB-I District is to provide areas for medium-density business and service uses to several residential neighborhoods with a maximum building size of 12,000 square feet. The purpose of the Regional Business District is to provide areas for large-scale commercial operations without any limitations on structure size.

The subject property contains .96 acres. It is located within the City's extraterritorial jurisdiction, in an area dominated by regional business land uses. The area surrounding the project site has mixed zoning including Regional Business, CB-I, RM-8 (Residential Multi-Family), and RS-4 (Residential Single-Family). The existing land uses in the area include offices, auto body shop, hotels, retail stores, the Biltmore Mall, single-family residences, manufactured housing, and a variety of others. The project site has frontage along Wedgefield Drive, however, the parcel will be combined with a development fronting on Brevard Road and will be oriented facing Brevard Road. Brevard Road is major thoroughfare with sufficient capacity to handle uses allowed in the Regional Business District. In addition, the project site is located in close proximity to the I-26 interchange.

In consideration of other land uses in the area and the project sites proximity to major thoroughfares and interstates, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

It is the recommendation of the Planning and Development Department to approve the request to rezone 26 Wedgefield Drive from Community Business I District to Regional Business District. The Planning & Zoning Commission held a public hearing on April 3, 2002, and unanimously voted to recommend the rezoning request be approved.

Upon inquiry of Councilman Peterson, Mr. Tacy said that the existing property is approximately 25-30 feet below the elevation of the road and that there will be consider buffering giving to the residential neighborhood.

Mr. Charles Murdock, speaking on behalf of Spake Development, felt that this particular parcel fits into the expansion, update and renovation of the supermarket and rezoning the property represents the highest and best use of that property. He felt that expanding the store to an upgraded and renovated store benefits the City residents in that area. He felt they were confident that they could buffer that property after construction is complete. He asked for Council support of the rezoning.

Mayor Worley closed the public hearing at 5:28 p.m.

City Attorney Oast reminded City Council that if the property is rezoned, that any use in the Regional Business District can be made of that property.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2914. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 467

B. PUBLIC HEARING RELATIVE TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARDS TO ALLOW THE LENGTH OF THE FLAGPOLE PORTION OF A FLAG LOT TO EXCEED THE MAXIMUM PERMITTED LENGTH OF 250 FEET AND TO ALLOW A SINGLE-FAMILLY HOME TO BE CONSTRUCTRED FURTHER THAN 500 FEET FROM A FIRE HYDRANT FOR PROPERTY ON BALLANTREE DRIVE

Mayor Worley opened the public hearing at 5:29 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a request to approve a modification from the subdivision standards to allow the length of the flagpole portion of a flag lot to exceed the maximum permitted length of 250 feet and to allow a single-family home to be constructed further than 500 feet from a fire hydrant for property on Ballantree Drive. This public hearing was advertised on April 12 and 19, 2002.

The City has received a request to subdivide a 5.74-acre parcel into two lots. The parcel is a flag lot type of property, with narrow frontage on Ballantree Drive that continues behind smaller properties along Ballantree and opens up to the bulk of the lot approximately 300 feet from Ballantree. The subdivision regulations of the Unified Development Ordinance require all residential lots to have at least 25 feet of frontage and flag lots to have a minimum width of 25 feet for the flagpole portion of the lot. The maximum length for the flagpole portion is 250 feet. A flag lot may only serve one single-family dwelling and the dwelling is required to be within 500 feet of a fire hydrant where public water is available.

The petitioners wish to create two flag lots out of the parent parcel in order to build homes on both lots. Each resulting lot would have the required street frontage and flagpole width, but due to the dimensions of the parcel, the maximum flagpole length and permitted distance from a fire hydrant cannot be observed.

An old logging road currently provides access to the undeveloped lot and it would be upgraded to a driveway to serve one of the resulting lots and another driveway would branch off from the upgraded driveway to access the other lot.

Staff received comments at both the Technical Review Committee (TRC) meeting and the Planning and Zoning Commission meeting from surrounding neighbors. Their concerns were primarily based on potential stormwater and erosion issues as well as possible strain on the existing water system resulting from development of the property. The TRC, in its decision, attached conditions to ensure that the applicants work with the Engineering Department to ensure compliance with the City's erosion control and stormwater ordinances. The applicant has had a preliminary meeting with a representative of the City's Engineering Department to discuss stormwater and erosion control requirements and measures that would be used for compliance with them. Another condition was that the Water Resources Department evaluates the water system to make sure adequate water and water pressure is available for the existing homes in the area as well as the potential new homes on the property.

At the TRC's meeting on March 18, 2002, they recommended approval with conditions. At their April 3, 2002, meeting, the Planning and Zoning Commission voted unanimously to recommend approval. The Planning and Development staff also recommends approval of the subdivision modification.

Councilman Dunn, who lives in the Ballantree neighborhood, stated that they do not want to block the applicant from building on their property, but they are concerned about stormwater runoff problems to the homes at the bottom.

When Vice-Mayor Bellamy asked if the Fire Department truck would be able to drive up the steep driveway, Mr. Pettibone said that at the TRC meeting, the Fire Department did review and approve the modification request.

Councilman Dunn said that the developer has agreed to install two silt fences to prevent erosion from running down the hill onto adjoining property.

There was a brief discussion about the hillside ordinance and stormwater control ordinance and whether the ordinances are strict enough. City Manager Westbrook said that they would be glad to review those ordinances at some point in time, but to his knowledge, he felt our ordinances are in line with other municipalities of our size in the state.

Councilman Ellis pointed out that there is a parking lot at the medical complex on Sweeten Creek Road that is entirely pervious. Progress is being made in this area and we need to try to encourage developers to proceed with that type of construction.

Councilman Peterson pointed out that this is an example of the need for the City to expand its extraterritorial jurisdiction (ETJ) because when the Pinnacles were developed, it was in the County and they didn't have to meet City standards. Part of the rationale for expanding the ETJ is that development just outside the City does have an impact within the City.

Mr. John Grear, 15 Elmwood Lane, presented City Council with an engineering report dated March 28, 2002, regarding his property and the proposed development located at the rear of his residence. It was the engineer's opinion that "the development will have adverse effects" to his property and the adjoining property owners. Mr. Grear was concerned that his house (and adjoining houses) will be the collection point of all the water runoff from this project. If Council approves this, he asked that a condition be placed that the construction must meet or exceed all the City's rules and regulations.

Mr. George Ribaud, 7 Elmwood Lane, voiced concern over water runoff and the danger of a fire occurring in the woods where the proposed house will be built.

Mr. Roy Birchfield, President of the Ballantree Homeowners Association, said that a concern they had when they first heard about this project was would the construction be single- or multi-family. They have now been assured that any more development would have to come back through the same process. He urged City Council to make sure that the developer follows these plans.

Mr. Leo Wentzel, property owner, explained that he has met with the City Engineer and he understands the erosion control problem in the area. He said that he intends to do everything he can to prevent erosion from running off his property and will cooperate with the City Engineer.

Mayor Worley closed the public hearing at 6:02 p.m.

When Councilman Mumpower asked about if the Planning staff has reviewed the engineering report Mr. Grear presented, Planning & Development Director Scott Shuford responded that the letter is evident of the possibility of some civil action that could be pursued outside the standards that the City imposes. If the construction is not installed correctly, not only would the property owner be liable to face the enforcement of our ordinances, but also they might suffer civil damages of the neighboring property owners.

Councilman Mumpower moved to approve the modification from the subdivision standards to allow the length of the flagpole portion of a flag lot to exceed the maximum permitted length of 250 feet and to allow a single-family home to be constructed further than 500 feet from a fire hydrant for property on Ballantree Drive with the condition that the developer work with the Engineering Department to ensure compliance with the City's erosion control and stormwater ordinances. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE FOLLOWING SEVEN AREAS PROPOSED FOR ANNEXATION WHICH ARE GENERALLY KNOWN AS (1) LEICESTER HIGHWAY AREA; (2) SHERWOOD HEIGHTS AREA; (3) HUNTINGTON-CHASE AREA; (4) PORTION OF BELL ROAD; (5) FOREST LAKE AREA; (6) MILL STONE AREA; AND (7) KENSINGTON-WINDSOR AREA

Urban Planner Paul Benson said that the Annexation Services Plan is being submitted for Council's approval for the following areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area; portion of Bell Road, Forest Lake area, Mill Stone area and Kensington-Windsor area.

City Council approval of this document is the second step in the annexation process that began on April 9, 2002, when Council adopted the resolutions of intent to annex these seven areas.

Upon review and approval by City Council, the Plan will be made available for public review. The follow steps will complete the annexation process.

Approval of Annexation Services Plan	April 23, 2002
Public information meeting	June 3, 2002
Public hearings	June 11, 2002
Adoption of annexation ordinances	June 25, 2002
Effective date of annexations	June 30, 2003

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major water and sewer lines, and any proposed extensions; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of N. C. Gen. Stat. sec. 160A-48 (basically contiguity and urbanization).

3) A statement setting forth the plans of the municipality for extending to the annexation area each major municipal service performed within the municipality. Specifically, (a) police protection, fire protection, solid waste collection and street maintenance on the date of annexation; and (b) extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such service to individuals lots or subdivisions.

4) The method under which the municipality plans to finance extension of services into the area to be annexed.

5) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed.

6) A statement showing how the proposed annexation will affect the City's finances and services, including City revenue change estimates.

He then reviewed with Council the specifics of how each area qualifies for annexation:

Leicester Highway – Contains 64 acres, northwest. The area is contiguous and urbanized. It meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Sherwood Heights – Contains 61 acres, north – The area is contiguous and urbanized. It meets two tests – population density and subdivision test, and subdivision test.

Huntington Chase – Contains 63 acres, east - The area is continuous and urbanized. It meets two tests – population density and subdivision test, and subdivision test. This area also contains two non-urbanized areas.

Bell Road – Contains 21 acres, east – The area is contiguous and is urbanized. It meets the subdivision test.

Forest Lake – Contains 53 acres, south – The area is contiguous and meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Mill Stone – Contains 7 acres, south – The area is contiguous and meets all three tests – population density test, the population density and subdivision test, and the subdivision test.

Kensington-Windsor – Contains 67 acres, south – The area is contiguous and meets the population density test.

Mr. Benson then explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will not require expansion of the Police Department. He explained how each area would be served by an expansion of a particular district. At the current population, the number of sworn positions reflects a police/citizen ratio of one officer per 410 residents. A ratio of one officer per 300-400 residents is typical for North Carolina cities and towns. The police/citizen ratio following annexation is estimated at one officer to 417 residents. Because of the relatively small size of the annexation areas and close proximity to the existing municipal boundaries, no additional capital or operating expenses is anticipated in adding these areas to the existing patrol districts.

Fire protection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of the Fire and Rescue Department. The N.C. Gen. Statutes require the City to compensate rural fire departments for lost revenue by either contracting with the rural fire departments for fire protection, (usually the case). City services supplement the rural fire departments under contract to bring fire protection to City standards. The Fire and Rescue Department participates with surrounding fire departments in accordance with mutual aid agreements. The City currently has an insurance rating of 3, on a scale of 1-10, with 1 being the highest level.

Solid waste collection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Sanitation Division. New customers would receive the automated collection service. Compensation would be offered to private solid waste hauler to offset economic loss as required by the statutes. Therefore, there will be costs to the City associated with the purchase of new rollout containers and potential "economic loss" payments to affected contractors.

Street maintenance services: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Street Maintenance Division. Existing personnel and equipment are planned to serve the proposed additions to the City maintenance system; therefore, no specific personnel and equipment additions will be made. Streets are resurfaced on a scheduled rotation established by classification, construction type, use, condition and inspections. The following are private and state maintained streets planned for inclusion on the scheduled rotation: Leicester Highway: Eliada Home Road and Old County Home Road; Sherwood Heights: Robinhood Road, Brookwood Road, and Brookwood Court; Huntington Chase: Huntington Chase Drive; Bell Road: Bell Road; Forest Lake: Forest Lake Drive, Sawmill Road, Meadow Lake Road, Simpson Hollow Road, Kingbird Lane, Glen Woods Court, and Goldfinch Lane; Mill Stone: Mill Stone Drive; and Kensington-Windsor: Windsor Drive, New Castle Court and Saint Charles Court. In order for privately owned streets to be considered by maintenance by the City, there is certain criterion that must be met. Some immediate maintenance issues include trimming of overgrown vegetation adjacent to streets in Sherwood Heights area; and need for some patching in the Forest Lake area.

Water distribution: On the effective date of annexation, all residents, businesses and property owners within the proposed seven annexation areas that are adjacent to existing water facilities will receive service on a basis substantially equal to all current portions of the City. The following four areas require no water line improvements: Sherwood Heights area, Forest Lake area, Mill Stone area and Kensington-Windsor area. The following three areas have water line improvements which are planned for completion by June 30, 2005: Leicester Highway: There is a need to upgrade the existing 2-inch water line to bring fire protection coverage to the same level as other parts of the City. The City will install approximately 2,600 linear feet of new 6-inch water line, fire hydrants and related appurtenances. Huntington Chase: There is a need to upgrade the existing 2-inch water line to bring fire protection coverage to the same level as other parts of the City. The City will install approximately 560 linear feet of new 6-inch water line, fire hydrants and related appurtenances. Bell Road: There is a need to upgrade the existing 2-inch water line to bring fire protection coverage to the same level as other parts of the City. The City will install approximately 1,300 linear feet of new 6-inch water line, fire hydrants and related appurtenances.

Sewer collection: The following five areas require no sanitary sewer system improvements: Leicester Highway area, Sherwood Heights area, Bell Road area, Forest Lake area and Kensington-Windsor area. The following two areas have sanitary sewer system improvements which are planned for completion by June 30, 2005: Huntington-Chase: The City will install approximately 560 linear feet of 8-inch sanitary sewer line and related appurtenances to enhance the level of service to this area. Mill Stone area: The City will install approximately 270 linear feet of 8-inch sanitary sewer line and related appurtenances to enhance the level of service to this area.

Administrative and other municipal services: The City provides a full range of services. Basically key professional and department directors specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and reaction and various other municipal activities and functions. The City is active in minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities.

Financial Impact:

Revenue: Total ad valorem property tax revenue - $375,547; Total state utility tax revenue - $51,300; Total local option sales tax - $144,058; Total Powell Bill allocation - $37,393; and Total fees, permits, licenses and charges for services - $47,149. Total revenue - $655,447.

Annual recurring expenditures: Fire (rural fire department contracts expected to be in place for at least 5 years) - $64,564; Solid waste (tonnage fee) - $9,632; and Street lighting (electrical charge to CP&L) - $6,644. Total recurring expenditures - $80,840.

Annual capital expenditures: Water line improvements - $310,000; Sewer line improvements - $101,000; Solid waste (economic loss compensation for private solid waste haulers) - $25,920; Rollout containers - $12,040; Street signs - $1,599; Street repair - $2,500; and Street lighting - $2,307. Total one-time annual capital expenditure - $455,366.

Mr. Benson explained the impact on insurance rates to property owners and commercial properties.

City Attorney Oast noted that if this Plan is found to be deficient after the public information meeting or after the City Council public hearing, it could be amended during Council deliberation of adoption of the ordinances.

Mr. Benson responded to various questions/comments from Council, some being, but are not limited to: does the City automatically take in all the streets in the annexation areas; are people required to tap into water or sewer after annexation; how much does it cost to tap into an existing water line; how long do we contract with the rural fire departments; how does the City handle street lights when subdivisions have more decorative street lights installed; are there different size roll-out containers; do we anticipate growth and more development around these proposed areas that will require building another fire station in the future; what is the status of multi-family apartments having recycling pick-up; how does the street scheduled maintenance rotation work; does the City feel that the police/citizen ratio is sufficient to protect our citizens; where does the City rank in crime throughout the state; what is the average response call for a Priority 1 police call; what constitutes Priority 1 police calls; and describe fire insurance rates.

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that the City is legally bound to provide services to the annexation areas on the effective date of annexation, except water and sewer line improvements which can be completed within a two year period after the effective date of an annexation.

Councilman Dunn briefed Council on a problem in Hollybrook where elderly people cannot roll down the trash containers for pick-up. He felt that if the City annexes an area, they should have the equipment to take care of the needs of that area. He understood the need for efficiency, but he felt that we are sacrificing services. Public Works Director Mark Combs explained the circumstances in Hollybrook and said that he is working with the homeowners association on that concern. He also noted that the City does have a set-out system in place for people who are physically not able to get their trash out to the curb.

Councilman Mumpower said that he wouldn't feel comfortable going forward with further annexations if the City is not providing good service to the current residents. However, Council does have assurance by staff that they are trying to provide good service. He invited City residents to contact Council to report if they see patterns of inadequate service.

At 7:25 p.m., Mayor Worley announced a short break.

Mr. Fred English, resident in Haw Creek, felt that the City should maintain what they have before trying to annex more people. He pointed out that there is only one short section of sidewalk in the whole Haw Creek valley.

Mr. Dennis Seeney, Forest Lake Subdivision resident, spoke against the annexation and said that even though he will be saving approximately $180-200 a year on fire insurance, it doesn't equal the amount of $1,000 of additional property taxes. He felt that he has adequate law enforcement protection already from the Sheriff's Department and their response time would be pretty much the same as the Asheville Police Department's response time. He wondered if the City would start maintenance of the common area that the association currently pays for.

In reply to Mr. Seeney, Mr. Benson said that the Forest Lake common area would be private property, however, if they would like to dedicate the land to the City, our Parks and Recreation Department may take over the maintenance.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 02-75 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE LEICESTER HIGHWAY AREA

Councilman Ellis moved for the adoption of Resolution No. 02-75. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 145

RESOLUTION NO. 02-76 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE SHERWOOD HEIGHTS AREA

Councilman Peterson moved for the adoption of Resolution No. 02-76. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 146

RESOLUTION NO. 02-77 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE HUNTINGTON CHASE AREA

Councilman Ellis moved for the adoption of Resolution No. 02-77. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 147

RESOLUTION NO. 02-78 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS A PORTION OF BELL ROAD

Councilwoman Jones moved for the adoption of Resolution No. 02-78. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 148

RESOLUTION NO. 02-79 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE FOREST LAKE AREA

Councilwoman Jones moved for the adoption of Resolution No. 02-79. This motion was seconded by Councilman Ellis and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 149

RESOLUTION NO. 02-80 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE MILL STONE AREA

Councilman Peterson moved for the adoption of Resolution No. 02-80. This motion was seconded by Councilman Ellis and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 150

RESOLUTION NO. 02-81 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE KENSINGTON-WINDSOR AREA

Councilman Ellis moved for the adoption of Resolution No. 02-81. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Councilman Dunn voting "no."

RESOLUTION BOOK NO. 27 – PAGE 151

Councilman Dunn said that he is not against annexation and he would have voted in favor had he felt like the City was not stretched as far as we are. He was not convinced this was the right time to annex.

B. RESOLUTION NO. 02-82 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Bellamy said that on April 16, 2002, City Council interviewed Allison Jordan, Marsha Bate, Roxie Wynn, Pegi O'Hagan and Keith Thomson for a vacancy on the Asheville School Board.

After each Council member spoke about the excellent credentials of all candidates, Councilman Ellis nominated Allison Jordan, Councilman Dunn nominated Allison Jordan, Councilwoman Jones nominated Marsha Bate, Mayor Worley nominated Allison Jordan, Councilman Mumpower nominated Marsha Bate, Councilman Peterson nominated Marsha Bate, and Vice-Mayor Bellamy nominated Roxie Wynn. There being a tie between Allison Jordan and Marsha Bate, Vice-Mayor Bellamy changed her vote in support of Allison Jordan.

Therefore, Allison Jordan was appointed as a member of the Asheville School Board to fill the unexpired term of Mr. Mark Gordon. Said term will begin immediately and expire on April 1, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 152

VI. OTHER BUSINESS:

Salvation Army Boys & Girls Club

Vice-Mayor Bellamy presented the City with several hand-made thank you cards and pictures from the Salvation Army Boys & Girls Club thanking firefighters and police officers.

Southeastern Airport Managers' Association

Mayor Worley said that he was presented with a resolution from the Southeastern Airport Managers' Association thanking the City of Asheville and the Asheville Regional Airport Authority for their generosity in assisting the 2002 Annual Conference held in Asheville.

Consolidation of Services

There was a brief discussion on the issue of consolidation with Buncombe County, in particular parks and recreation services. City Manager Westbrook said that as a result of a list of items Councilman Dunn had given him with regard to a proposal from Buncombe County, he prepared a memo to City Council noting that staff is analyzing the proposal and he would report back to Council within the next month on those items. Councilman Peterson felt that a subcommittee of Council working with a subcommittee of County Commissioners might be a better approach than having City staff working with County staff on consolidation proposals.

With regard to the consolidation of after-school programs, City Manager Westbrook said that at the budget worksession on May 13, 2002, Parks & Recreation Director Irby Brinson will explain his proposal.

Claims

The following claims were received by the City of Asheville during the period of April 5-11, 2002: Tim Vorst (Fire), Joy Reid (Water) and Michael H. Carter (Transit Services).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Veterans Memorial Request

Mr. Tuck Gudger, North Asheville resident, presented City Council with a petition containing approximately 650 names which read: "There is not a Veterans' Memorial in downtown Asheville commemorating those who have served, are serving and will serve in the military forces of the United States of America, especially during times of armed conflict, and there has long been a need for an appropriate veteran's memorial. The last open space in the city for a Veterans' Memorial is in the Pack Square/City/County Plaza area which area is being configured for better public use. We petition for a reservation of space in the Pack Square/City/County Plaza area for erection of a monument commemorating all veterans and, to the extent feasible, for erection of such monument." He asked that Council adopt a resolution supporting a veterans' memorial to be included in the projected plans for the renovation of the City/County Plaza. He also asked that the City contribute $50,000 towards the $100,000 total project cost. The other $50,000 is being requested from the Buncombe County Commissioners. He said that the City could maybe allocate the $50,000 over 3 years since the project may not be completed until that time.

Mr. Bill Griffin also spoke in support of the veterans' memorial and passed out to Council a sketch on what they would like the memorial to look like.

Mr. Richard Griffin supported the veterans memorial and stressed they need a place in Asheville that is appropriate and accessible for large crowds.

Mayor Worley asked the City Manager to place this item on Council's worksession agenda within 30 days and asked that Pack Square Conservancy Inc. (group contracted with the City) be invited to the worksession for a briefing on the project.

Comments by Walter Plaue

Mr. Walter Plaue invited City Council to attend the Memorial Day Services at 10:00 a.m. on Monday, May 27, 2002, at the City/County Plaza. He hoped this celebration would be the first of many.

Comments by Fred English

Mr. Fred English, Haw Creek resident, felt that the $15,000 appropriation to the Asheville Youth Sports Program voted on by Council at their worksession on April 9, 2002, was a conflict of interest for Vice-Mayor Bellamy and she should not have voted on that issue.

Closed Session

At 8:42 p.m., Councilwoman Jones moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Henderson County, Cane Creek Water and Sewer District, Asheville-Buncombe-Henderson Water Authority, James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. Williams, Paul E. Fruits, B. Joy MacFadyen Bulluck, Buncombe County, and City of Asheville – G. S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 10:10 p.m. Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 30, 2002
North Asheville Community Center
37 East Larchmont Road

7:00 p.m. - Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

The following topics were raised by residents and addressed by City Council and City staff: request to withhold any decision regarding the renovation of the Civic Center until a plan can be produced for the alternate use of the Civic Center at no cost to the City; determination needs to be made if Dunwood Road is a private or City-maintained street; large potholes on Dunwood Road; Dunwood Road is in such disrepair that trash trucks cannot collect garbage; annexation policies in the past with regard to street maintenance; Black Oak Drive, which was annexed several years ago, is in bad disrepair and residents requested the City take over maintenance of that private road; street assessment process unfair to property owners on Black Oak Drive who have a lot of street frontage; request to have Black Oak Drive's potholes repaired and snow removal service even if it is a private road; request for a pedestrian signal at the corner of Larchmont Road and Merrimon Avenue; request for sidewalk between Burger King and Swannanoa Cleaners on Merrimon Avenue; request for speed bumps on Fenner Avenue; request for sidewalks on Fenner Avenue; need for more speed enforcement on Fenner Avenue; request for "Children at Play" or "Slow" signs on Fenner Avenue near the bottom of the hill or near the corner of Lookout and Fenner; need Police Department to enforce parking violations on Fenner Avenue; Civic Center renovation should not include a sport activities complex because that should be built by the river or closer to the Airport in order to have adequate parking; City should make a determination on what to do at the Civic Center soon because the price tag is getting higher every year; library at the North Asheville Community Center is small and perhaps should be expanded over the air rights of the parking lot; no speeding enforcement on Merrimon Avenue or Kimberly Avenue; need to look at City departments, e.g., Civic Center and Transit Services, for prioritization; need for the City to do a better job of communicating with the community; request for community to give input to the City's 2025 Comprehensive Plan; request for County Commissioners' meetings to be viewed on the City's Government Channel; and request for more greenways.

After discussion, Council requested City staff prepare a report regarding streets that are in the City of Asheville but not maintained by the City. Said report is to contain a list of streets; the cost of bringing the streets up to City standards; and a financial plan with potential funding options, e.g. how much the City would pay and where those funds would come from, and how much the property owners would pay. Due to the current budget concerns, the City Manager requested this information be provided to Council between September 2002 – March 2003. Councilman Mumpower requested a worksession before late fall as he just wanted to explore possibilities without dollars being attached.

Mayor Worley adjourned the meeting at 8:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 7, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Resolution setting a Public Hearing on May 28, 2002, for the Voluntary Annexation of Reynolds Mountain Subdivision, Phase I

Budget Amendment for Mobile Safety House Grant from Federal Emergency Management Agency

Summary: The consideration of a budget amendment, in the amount of $52,277, to receive grant money from the Federal Emergency Management Agency (FEMA) for a mobile safety house and associated equipment.

The City of Asheville Fire and Rescue Department requested $52,277 from FEMA for the purchase of a mobile safety house and associated equipment. Staff was successful in obtaining those funds and was awarded Federal grant EMW-2001-FG-06774. The grant provides 70% of the total project, with the remainder from Fire Department's operating budget.

The safety house is primarily designed to educate adults about fire safety and home safety. Part of the mobile house is also to educate the public about residential fire sprinkler systems.

City staff recommends City Council approve the budget amendment to receive grant money from FEMA.

Contract to Audit City Accounts

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2001-2002.

N.C. General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2000-2001. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the Fiscal Year 2001-2002 audit. The base fee has been proposed at $54,000 (this is the same fee as last year and $700 less than two years ago). Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution, which authorizes the Mayor to execute a contract with Crisp Hughes Evans LLP for auditing services for Fiscal Year 2001-2002.

Budget Amendment for Master Street Tree Plan, Phase III

- Summary: The consideration of a budget amendment, in the amount of $10,000, from a grant from the North Carolina Department of Environment and Natural Resources for implementation of the Master Street Tree Plan, Phase III.

The City of Asheville applied for funds in August 2001 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of $10,000 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the east area of Asheville.

The Parks and Recreation Department has completed the first two phases of the MSTP, and the Public Works Department will complete the remaining phases. Once complete, the MSTP will be an inventory of all the street trees on City right-of-ways located within the City limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the east area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of $10,000 to establish a budget for the next phase of the MSTP.

Youth Employment Program

Summary: The consideration of accepting a proposal by Community Solutions for Youth Employment to fund and manage the Youth Employment Program for the Summer of 2002, and approval of a budget amendment, in the amount of $37,400, to fund the program.

Community Solutions for Youth Employment (CSYE), part of a multi-agency support system for high risk youth ages 14 – 21 years of age, was informed of the City's inability to continue its youth employment program for 2002 due to budget constraints caused by State revenue shortfalls. CSYE is a program of Eliada Homes, Inc. CSYE, in cooperation with the Parks and Recreation Department, immediately began work to determine the best way to continue funding the youth employment program.

CSYE is proposing to fund summer jobs for 26 youth for eight weeks at 30 hours per week. In addition, CSYE agrees with the department that employment for these youth is only one part of the overall assistance that they need and therefore has agreed to manage the program for the Department at no additional cost. This management will include: recruitment of applicants, application activities, recruitment of employers in addition to the City of Asheville, interviewing activities, hiring, pre-employment training and orientation, job retention activities, mid-summer training, and volunteer placement for any additional youth needing experience but not included in the employment process. CSYE staff will provide weekly onsite contact with each youth employee to monitor their work and to supply support. CSYE will conduct an evaluation of the program. A special event at the end of the eight weeks is planned to celebrate the successful conclusion of the program.

The City of Asheville will accept a grant from the Community Solutions for Youth Employment for $37,400 to fund the cost of the program. The City of Asheville will use these funds to pay the wages and social security for each youth and provide pre-employment drug screening. Cost to the City will be the staff and time necessary to process payroll and to administer the drug screening program.

Traditionally, youth employed through this program have worked in a number of different City Departments including Parks and Recreation, Fire, Public Works and Human Resources.

The Parks and Recreation Department recommends that the City accept the proposal and grant funds from CSYE for the 2002 summer youth employment program and approve the budget amendment to fund the program.

Upon inquiry of Vice-Mayor Bellamy, Superintendent of Recreation Butch Kisiah explained the recruitment procedure.

Provisions for Possession & Consumption of Malt Beverages and/or Unfortified Wine at Goombay Festival, Greek Festival, Asheville Mountain Sports Festival, Asheville Downtown Association's events and the Bele Chere Festival

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: 2002 Goombay Festival, 2002 Mountain Sports Festival, 2002 Greek Festival, Asheville Downtown Association's 2002 events and Bele Chere 2002.

The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 23-25, 2002. The 2002 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Mountain Sports Festival is a unique combination of competitions and demonstrations throughout Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Mountain Sports Festival has requested permission to allow possession and consumption of beer and wine during these events.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the Downtown area. This year the request is being made for July 26-27, 2002. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Vice-Mayor Bellamy asked that these be voted on separately at the next formal meeting.

- **Grant from U.S. Dept. of Justice for Three New Police Officer Positions**

Summary: The consideration of a resolution authorizing the City Manager to apply for a federal grant from the U.S. Department of Justice to fund three new police officer positions.

The City is eligible to receive a $225,000 grant form the U. S. Department of Justice, Office of Community Oriented Services, to fund three new police officer positions for a period of three years. It is intended to assign three police officers to provide additional police services to the City's public housing communities. In consideration thereof, the Housing Authority of the City of Asheville has agreed to provide $107,736 for the required local cash match. No City funds are required for the match.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with the U.S. Department of Justice to fund three new police officer positions.

Police Chief Will Annarino answered various questions from Council regarding these three positions.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

I-26 CONNECTOR UPDATE

Metropolitan Planning Organization Coordinator Dan Baechtold said that this is a presentation to City Council on the traffic projections to be used in the design of the I-26 Connector Project.

Mr. Baechtold said that Stantec Consulting, traffic consultant from Raleigh, recently completed an update to the traffic model for the Asheville urban area. The traffic model is a computer simulation of traffic patterns that predicts traffic volumes on major streets and highways over the next 25 years. This traffic data will be used as the basis for designing the I-26 Connector project in Asheville. Stantec had a contract with the City of Asheville in the amount of $145,300 to produce this product. Eighty Percent (80%) of this cost was paid for with federal funds. The City of Asheville provided the local match of twenty percent (20%) in the amount of $29,060.

He said the traffic model presentation would also be given to the Community Coordinating Committee, which is the citizen's group that has been working with the NCDOT on the design of the connector project. That presentation will take place on the morning of May 7th. The following day, on May 8th, the presentation will be given to the Transportation Advisory Committee for the Asheville Area MPO (TAC). The TAC serves as the body that provides local input to the NCDOT. The TAC will be asked, after their public hearing on May 16, 2002, to give their input to the NCDOT.

Mr. Drew Joyner, with the N. C. Dept. of Transportation (NC DOT) Project Development and Environmental Analysis Department, explained that for the past 1-1/2 years they have (1) added I-26/I-40/I-240 interchange; (2) updated the I-26 Connector website; (3) added two new alternatives – beginning functional design and completing field studies for environmental impacts; (4) worked with NC DOT staff to provide visualization of project alternatives; and (5) updated the Asheville Urban Area Traffic Model.

The traffic data was one of the factors used to determine the number of lanes that will be built through West Asheville. He explained the results of the traffic model stating that the NC

DOT would like to continue forward with their planning. Since the NC DOT now has the information they need to make a determination on the number of lanes, and in order to move forward, the NC DOT recommends an 8-lane cross-section on I-240. After the TAC provides input to the NC DOT, then Stantec will be able to provide NC DOT with updated full traffic forecasts. After receiving that information from Stantec, then the NC DOT can work on detail functional designs for each of the four alternatives.

Ms. Beverly Williams, Asheville Coordinator for the NC DOT Statewide Planning Branch, explained some specifics of the traffic model, noting that City staff provided the housing, land use and employment data. She reiterated that the NC DOT recommendation is that this portion of the project receives an 8-lane cross-section on I-240. She noted that the NC DOT is not asking for concurrence on the larger I-26 Connector at this time, just the I-240 west traffic.

NC DOT and Stantec representatives answered various questions from Council with regard to the traffic model, some being, but are not limited to: how much is through trip traffic; was peak traffic considered in the model; what does the different level of services mean, what is the existing level of service; how many people would be relocated; any consideration in the traffic model for public transportation or new railway; will a short delay of a decision from the TAC slow the project down from it's anticipated 2008 construction date; and what happens if the TAC makes a recommendation of 6 lanes.

Councilwoman Jones, member of the TAC, asked for Council's support to ask the TAC to postpone their decision for at least 30 days in order for members to hear more from the public and understand the project more fully. She stressed that this request is not to delay the project.

After discussion, it was the consensus of City Council to add on the formal meeting agenda next week a discussion of a 30-day extension regarding the I-26 connector.

On behalf of Council, Mayor Worley thanked the NC DOT and Stantec representatives for their presentation.

STANDARDS FOR LIGHTING OF MOST NON-RESIDENTIAL DEVELOPMENT

Planning and Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Asheville Standard Specifications and Details Manual to establish standards for lighting of parking lots, outdoor display areas, vehicular canopies and similar activities/uses to ensure adequate safety, night vision, and comfort and not cause excessive glare onto adjacent properties and public street rights-of-way.

Citizens have consistently identified glare and light trespass as an adverse impact of non-residential development. In addition, citizens have expressed concern about the "over-lighting" of uses such as gas stations and convenience stores. In response to these concerns, the staff of the Public Works and Planning and Development Departments have worked with staff of CP&L to develop lighting standards designed to ensure adequate lighting for all uses while minimizing glare and light trespass. The ordinance establishes general lighting standards and specific standards for the following uses:

- Parking lots and outdoor areas;
- Vehicular canopies;
- Outdoor display areas;
- Outdoor sports fields and performance areas;
- Parking decks; and
- Signs.

The goal of the proposed standards is to provide developers, contractors, and property owners with standards that will ensure adequate lighting for the development being proposed while minimizing adverse impacts on adjacent properties and public rights-of-way caused by glare and light trespass. The City staff was fortunate to have the assistance of a lighting expert employed by CP&L to assist in the development of the lighting standards. Our goal was to provide reasonable standards that would meet the needs of and benefit the entire community.

The Public Works and Planning and Development staff recommend approval of the ordinance establishing lighting standards for the City of Asheville.

Mr. Shuford noted that before staff requests final action by Council they will run the ordinance through a focus group which will include neighborhood representatives and people in the lighting industry. After that focus group reviews the changes, they will bring the final ordinance before Council for action.

PUBLIC COMMENT AT PUBLIC HEARINGS

When Councilman Dunn asked if any suggestions have been forthcoming on how to structure public comment at public hearings, Mayor Worley replied that Council members have not given him any input but would welcome such input.

CLOSED SESSION

At 5:04 p.m., Councilman Mumpower moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: City of Asheville, Kenneth Bowman, Joseph Boerner and others. This is the City's appeal of the Civil Service Board decision on the police officer pay grievance and unless a request is made, the list of about 25 names will not be read. The City Attorney has a written list of the names if anyone wants to see it. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously.

At 6:20 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

At 6:20 p.m., Mayor Worley recessed the meeting to be reconvened at 6:30 p.m. at the Asheville City Schools Administrative Offices at 85 Mountain Street.

JOINT CITY COUNCIL/SCHOOL BOARD MEETING

At 6:30 p.m., Mayor Worley reconvened the meeting at the Asheville City Schools Administrative Offices to hear the State of the System address by Superintendent Robert L. Logan.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – May 14, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF UNC-CHAPEL HILL'S DEAN WILLIAM H. CAMPBELL

Mayor Worley recognized UNC-Chapel Hill's Dean William H. Campbell for his many contributions to pharmacy, health care and the City of Asheville's initiatives.

B. RECOGNITION OF THE ASHEVILLE URBAN TRAIL COMMITTEE

Mayor Worley read the proclamation proclaiming the Asheville Urban Trail Committee as the Asheville Parks & Recreation Department's 2002 Volunteer of the Year. He presented Ms. Grace Pless, Chair, with the proclamation. She then briefed City Council on the history of the Committee, which began in 1989 noting that their completed trail celebration will be on May 16, 2002.

C. PROCLAMATION PROCLAIMING MAY, 2002, AS "ORGAN DONATION AWARENESS MONTH"

Councilman Mumpower read the proclamation proclaiming May, 2002, as "Organ Donation Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Alan T. McKenzie, CEO of the Buncombe County Medical Society, and Dr. Jim Montgomery, President of the Buncombe County Medical Society, who briefed Council on some activities taking place during the month.

D. PROCLAMATION PROCLAIMING MAY 18-24, 2002, AS "NATIONAL SAFE BOATING WEEK"

Councilman Dunn read the proclamation proclaiming May 18-24, 2002, as "National Safe Boating Week" in the City of Asheville. He presented the proclamation to Mr. Russ Martin, Local Commander of the Asheville Power Squadron, who briefed Council on some activities taking place during the week.

II. CONSENT:

Vice-Mayor Bellamy requested Consent Agenda Items K-O be removed from the Consent Agenda to be voted on separately.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 23, 2002; THE COMMUNITY MEETING HELD ON APRIL 30, 2002; AND THE WORKSESSION HELD ON MAY 7, 2002

B. RESOLUTION NO. 02-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO LICENSE AGREEMENTS WITH MORRIS COMMUNICATIONS INC. FOR ANTENNAS AT 36 RESERVOIR ROAD AND PEACH KNOB RESERVOIR

Summary: The consideration of a resolution authorizing the City Manager to execute License Agreements with Morris Communications, Inc. for antennas at 36 Reservoir Road and Peach Knob Reservoir.

The properties at 36 Reservoir Road (White Fawn) and Peach Knob Reservoir are the sites of telecommunication towers owned by the City of Asheville. The City leases antenna space on the towers and ground space for related equipment.

Morris Communications, Inc., has operated an antenna and related equipment at each of the sites since December, 1996. There are three towers at 36 Reservoir Road and the Morris antenna is located on the tower known as the "U. S. Cellular Tower" which is immediately east of the proposed Sister Cities Park. The proposed License Agreements will enable Morris to continue operating antennas at each site; however, there is a provision, which allows either the Licensor or the Licensee to terminate the agreement upon 180 days notice. The term of the License Agreements will be 3 years with 2 renewal periods of 3 years. Morris will pay a License Fee of $6,300 for the White Fawn site and $5,100 for the Peach Knob site, the first term with a 10.5% increase at each renewal thereafter. In addition to the License Fee, Morris will pay a Utility Fee of $150.00 per annum at each site.

The Notice of Intent to enter into License Agreements with Morris Communications was published on Friday, April 26, 2002, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested,

Planning Department staff recommends adoption of the resolution authorizing the City Manager to execute License Agreements with Morris Communications, Inc. for antennas at 36 Reservoir Road and Peach Knob Reservoir.

RESOLUTION BOOK NO. 27 – PAGE 153

C. RESOLUTION NO. 02-84 - RESOLUTION SETTING A PUBLIC HEARING FOR MAY 23, 2002, TO CONSIDER THE VOLUNTARY ANNEXATION OF REYNOLDS MOUNTAIN SUBDIVISION, PHASE I

RESOLUTION BOOK NO. 27 – PAGE 154

D. ORDINANCE NO. 2915 - BUDGET AMENDMENT TO RECEIVE GRANT FUNDS FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR A MOBILE SAFETY HOUSE

Summary: The consideration of a budget amendment, in the amount of $52,277, to receive grant money from the Federal Emergency Management Agency (FEMA) for a mobile safety house and associated equipment.

The City of Asheville Fire and Rescue Department requested $52,277 from FEMA for the purchase of a mobile safety house and associated equipment. Staff was successful in obtaining those funds and was awarded Federal grant EMW-2001-FG-06774. The grant provides 70% of the total project, with the remainder from Fire Department's operating budget.

The safety house is primarily designed to educate adults about fire safety and home safety. Part of the mobile house is also to educate the public about residential fire sprinkler systems.

City staff recommends City Council approve the budget amendment to receive grant money from FEMA.

ORDINANCE BOOK NO. 19 – PAGE 469

E. RESOLUTION NO. 02-85 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS, LLP, CERTIFIED PUBLIC ACCOUNTANTS, FOR AUDITING SERVICES FOR FISCAL YEAR 2001-02

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2001-2002.

N.C. General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2000-2001. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the Fiscal Year 2001-2002 audit. The base fee has been proposed at $54,000 (this is the same fee as last year and $700 less than two years ago). Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution, which authorizes the Mayor to execute a contract with Crisp Hughes Evans LLP for auditing services for Fiscal Year 2001-2002.

RESOLUTION BOOK NO. 27 – PAGE 155

F. ORDINANCE NO. 2916 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO IMPLEMENT THE MASTER STREET TREE PLAN, PHASE III

Summary: The consideration of a budget amendment, in the amount of $10,000, from a grant from the North Carolina Department of Environment and Natural Resources for implementation of the Master Street Tree Plan, Phase III.

The City of Asheville applied for funds in August 2001 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program. The grant was recently awarded in the amount of $10,000 and designated for implementing the next phase of the Master Street Tree Program (MSTP) in the east area of Asheville.

The Parks and Recreation Department has completed the first two phases of the MSTP, and the Public Works Department will complete the remaining phases. Once complete, the MSTP will be an inventory of all the street trees on City right-of-ways located within the City limits of Asheville. The existing inventory is almost fifteen years old and does not accurately reflect the trees of the City. The next phase of the process will identify the location, size, condition, and site conditions of trees located in the east area of Asheville. The MSTP will serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of $10,000 to establish a budget for the next phase of the MSTP.

ORDINANCE BOOK NO. 19 – PAGE 471

G. ORDINANCE NO. 2917 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE COMMUNITY SOLUTIONS FOR YOUTH EMPLOYMENT

Summary: The consideration of accepting a proposal by Community Solutions for Youth Employment to fund and manage the Youth Employment Program for the Summer of 2002, and approval of a budget amendment, in the amount of $37,400, to fund the program.

Community Solutions for Youth Employment (CSYE), part of a multi-agency support system for high risk youth ages 14 – 21 years of age, was informed of the City's inability to continue its youth employment program for 2002 due to budget constraints caused by State revenue shortfalls. CSYE is a program of Eliada Homes, Inc. CSYE, in cooperation with the Parks and Recreation Department, immediately began work to determine the best way to continue funding the youth employment program.

CSYE is proposing to fund summer jobs for 26 youth for eight weeks at 30 hours per week. In addition, CSYE agrees with the department that employment for these youth is only one part of the overall assistance that they need and therefore has agreed to manage the program for the Department at no additional cost. This management will include: recruitment of applicants, application activities, recruitment of employers in addition to the City of Asheville, interviewing activities, hiring, pre-employment training and orientation, job retention activities, mid-summer training, and volunteer placement for any additional youth needing experience but not included in the employment process. CSYE staff will provide weekly onsite contact with each youth employee to monitor their work and to supply support. CSYE will conduct an evaluation of the program. A special event at the end of the eight weeks is planned to celebrate the successful conclusion of the program.

The City of Asheville will accept a grant from the Community Solutions for Youth Employment for $37,400 to fund the cost of the program. The City of Asheville will use these funds to pay the wages and social security for each youth and provide pre-employment drug screening. Cost to the City will be the staff and time necessary to process payroll and to administer the drug screening program.

Traditionally, youth employed through this program have worked in a number of different City Departments including Parks and Recreation, Fire, Public Works and Human Resources.

The Parks and Recreation Department recommends that the City accept the proposal and grant funds from CSYE for the 2002 summer youth employment program and approve the budget amendment to fund the program.

ORDINANCE BOOK NO. 19 – PAGE 473

H. RESOLUTION NO. 02-86 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FEDERAL GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND THREE NEW POLICE OFFICE POSITIONS

Summary: The consideration of a resolution authorizing the City Manager to apply for a federal grant from the U.S. Department of Justice to fund three police officer positions.

The City is eligible to receive a $225,000 grant form the U. S. Department of Justice, Office of Community Oriented Services, to fund three police officer positions for a period of three years. It is intended to assign three police officers to provide police services to the City's public housing communities. In consideration thereof, the Housing Authority of the City of Asheville has agreed to provide $107,736 for the required local cash match. No City funds are required for the match.

City staff recommends City Council authorize the City Manager to apply for and enter into an agreement with the U.S. Department of Justice to fund three police officer positions.

RESOLUTION BOOK NO. 27 – PAGE 156

I. RESOLUTION NO. 02-87 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID FROM MICHAEL FRISBEE TO PURCHASE 17 KENDALL STREET

Summary: The consideration of a resolution authorizing the Mayor to convey property at 17 Kendall Street in the West Asheville community to Michael Frisbee in the amount of $10,780.

The City originally received an offer to purchase 17 Kendall Street from Neighborhood Housing Services in the amount of $10,000. On April 9, 2002, the City Council directed the City Clerk to advertise for upset bids. The advertisement ran in the Asheville Citizen-Times on April 12, 2002, as provided in N. C. Gen. Stat. sec. 160A-269, and an upset bid was received by Michael Frisbee in the amount of $10,780. Another advertisement ran on April 26, 2002, and no upset bid was received. Therefore, the offer to purchase from Michael Frisbee in the amount of $10,780 was not upset and the sale to Michael Frisbee should be approved.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey the property at 17 Kendall Street to Michael Frisbee.

RESOLUTION BOOK NO. 27 – PAGE 157

J. RESOLUTION NO. 02-88 - RESOLUTION CONFERRING MAYOR'S POWERS AND DUTIES UPON VICE-MAYOR

RESOLUTION BOOK NO. 27 – PAGE 158

K. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GOOMBAY! FESTIVAL

L. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GREEK FESTIVAL**

M. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL**

N. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 2002 EVENTS**

O. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL**

Consent Agenda Items K-O were removed from the Consent Agenda to be voted on separately.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Ellis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA TO BE VOTED ON SEPARATELY

K. **RESOLUTION NO. 02-89 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2002 GOOMBAY! FESTIVAL**

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N. **RESOLUTION NO. 02-92 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION'S 2002 EVENTS**

O. **RESOLUTION NO. 02-93 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: 2002 Goombay Festival, 2002 Mountain Sports Festival, 2002 Greek Festival, Asheville Downtown Association's 2002 events and Bele Chere 2002.

ORDINANCE BOOK NO. 19 – PAGE 473

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Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: 2002 Goombay Festival, 2002 Mountain Sports Festival, 2002 Greek Festival, Asheville Downtown Association's 2002 events and Bele Chere 2002.

The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 23-25, 2002. The 2002 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Mountain Sports Festival is a unique combination of competitions and demonstrations throughout Asheville. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 27-29, 2002. The 2002 Mountain Sports Festival has requested permission to allow possession and consumption of beer and wine during these events.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the Downtown area. This year the request is being made for July 26-27, 2002. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Councilman Mumpower moved for the adoption of Resolution Nos. 02-89, 02-90, 02-91, 02-92, and 02-93. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no."

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RESOLUTION BOOK NO. 27 – PAGE 163
RESOLUTION BOOK NO. 27 – PAGE 165
RESOLUTION BOOK NO. 27 – PAGE 167

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING OF 5 LOTS AT CLAYTON ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 2918 - ORDINANCE TO REZONE 5 LOTS AT CLAYTON ROAD FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 5:30 p.m.

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Urban Planner Carter Pettibone said that this is consideration of an ordinance to rezone 5 lots at Clayton Road from RS-2 Residential Single-Family Low Density District to Institutional District. This public hearing was advertised on May 3 and 10, 2002.

The project applicant, Biltmore Baptist Church, is requested the rezoning of approximately 61.97 acres (PIN Nos. 9634.08-89-1762, 9635.04-80-2415, 9635.04-81-4120, 9635.04-81-2207 and 9635.04-82-3111) to allow for future expansions and uses accessory to an existing place of worship. The RS-2 district does allow for Places of Worship as a use by right subject to special requirements. The Institutional District allows for a place of worship as a permitted use.

The properties are located in the City's extraterritorial jurisdiction (ETJ) near the intersection of Interstate-26 and Longs Shoals Road. Development in the area is sparse with the Coke-a-Cola distribution center located across the street to the southwest, a residential subdivision adjacent to the west side of the properties, and the French Broad River and vacant land surrounding the remainder of the site. The place of worship has been in existence for a number years and a master plan for the properties had been developed prior to its incorporation into the ETJ. The design of the master plan, which clearly defines future expansions for the place of worship and its accessory uses, is not consistent with the development standards of the RS-2 zoning district and/or the special requirements of Article 16 of the UDO (uses by right subject to special conditions). However, the master plan is consistent with the Institutional District requirements. It is the opinion of the Planning and Development Department that at the time the properties were incorporated into the ETJ, they should have rightfully been zoned Institutional to allow for the continued development of the master plan. In addition, it would cause a considerable hardship to require future development on the properties to meet the RS-2 district standards and special requirements of Article 16.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the properties located at 35 Clayton Road from RS-2 to Institutional. The Planning and Development staff also recommends approval of the requested rezoning.

Mr. James Jones, representing Lampley and Associates, spoke in support of the rezoning so the Church can continue with their Master Plan.

Mayor Worley closed the public hearing at 5:35 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2918. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 475

B. PUBLIC HEARING TO CONSIDER REZONING 775 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2919 - ORDINANCE TO REZONE 775 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:36 p.m.

Urban Planner Carter Pettibone said that this is consideration of an ordinance to rezone 775 Haywood Road from RM-8 Residential Multi-Family Medium Density District to Central Business District. This public hearing was advertised on May 3 and 10, 2002.

The applicant, West Asheville Development LLC, has requested the rezoning of approximately 0.21 acres (PIN No. 9638.13-14-5875) to allow for further development of the area at the corner or Haywood Road and Herron Avenue. The purpose of the Central Business District is to encourage a strong supportive retail center along with high-density residential development, which will complement surrounding neighborhoods.

The existing land uses in the area include single and multi-family residences to the north and east and retail and planned mixed-use development to the south and west that are part of the Bledsoe Building renovation project. The site's frontage is on Herron Avenue, but since the parcel will be part of the mixed-use development to the south it will be able to take advantage of the driveway accesses to Haywood and Herron that currently exist and are used by the Bledsoe Building.

In consideration of the adjoining zoning and land uses in the area to the south and west of the site and the project site's proximity to the Haywood Road thoroughfare, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance (UDO). The proposed rezoning is also in keeping with the intent of the Haywood Road Corridor Plan, which was approved in 1999 to serve as a guide for future development along Haywood Road in the West Asheville neighborhood. Two of the goals as specified in Plan are to enhance the existing balanced mix of uses on Haywood Road through commercial, institutional, open space, and small parks and to encourage new development that serves adjacent neighborhoods and helps create an economically vibrant pedestrian environment. The plan identifies this parcel as one of the properties included in the Haywood Road Corridor Study Area and rezoning it to CBD would help fulfill these goals.

In addition, the properties to the south that are zoned CBD contain mixed use buildings with associated parking areas with no buffering to the residentially-zoned properties to the north and east since they existed prior to the current UDO's planting and buffering requirements. Any uses developed on this property subsequent to a rezoning would necessitate appropriate buffering, street trees and/or parking screening to the adjacent residential properties.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the northwest corner of Haywood Road and Herron Avenue from RS-8 to CBD. The Planning and Development staff also recommends approval of the requested rezoning.

Mr. David Ramsey, resident on Mildred Avenue and Project Manager of the Bledsoe Building, spoke in support of the rezoning for future development.

Vice-Mayor Bellamy said she attended an affordable housing forum recently and it was noted that the City has been rezoning multi-family residential land. She hoped the City would do a better job of keeping multi-family sites in the City and perhaps even rezone more for multi-family development.

Mayor Worley closed the public hearing at 5:42 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2919. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 477

C. PUBLIC HEARING RELATIVE TO CONSIDER A LEVEL III CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON RIVER HILLS ROAD OFF OF SOUTH TUNNEL ROAD KNOW AS DREAMLAND DEVELOPMENT (TARGET RETAIL STORE)

ORDINANCE NO. 2920 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON RIVER HILLS ROAD OFF OF SOUTH TUNNEL ROAD KNOW AS DREAMLAND DEVELOPMENT (TARGET RETAIL STORE)

City Attorney Oast reviewed with Council the conditional use permit process by stating that City Council will first hear from staff that will describe the proposal and provide some background information. Then the applicant may make a presentation and then comments from the public will be taken. He said that there would be an opportunity for questions and rebuttal comments, as necessary. Following the hearing, Council will then debate the proposal and will take action on the request.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

Mayor Worley said that at this public hearing Council will be discussing the issuance of a conditional use permit for a large national chain. Our review of this request is limited to issues that directly affect the City of Asheville and its public services and infrastructure. Many citizens may have strong feelings about corporate hiring and purchasing practices, wage structure for employees, compensation of executives, corporate public involvement in the community, effect on other businesses, and similar issues. Those views may be favorable to the applicant or unfavorable. While this Council respects these views and concerns, they are not relevant to our decision about the issuance of the conditional use permit, and we may not legally consider them in our deliberations. Because they are not relevant, their discussion will serve no purpose other than to distract our attention away from the many complex issues we are changed with addressing, as well as needlessly prolonging the meeting. Consequently, he asked that members of the audience not include these statements in comments. In addition, he asked that members of the audience not repeat comments already made as unnecessary redundancy can needlessly prolong a hearing and likewise distract Council from the issues that they must consider.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:43 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Green said that this is the consideration of a conditional use permit for to construct a 125,400 square foot Target store in the River Hills Shopping Center, located at the intersection of Tunnel Road/Wood Avenue and Swannanoa River Road.

On March 29, 2002, Collett and Associates submitted development plans for Level III site plan review. The project is a new 125,400 square foot Target store with 627 parking spaces to be located in the River Hills Shopping Center. The 19.2 acre project site is zoned Commercial Industrial (Location Map – Attached to City Exhibit 3). There will be three points of access to the site; two primary points of access will be from River Hills Road and a secondary access will be from McArthur Lane. An outparcel of 0.8 acres will not be developed at this time. The Technical Review Committee (TRC) reviewed the plans at their April 15, 2002, meeting and recommended approval with conditions. Most of the TRC's comments were addressed in revised plans submitted April 25, 2002. The Planning and Zoning Commission at their May 1, 2002, meeting reviewed the revised plans. The Commission recommended approval of the plans with conditions.

Level III projects are conditional uses within the Commercial Industrial District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed. In addition the project must meet the supplemental development standards for large retail structures due to its size. The applicant has met the necessary development standards as outlined in the supplemental development standards for large retail buildings. The building will be finished with split face concrete block with accent bands of smooth face block. The façade also incorporates arcades, display windows, and several distinct massing elements as well as articulation of the façade and of the roof. The parking area will be heavily landscaped with a buffer and interior planting islands.

The project site is located in an area dominated with commercial land uses and mixed with single-family residential, multi-family residential, and industrial type land uses. The project site sits at a higher elevation than most of the surrounding properties. The project site is highly visible from almost every direction, especially in the area of the Asheville Mall, Swannanoa River Road and Interstate-240.

The project plan proposes two accesses on River Hills Road and a third access on McArthur Lane (Site Plan – Attached to City Exhibit 3). River Hills Drive connects to Wood Avenue, which connects to South Tunnel Road and Swannanoa River Road. The closest interstate interchange is approximately one (1) mile away on Tunnel Road. McArthur Lane connects to Glendale Avenue, which connects to Swannanoa River Road. The building is situated towards the rear of the site with the majority of the parking in front. The project proposes 627 parking spaces at a ratio of five (5) spaces per 1,000 square feet of gross floor area. The UDO allows for a minimum of one (1) space per 350 square feet and a maximum of one (1) space per 200 square feet or five (5) per 1,000 square feet.

The building will be single story at a height of 28 feet not including the decorative parapet (Building Design – Attached to City Exhibit 3). At the highest point, the building will be 36 feet in height. The Commercial Industrial district allows for a maximum height of eighty (80) feet. The face and rear of the building is approximately 393 feet in length and the sides are approximately 269 feet in length. The building will have a single entrance located to the left side of the building face and the site plan depicts a sidewalk along the length of the face of the building. The rear of the building has an area for loading, deliveries, and a compactor. The building will be constructed

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of split-face concrete masonry units (CMU) with five cream-colored smooth face CMU accent bands. The developer has submitted revised drawings (City Exhibit 4).

The plan depicts three attached signs; two of which are the "Target with bulls-eye" signs measuring approximately 181 square feet, one located on the front face of the building and one on the right side of the building. The remaining sign, approximately 72 square feet, is located on the front of the building (right side) and reads "PHARMACY." The total square footage of all attached is approximately 434 square feet. This attached signage is not out of scale with the building and seems appropriate in meeting the needs of building identification given its size and location. The plan does not depict a freestanding sign anywhere on the site, however, the applicant has requested an 80 square foot sign to be located off the site along River Hills Drive to orient customers to the site. The size of this sign appears excessive since its purpose is primarily to orient persons already on River Hills Drive to the Target store; it is essentially a directional sign. Variances or other adjustments permitted in our code will be required to address these signage issues.

The UDO requires 100 square feet of open space for every 1,000 square feet of gross floor area. The plan depicts the required 12,540 square feet of open space.

Per the Supplemental Design Standards for Large Retail Structures, the project must provide a 50-foot buffer, which incorporates 150% of the plantings called for in a "D" buffer. The buffer shall apply to the entire frontage along River Hills Road, Springvale Avenue, and the south corner of the site.

The UDO requires that new commercial developments provide one large maturing tree (over 35 feet in height at maturity) for every 40 linear feet of property abutting a street, or one small-maturing tree (less then 35 feet in height at maturity) for every 30 linear feet of property abutting a street.

UDO requires sidewalk installation along the frontage of all adjacent public streets. The applicant may pay a fee in lieu of sidewalk installation, provided that the applicant makes a written request to the City Engineer.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the UDO. City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. **The proposed use or development of the land will not materially endanger the public health or safety.** The proposed use will not materially endanger public health and safety since it has multiple access points, is served by a public street and is located in an area of similar uses.

2. **The proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** The proposed use constitutes the redevelopment of previously developed land and its development will not result in excessive grading or other

alteration of the natural landscape. If developed according to the plan, it will increase the extent of trees and shrubs on the site above current conditions.

3. **The proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The proposed use is located in an area of similar uses and will be buffered from adjoining residential uses in accordance with the supplemental landscaping standards for large retail uses. Site lighting and building design will be in accordance with the supplemental standards as well.

4. **The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The proposed use is located in an area of similar uses and will be appropriately buffered from adjoining uses of lesser intensity.

5. **The proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the city.** The proposed use is consistent with both the current zoning of the property and the designation of the property in the comprehensive plan.

6. **The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** If developed in accordance with the conditions proposed by staff, there will be no undue public service impacts. The project has been reviewed by TRC, which found that services and facilities are available to meet the needs of the proposed development.

7. **The proposed use will not cause undue traffic congestion or create a traffic hazard.** The applicant has submitted a traffic impact analysis for the site that has been found to be generally acceptable by staff. If developed in accordance with the conditions proposed by staff, there will be no undue impact on the traffic circumstances in the surrounding area. Offsite improvements to the access from McArthur Lane and the intersection of River Hills Drive and the access point to the Dick's, Office Max and Circuit City development, in addition to the provision of a transit stop/shelter, will address the traffic impacts of the project.

The Planning and Zoning Commission reviewed the plans for the Dreamland Development (Target) at their May 1, 2002, meeting and recommended approval of the project subject to conditions (please note that the developer is working to address the conditions identified by the Planning and Zoning Commission; some of these issues may be addressed prior to City Council review). The staff of the Planning and Development Department concurs with this recommendation. The proposed conditions are:

The project applicant shall:

1. Provide lighting plan detail for parking and sidewalk areas. The light fixtures must be cut-off type and the height of the lighting standards shall not exceed 30 feet.
2. Provide signage package for the proposed development that meets the store's need for signage while minimizing the need for variances from the signage requirements set forth in Article 13 of the UDO.
3. The applicant shall install a type "B" buffer along the southwest side of Springvale Avenue, the northwest side of Dogwood Lane, and the northeast side of Glendale Avenue in the area of the stormwater facility.
4. The calculations for the parking lot landscaping require adjustment. The landscaping must meet the requirements set forth in the supplemental standards

for large retail structures, resulting in a need for additional parking lot landscaping.

5. No parking will be permitted in front of the building to be constructed on the outparcel at the time of Outparcel 1 development.
6. No curb-cuts on River Hills Road will be approved for Outparcel 1.
7. Work with Planning and Development staff to investigate the feasibility of providing pedestrian access to the Carmike Theater site and the Michael's/Goody's site.
8. Provide pedestrian connection from primary site to Springvale Avenue.
9. Provide a buffered sidewalk in the western portion of the parking lot to provide a safe pedestrian passage through the parking area.
10. Work with staff to investigate the feasibility of a pedestrian connection with the Glendale neighborhood.
11. Install street trees along River Hills Road.
12. Work with the Transit Director to locate a transit stop and shelter on the site or, alternately, at the Transit Director's discretion, in the immediate vicinity of the site in order to provide convenient transit access to the proposed development. The transit stop/shelter shall be located within easy walking distance of the store entrance and not on the periphery of the site.
13. Implement traffic improvements recommended by the traffic impact analysis (TIA).
14. Address concerns raised by the Engineering Department about the intersection of River Hills Drive and the Dick's/Office Max/Circuit City driveway resulting from traffic generation by the proposed development. This condition may require a reconfiguration of the intersection as a roundabout or signalization of the intersection.
15. Address concerns raised by residents and the Engineering Department concerning access from McArthur Lane by installing a right-turn out only traffic directional island and appropriate signage.
16. In addition to the display windows added to the front façade, add additional display windows that are either internally accessed or externally accessed (such as those provided for movie theaters) in order to improve the extent of the "window" areas along the façade frontage so as to provide pedestrian interest and to create the appearance of a continuous line of windows. Displays provided in these "windows" shall not be considered signage.
17. Address all stormwater requirements of the Engineering Department.

Mr. Green said that City staff has been working with the developer and reviewed with Council the following set of revised conditions (City Exhibit 5):

1. Provide lighting plan detail for parking and sidewalk areas. The light fixtures must be cut-off type and the height of the lighting standards shall not exceed 30 feet. – The applicant has provided City staff with an elevation of the lighting fixtures that meets this standard and they have assured the City that there will be cut-off fixtures.
2. Provide signage package for the proposed development that meets the store's need for signage while minimizing the need for variances from the signage requirements set forth in Article 13 of the UDO. – The applicant has provided City staff with a signage package that is acceptable and seems reasonable in light of the size of the development. City staff will be working with the developer to obtain the necessary variances and adjustments to permit that signage package.

3. The applicant shall install a type "B" buffer along the southwest side of Springvale Avenue, the northwest side of Dogwood Lane, and the northeast side of Glendale Avenue in the area of the stormwater facility.
4. The calculations for the parking lot landscaping require adjustment. The landscaping must meet the requirements set forth in the supplemental standards for large retail structures, resulting in a need for additional parking lot landscaping.
5. No parking will be permitted in front of the building to be constructed on the outparcel at the time of Outparcel 1 development.
6. No curb-cuts on River Hills Road will be approved for Outparcel 1.
7. Work with Planning and Development staff to investigate the feasibility of providing pedestrian access to the Carmike Theater site and the Michael's/Goody's site. – The developer does not have any interest in either of these projects and City staff has agreed to make contact with the owners and developers of those two sites to try to work out some type of pedestrian access.
8. Provide pedestrian connection from primary site to Springvale Avenue.
9. Provide a buffered sidewalk in the western portion of the parking lot to provide a safe pedestrian passage through the parking area.
10. Work with staff to investigate the feasibility of a pedestrian connection with the Glendale neighborhood.
11. Install street trees along River Hills Road.
12. Prior to the issuance of a building permit, the developer shall identify a design and location for a transit shelter and bus loading area acceptable to the City of Asheville Transit Director. The transit shelter and bus loading area shall be constructed by the developer at this location according to the approved design prior to the issuance of a certificate of compliance for the building, except as follows: In the event that transit service is not ready to be provided to the development at this time of the issuance of the certificate of compliance, the developer shall construct the bus loading area and escrow sufficient funds for the construction of the transit shelter at a later date, the amount of such escrow to be determined by the Transit Director. – This revised condition has been provided to the developer and they are in agreement with it.
13. Implement traffic improvements recommended by the traffic impact analysis (TIA).
14. Address concerns raised by the Engineering Department about the intersection of River Hills Drive and the Dick's/Office Max/Circuit City driveway resulting from traffic generation by the proposed development. This condition may require a reconfiguration of the intersection as a roundabout or signalization of the intersection.
15. Address concerns raised by residents and the Engineering Department concerning access from McArthur Lane by installing a right-turn out only traffic directional island and appropriate signage.
16. Address all stormwater requirements of the Engineering Department.

Upon inquiry of Councilman Ellis, Mr. Green said that the responsibility of development and implementation of any reconfiguration of the intersection of River Hills Drive and the Dick's/Office Max/Circuit City driveway will have to be borne by the developer and approved by City staff.

Mr. Green and Target development staff responded to various questions from Council, some being, but are not limited to: where will sidewalks be installed, where are the residential homes in the area, what will the signage package include, what are the requirements about lights not trespassing onto residential properties, what are some of the details of a Traffic Impact Analysis, potential to use pervious pavement on the project, what was on the property prior to the flea market, and what are the elevation differences of the development compared to those buildings around it.

Upon inquiry of Councilwoman Jones, Mr. Green said that after a Traffic Impact Analysis (TIA) is completed, it is then submitted to the City for review by the City's Traffic Engineer and, in this case, by a consultant retained by the City. The City and the consultant review every aspect of the TIA to make sure the data is correct, the traffic counts are done at the correct time, etc. In this project, there was an initial review of the TIA and City staff gave comments back to the engineer who prepared the TIA. They then provided revised information.

Mr. Dan Baechtold, representing the City's Engineering Department, noted that TIA's have to follow national engineering standards and professional engineers prepare them. He felt that we generally see TIA's predict the impacts pretty accurately.

Mr. Bob Stultz, Partner in Collett and Associates, spoke in support of the development, which will be a Target retail store to be located on a 19-acre site, which is primarily industrial and commercial in nature. They have received a wastewater allocation from the Metropolitan Sewerage District, a conditional approval for a water allocation from Water Resources Department and Carolina Power & Light Company has advised them that there is sufficient power at that location to support the proposed development. The TIA has been completed and reviewed by the City and the N. C. Dept. of Transportation. They have agreed to implement the recommendations in the TIA, which will keep all roadways affected by the project at acceptable levels of service. According to the current project schedule they anticipate commencement of construction in the fourth quarter of 2002, with a fall 2003 store opening. They look forward to being a part of the Asheville community.

Councilman Peterson was concerned about the access onto McArthur Lane and felt it may open the door for increase traffic in the residential area. Mr. Stultz responded in that in their initial design, they did not have a rear access. However, it was included, as a recommendation by City staff, for safety reasons, e.g. it will allow emergency vehicles access if River Hills Road is blocked. They will work with City staff to restrict left-turn access back onto Glendale off of McArthur Lane to prohibit traffic leaving the Target store going through the Oakley neighborhood. He said they would not put any signage on Glendale to encourage people to go into Target from the rear, noting that they even intend to have deliveries through the front entrance.

Upon inquiry of Councilman Mumpower, Mr. Stultz said that the cost to implement the recommendations of the TIA will be approximately $129,000 and is similar to what they experience in other locations. He said that they have been working with City staff for approximately 4 months; however, he was pleased to note that the formal process has taken only 6 weeks.

Ms. Debra Houser, President of the Oakley Community Association, said they are deeply concerned about the traffic impact. Even though this is not the largest development proposed to be built in this area, the City need to look at the cumulative effect of traffic. Her main area of concern is Fairview Road. The N.C. Dept. of Transportation website shows that currently there 19,000 vehicles a day that go through the intersection of Cedar Avenue and Wood Avenue onto Fairview Road. Also, there are 19,000 vehicles a day that drive on Fairview Road going to the intersection of Swannanoa River Road. The Oakley community has initiated traffic calming efforts on Fairview Road and Fairview Avenue because the traffic now is unacceptable. Out of 462 children in Oakley School, only five families allow their children to walk home because of traffic concerns. She said that the Fire Department and Police Department vehicles are unable to get through the area in emergencies because of traffic gridlock. She noted that all these streets are two lanes and no one has mentioned about widening them to accommodate the traffic. They

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requested the City to use more forethought. She stressed the cumulative effect of the traffic will lead to a dangerous situation.

Ms. Rebecca Campbell, west Asheville resident, felt the City needed to do holistic planning. She presented City Council with information from the N.C. Dept. of Transportation for the year 2000 of average traffic counts in the East Asheville/Oakley community (Neighborhood Exhibit 1).

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:48 p.m.

Upon inquiry of Councilman Peterson about traffic calming measures in the Oakley community, City Engineer Cathy Ball said that there have been some efforts for traffic calming. In 2000, Wood Avenue was selected as a traffic calming project but the City could not get the community support to move forward on that project. Our policy requires that we receive 40% of people affected to sign stating that they are willing to support some type of traffic calming, before the City spends time in doing the design. We were unable to get the 40% of signatures in the project area. In 2001, Fairview Avenue was selected as a traffic calming project and once again they were unable to get enough signatures to move forward on the project. City staff has looked at Fairview Road, particularly in the school area. And, about two years ago. the City had an opportunity to purchase the house at the intersection of Cedar and Fairview in hopes of realigning the intersection at Liberty/Cedar/Fairview. About four years ago some plans were done to improve that intersection but we weren't able to implement them because of needing some property. That is an unfunded capital project we have on this year's Transportation Program. We have tried to comprehensively look at the Fairview Road as a whole.

Councilman Peterson said that if the City approves this project we are providing some benefits to the businesses and people who live in the larger community in and outside of Asheville, but the people in Oakley are bearing part of the brunt of that. He felt the City has a responsibility to direct staff to go back and try to look at the Fairview/Cedar/Liberty intersection for some traffic calming measures and to make improvements.

Councilman Mumpower moved to adopted Ordinance No. 2920 granting a conditional use permit for a proposed development known as Dreamland Development (Target Retail Store), located at the intersection of Tunnel Road/Wood Avenue and Swannanoa River Road, subject to the revised 16 conditions outlined above. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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Vice-Mayor Bellamy said that the people at the affordable housing forum said that our development process is not working, however, Target representatives have said that their experience with the City has been very positive and streamlined. As a result of those comments, she hoped that the City could repeat the positive process more often.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Transit System

Councilwoman Jones invited the Council and public to a meeting co-sponsored by the City on Friday, May 17, 2002, at the Civic Center from 10:30 a.m. – 4:00 p.m. The meeting is to talk about improving our transit system. A person from Boulder, Colorado, will be in attendance to talk about some innovative things their City has been doing and how it can be applied in Asheville.

Claims

The following claims were received by the City of Asheville during the period of April 12-25, 2002: Cynthia Burris (Streets), Kelly Fielden (Police), Brian Delmas (Streets), Ronald Sebilo-Tibbets (Fire), Donna Fender (Streets), Sherwin Pevaroff (Water) and Kim MacQueen (Fire).

The following claims were received during the period of April 26-May 2, 2002: BellSouth (Water), Michael Keating (Water), Timothy J. Rabb (Water), Denise Vanselow (Streets) and Charlene Lamb (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City filed a Complaint, motion for preliminary injunction and motion for temporary restraining order on April 23, 2002, against Jemini Inc., d/b/a Patton Avenue Pub, Mitch Fouts and James Medford. The nature of the proceeding was a complaint for a permanent injunction prohibiting defendants from holding a concert in the parking lot of the Patton Avenue Pub; directing defendants to hold the event inside the Pub; and for a temporary restraining order. This matter was handled in-house.

The City was served with a Complaint on April 22, 2002, as follows: Connie Jones v. City of Asheville. The nature of the proceeding is an EEOC charge of racial discrimination. This matter will be handled in-house.

The City was served with a Complaint on April 19, 2002, as follows: Monique and Mike Usher v. Transit Authority, et al. The nature of the proceeding is a complaint for personal injury as a result of traffic accident involving a bus. An attorney outside the City Attorney's Office will handle this matter.

The City was served with a Petition for a Contested Case Hearing on May 6, 2002, as follows: Christopher L. Baker v. City of Asheville. The nature of the proceeding is money owed for water bills, pursuant to the Setoff Debt Collection Act. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English spoke about several items, in particular he was opposed to the City raising property taxes and felt the City should not annex more people until they take care of the current City residents.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:07 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 21, 2002 - 3:00 p.m.

Worksession

Present: Vice-Mayor Terry M. Bellamy, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles R. Worley

CONSENT:

Setting a Public Hearing on May 28, 2002, to Designate the South Asheville Cemetery on Dalton Street as a Local Historic Landmark

Legislative Request for 2002 Short Session

Summary: The consideration of a request for legislation to reduce the terms of Housing Authority members.

At Council's retreat in February, there was some discussion regarding reducing the lengths of terms for Housing Authority members from five years to three years. Vice Mayor Bellamy initiated this discussion, and there was general support for the proposal.

The terms of Housing Authority members are established by statute, N.C.G.S. 157-5(d), as five years. Therefore, in order to obtain a reduction in the length of the term, an amendment to the law is required, and only the N.C. General Assembly can do it. The City of Charlotte has already done this in 1990.

The local bill submission deadline for this year's short session of the General Assembly is June 5. Therefore, in order for this request to be transmitted to our delegation and a bill to be introduced, Council action is required before then, and should probably occur on May 28. For short session consideration, local bills must be non-controversial.

Vice-Mayor Bellamy asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

METROPOLITAN SEWERAGE DISTRICT UPDATE

Mr. Tom Hartye, General Manager of the Metropolitan Sewerage District (MSD) updated City Council on MSD in general. He explained the make-up of the MSD 11-member Board and explained the treatment plant and it's activities.

He gave a brief history of the collection system: (1) prior to 1990 the District was comprised of the Treatment Plant and less than 100 miles of interceptors; (2) in 1990 the District became the proud owner of an additional 750 miles of small collection lines most of them aged and failing structurally and a good portion of them undersized; (3) these lines were mostly run in the 1920's and not a lot of maintenance was performed on them; and (4) the District's in-house design and construction division has "cranked-up" and is rehabbing or replacing an average of 50,000 LF/year.

Mr. Hartye said that residential/commercial users make up 9 million gallons per day; industrial users make up 3 million gallons per day; and ground water (infiltration)/rain water (inflow) make up 8 million gallons per day. The said that the Treatment Plan can handle up to 40 million gallons per day.

Mr. Hartye explained the major sanitary sewer overflow (SSO) problems come from major defects, roots and grease and RDI/I. Preventive maintenance efforts include a grease program, preventive maintenance contract, technical services, mapping, and right-of-way maintenance.

He reviewed the Council the capital improvement plan for the next six years (until Fiscal Year 2006): interceptors rehabilitation ($31.4 million); collection rehabilitation ($36.8 million); reimbursements ($4.5 million); plant/pump station/general ($10.6 million); and Master Plan Wet Weather ($8.5 million) – totaling $91.8 million.

Mr. Hartye explained that since the consolidation of 15 different collections systems in 1990, there has been a total of $66 million of sewer line rehabilitated or replaced and they currently serve 130,000 customers.

Comprehensive issues include future in-fill growth; potential new service area(s) assessment; Buncombe County Land Use Plan; and other jurisdictional planning documents.

Mr. Hartye explained that revenue for Fiscal Year 2003 is anticipated to be $17.3 million from domestic sewer fees; $2.8 million from industrial sewer fees; $900,000 from facility and tap fees; $991,000 from interest income and other; and $10.7 million from grants and bonds. Expenses are anticipated to be $10.7 for operations and maintenance; $16.4 for capital improvement plan; and $5.5 for debt payments.

Mr. Hartye and Mr. Brady Blackburn, Chair of the MSD Board, answered various questions from Council, some being, but are not limited to: MSD's extension policy; what is MSD doing for affordable housing; how can MSD work with the City and Chamber of Commerce regarding economic development; how can the City work closer to MSD in planning our growth; and does MSD have any cost-containment efforts.

City Manager Westbrook said that about 3-4 years ago he sent MSD a list of homes in the City that did not have sewer. Mr. Hartye was unaware of that list and asked City Manager Westbrook to send him a copy to review.

On behalf of City Council, Vice-Mayor Bellamy thanked Mr. Blackburn and Mr. Hartye for their informative update.

VETERANS MEMORIAL AT CITY/COUNTY PLAZA

Ms. Carol King, Chair of the Pack Place Conservancy, updated City Council on the different phases and designs for the Pack Square and City/County Plaza areas. She stressed that a place has been set aside for a veterans' memorial at City/County Plaza. The timeline for construction to begin is late 2003 with an anticipated finish date of July 4, 2005.

Regarding the veterans' memorial, Ms. King said that earlier Mr. Richard Griffin, representing a group requesting a veterans' memorial, had approached her with a petition for a memorial and she advised him that a place has been set aside for the memorial, but they would have to raise money to pay for the construction of it. She suggested Mr. Griffin contact all the veteran organizations in the City and County to see how much they would be willing to contribute. She said that other groups have requested items to be constructed and they are raising their own money.

Ms. King noted that the Public Art Board has been working with the Pack Square Conservancy through the entire design of the project and Mr. Griffin will need to contact them regarding the design of the memorial.

Upon inquiry of Councilman Dunn, Ms. King said that there is a lot of support for this project and fund-raising will encompass a combination of governmental, not-for-profits, for-profits, individuals, grants, organizations, etc.

Councilman Ellis moved to allow Mr. Griffin and his group supporting the veterans' memorial time within which to speak at this worksession. This motion was seconded by Councilman Dunn and carried unanimously.

Mr. Tuck Gudger, representing the group requesting a veterans' memorial, was pleased that a prominent place and adequate room has been set aside in the design for a veterans' memorial. He then asked City Council to contribute $50,000 towards the $100,000 total design cost. He noted that they have also requested $50,000 from Buncombe County. He said that they would work through the Pack Square Conservancy to raise the money.

When Mr. Gudger asked how much space would be set aside, Ms. King suggested that Mr. Gudger and Mr. Griffin meet with the architects to discuss the specifics.

Mr. Griffin said that his group is not a 501 (c) (3) organization and they have no ability to raise charitable contributions. In addition, he felt it was awkward to impose their group to raise funds for the memorial. He said they would work with the Pack Square Conservancy to raise funds, but believed the City and the County should fund the veterans' memorial,

Councilman Mumpower said that City Council does endorse the concept and felt that all of Council was pleased that adequate space has been set aside for a veterans' memorial. However, a request has been made for the City and County to contribute $50,000 each to construct the memorial. He did not want to create any illusions that the City would be able to monetarily contribute to the construction.

Councilwoman Jones felt it was premature to make any commitments since there are so many unknowns the City is dealing with now. She advised Ms. King that in researching for grants, if they find one that would fit for a veterans' memorial that may require a match, to advise City Council.

City Manager Westbrook said that the City would be participating in the project through infrastructure work. Even though it is not a direct contribution to the veterans' memorial, the infrastructure is needed to complete the entire project. He asked Ms. King to let the City know as soon as possible the results of the feasibility study so the City may begin to fund their responsibilities.

Vice-Mayor Bellamy thanked Ms. King for her presentation and hoped to hear from the Pack Square Conservancy again on another update.

CONTRACT FOR TRANSIT MANAGEMENT SERVICES

Transit Services Director Bruce Black said that this is the consideration of a resolution authorizing the City Manager to sign a contract for the provision of transit operations management services to the City of Asheville.

Because of a conflict between state and federal law, the City is required to hire an operations management company who in turn will employ the drivers, mechanics, supervisors, and other personnel necessary for the operation of the transit service. The current contract will expire on June 30, 2002. The Transit Services Department issued a Request for Proposals for the operations management of the transit system beginning July 1, 2002. This is a three-year contract, with two one-year renewal options.

Five management companies respond. Of those five, three were interviewed by a committee consisting of the Chair of the Transit Commission, representatives from the Finance Department and Risk Management Division, the Transit Planner, and the Director of Transit Services.

The committee awarded the top scoring firm, Professional Transit Management (PTM), from Cincinnati, Ohio, 343 points out of 400 possible (85%). The other two management companies interviewed were MV Transportation, from Fairfield, California, which received 295 points (74%); and CCL Management, from Jacksonville, Florida, which received 242 points (61%).

The fees proposed in the PTM proposal have been negotiated to be sure that the City has their best offer. The total contract fee cost for the first three years is $395,595, the two remaining one year option fee costs being $131,424 for the forth year, and $136,068 for the fifth year.

The second choice, MV Transportation, fees pre-negotiation are very similar. If the proposed contract is not acceptable to PTM, discussions will begin with MV Transportation.

City staff recommends the City Council authorize the City Manager to sign the transit operations management agreement with either Professional Transit Management or MV Transportation.

Vice-Mayor Bellamy asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS

It was the consensus of City Council to instruct City Clerk Burleson to prepare the proper paperwork to reappoint Ms. Sophie Dixon to the Civil Service Board to serve an additional two-year term.

It was the consensus of City Council to readvertise for a vacancy on the Public Art Board, as the Board's request.

OTHER BUSINESS

It was the consensus of City Council to hold a budget worksession (after the regular worksession) on Tuesday, June 4, 2002. In addition, it was the consensus of City Council to hold a special meeting on Thursday, June 27, 2002, at 3:00 p.m. in the Council Chamber of the City Hall Building, to consider adoption of the Fiscal Year 2002-03 Annual Operating Budget.

Discussion surrounded an upcoming visit to our local delegation regarding the Governor withholding monies generated in Asheville for Asheville. Councilman Mumpower has arranged the meeting on Wednesday, May 29, 2002, and discussion was held on how the City could raise public awareness by possibly soliciting letters from those affected that could be hand delivered to our delegates. After discussion, it was the consensus of City Council to not solicit letters from

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those affected at this time, but to meet with our legislators and ask them what they need from us. In addition, it was the consensus of Council to add this topic to the next formal meeting agenda.

ADJOURNMENT:

Vice-Mayor Bellamy adjourned the meeting at 5:30 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 28, 2002 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Councilman Ellis gave the invocation.

MEMORIAL DAY CELEBRATION

Mayor Worley thanked Mr. Walter Plaue and Council members Mumpower, Dunn and Ellis for their efforts in planning the outstanding City-County Memorial Day Celebration.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 14, 2002, AND THE WORKSESSION HELD ON MAY 21, 2002

B. MOTION SETTING A PUBLIC HEARING ON JUNE 11, 2002, FOR THE FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET

C. RESOLUTION NO. 02-94 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE PROVISION OF TRANSIT OPERATIONS MANAGEMENT SERVICES TO THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to sign a contract for the provision of transit operations management services to the City of Asheville.

Because of a conflict between state and federal law, the City is required to hire an operations management company who in turn will employ the drivers, mechanics, supervisors, and other personnel necessary for the operation of the transit service. The current contract will expire on June 30, 2002. The Transit Services Department issued a Request for Proposals for the operations management of the transit system beginning July 1, 2002. This is a three-year contract, with two one-year renewal options.

Five management companies respond. Of those five, a committee consisting of the Chair of the Transit Commission, representatives from the Finance Department and Risk Management Division, the Transit Planner, and the Director of Transit Services, interviewed three.

The committee awarded the top scoring firm, Professional Transit Management (PTM), from Cincinnati, Ohio, 343 points out of 400 possible (85%). The other two management companies interviewed were MV Transportation, from Fairfield, California, which received 295 points (74%); and CCL Management, from Jacksonville, Florida, which received 242 points (61%).

The fees proposed in the PTM proposal have been negotiated to be sure that the City has their best offer. The total contract fee cost for the first three years is $395,595, the two remaining one year option fee costs being $131,424 for the forth year, and $136,068 for the fifth year.

The second choice, MV Transportation, fees pre-negotiation are very similar. If the proposed contract is not acceptable to PTM, discussions will begin with MV Transportation.

City staff recommends the City Council authorize the City Manager to sign the transit operations management agreement with either Professional Transit Management or MV Transportation.

RESOLUTION BOOK NO. 27 – PAGE 170

D. RESOLUTION NO. 02-95 - RESOLUTION REQUESTING INTRODUCTION OF LEGISLATION AFFECTING THE CITY OF ASHEVILLE IN 2002 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

Summary: The consideration of a request for legislation to reduce the terms of Housing Authority members.

At Council's retreat in February, there was some discussion regarding reducing the lengths of terms for Housing Authority members from five years to three years. Vice Mayor Bellamy initiated this discussion, and there was general support for the proposal.

The terms of Housing Authority members are established by statute, N.C.G.S. 157-5(d), as five years. Therefore, in order to obtain a reduction in the length of the term, an amendment to the law is required, and only the N.C. General Assembly can do it. The City of Charlotte has already done this in 1990.

The local bill submission deadline for this year's short session of the General Assembly is June 5. Therefore, in order for this request to be transmitted to our delegation and a bill to be introduced, Council action is required before then, and should probably occur on May 28. For short session consideration, local bills must be non-controversial.

RESOLUTION BOOK NO. 27 – PAGE 171

E. RESOLUTION NO. 02-96- RESOLUTION AMENDING THE FISCAL YEAR 2002-03 BUDGET SCHEDULE AND CITY COUNCIL MEETING SCHEDULE FOR ADOPTION OF THE FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET AT A SPECIAL MEETING ON THURSDAY, JUNE 27, 2002, AT 3:00 P.M. IN THE COUNCIL CHAMBER, 2ND FLOOR, CITY HALL BUILDING

RESOLUTION BOOK NO. 27 – PAGE 172

F. RESOLUTION NO. 02-97 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Summary: The consideration of appointing a member to the Civil Service Board.

The term of Sophie Dixon, as a member of the Civil Service Board, expired on May 21, 2002.

On May 21, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Ms. Dixon, as a member of the Civil Service Board, to serve an additional two-year term. Her term will expire May 21, 2004, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 173

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 2921 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 1153 SWEETEN CREEK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley said that this public hearing was opened on October 23, 2001, and continued until December 18, 2001, in order to give staff time to work with the property owner and his realtor to refine the uses and at the same time to work with the neighborhood to coordinate the uses through them. On December 18, 2001, the petitioner requested a continuance of this public hearing until January 22, 2002. At the January 22, 2002, meeting, the petitioner and the neighborhood representative requested the public hearing continued again to February 26, 2002, in order to achieve something that will be agreeable for all concerned. At the February 26, 2002, the petitioner and the neighborhood representative requested the public hearing continued again to May 28, 2002, in order to achieve something that will be agreeable for all concerned.

Ms. Stacy Merten, Urban Planner, said that this is the consideration of an ordinance to rezone a portion of 1153 Sweeten Creek Road from RS-8 Residential Single-Family High Density District to Commercial Industrial District. This public hearing was advertised on October 12 and 19, 2001.

On August 28, 2001, Chris Jarrett submitted an application for the rezoning of the eastern portion of the property located at 1153 Sweeten Creek Road (PIN No. 9657.18-30-1919). The property is located on the east side of Sweeten Creek Road, between W. Chapel and Busbee View Road. The parcel is currently split zoned, with the front portion, adjacent to Sweeten Creek, zoned Commercial Industrial District and the back portion zoned RS-8 Residential Single-Family High Density District. The rezoning request is for the back portion of the property only, which is approximately 2.5 acres. The entire parcel is approximately 4 acres and 745 feet deep, extending into a residential neighborhood. Currently, the only access to the parcel is via Sweeten Creek Road.

This rezoning request originally came before Council on October 23, 2001. At that time the owner was requesting that the entire parcel be zoned Commercial Industrial. In recognition of the unique nature of the parcel in question, Planning & Development staff had suggested a conditional use rezoning for the property, but because there were no plans for the parcel, Mr.

Chris Jarrett, owner of the property, did not choose to pursue this option. Consequently, Planning staff recommended that the property be rezoned to Community Business II, instead of Commercial Industrial. Although many of the uses allowed in CB II District overlap with those allowed in Commercial Industrial, the CB II is a less intensive zone than Commercial Industrial and would provide a more appropriate transition from the Commercial Industrial portion of the property to the residentially zoned property surrounding the parcel. The Planning & Zoning Commission reviewed this at their meeting on October 3, 2001, and recommend 6-1 to approve with conditions that the parcel be rezoned CB II.

There was considerable comment at the City Council public hearing and concern about commercial encroachment into the Shiloh Community. Council ultimately decided to continue the hearing in hopes that a more amenable compromise could be worked out amongst all of the parties. The hearing was subsequently continued three more times to give the applicant time to pursue other options and work with the community. Despite a great deal of effort by all parties it was difficult to develop a compromise agreeable to all. Mr. Jarrett is reluctant to place a conditional use zoning on the property as he has no specific plans for development but is merely attempting to sell the parcel and believes it will be more marketable if entirely zoned Commercial Industrial.

Staff's continuing effort to work with Mr. Jarrett has resulted in the recommendation of RM-16 Residential Multi-Family High Density District for the rear portion of this parcel. Although Mr. Jarrett would prefer this property be rezoned to Commercial Industrial, he would be agreeable to the RM-16 designation. The continuation of single family zoning for this portion of the property is not suggested as the only access is via the front portion of the property. However the RM-16 zoning coupled with the Commercial Industrial provides more opportunity for a high density mixed use development conveniently located with respect to transportation and other commercial services, while at the same time respecting the residential character of the surrounding community. This rezoning would not preclude a potential buyer from pursuing a conditional use zoning for the property.

Vice-Mayor Bellamy was concerned about encroachment into the residential neighborhood and asked if RM-8 Residential Multi-Family Medium Density District was considered. Ms. Merten said that it was considered, but the owner did not agree to it. Again Ms. Merten stated that the RM-16 designation is a compromise, which will allow the residential character of the neighborhood to remain while at the same time making it more marketable for the owner.

Ms. Norma Baynes, liaison for the Shiloh Community Association, said they do not want the property zoned Commercial Industrial. The commercial intrusion into the residential neighborhood will result in additional traffic, lights and noise problems. They would like the property to remain zoned RS-8 but would be willing to compromise at an RM-6 designation, which they feel is better for community and development of the neighborhood. She said they would be willing to work with whoever buys the property. Since the Shiloh community has commercial encroachment on three sides, they need help to define their boundaries so they can preserve their community.

Mr. Jarrett pointed out that his property is on the boundary of the Shiloh community. He noted that only area residents, not adjoining property owners, have expressed concern over the rezoning. He said that he would like to be able to market the property and with the split zoning, the tax value on the property is more than what the property is worth. He said that he lives in Charlotte, N.C., and has no use for the property.

Even though Mr. Jarrett's realtor has met with the Shiloh neighborhood to discuss compromises, Ms. Baynes said that they did not talk with them about the RM-16 designation.

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Mayor Worley closed the public hearing at 5:39 p.m.

Discussion surrounded the appropriate zoning designation for the property taking into account the marketability of the property and the protection of the residential neighborhood.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved to rezone the portion of 1153 Sweeten Creek Road from RS-8 to RM-16. This motion was seconded by Councilman Ellis.

Vice-Mayor Bellamy explained that her concern with rezoning the property to RM-16 was the uncertainty of what would be built on the property. If a specific use was planned, the conditional use tool could be applied with additional conditions on the development.

Councilman Peterson did not support the RM-16 zoning in that a developer could build 40 units and would not have to come to City Council for any kind of approval. He supported the rezoning to RM-8 instead.

The motion made by Councilman Mumpower and seconded by Councilman Ellis carried on a 5-2 vote with Vice-Mayor Bellamy and Councilman Peterson voting "no."

ORDINANCE BOOK NO. 19 – PAGE 485

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING ON PROPERTY LOCATED AT BROTHERTON AVENUE AND VIRGINIA AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/ CONDITIONAL USE AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF A 32-UNIT CONDOMINIUM DEVELOPMENT

ORDINANCE NO. 2922 - ORDINANCE TO REZONE PROPERTY LOCATED AT BROTHERTON AVENUE AND VIRGINIA AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2923 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT BROTHERTON AVENUE AND VIRGINIA AVENUE TO ALLOW FOR CONSTRUCTION OF A 32-UNIT CONDOMINIUM DEVELOPMENT

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:58 p.m.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford explained the history of this project noting that it achieves several of the City's smart growth policy goals. The major concern of the neighborhood was fire flow, however, the Water Resources Department has completed a project that has resulted in increased fire flow to the area which they believe resolves the concern.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Green said that this is the consideration of a request to rezone property located at Brotherton Avenue and Virginia Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use and a motion to issue a Conditional Use Permit to allow for construction of a 32-unit condominium development.

At their May 1, 2002, meeting the Asheville Planning and Zoning Commission recommended rezoning of property (7.4 acres) located at the intersection of Brotherton Avenue and Virginia Avenue from RS-8 to RM-8 (Location Map – Attached to City Exhibit 3). The property is currently owned by the City of Asheville. The applicant, Jack Morse of Morse Properties, has an option to purchase the property. The project site is located in a predominantly detached single-family residential area. The site has public street frontage along Brotherton Avenue and Virginia Avenue. The project site is currently zoned RS-8, which allows for a maximum density of 8-units per acre. The RS-8 zoning does not allow for multi-family or attached single-family structures. Consequently, the project applicant is requesting RM-8 zoning, which allows for multi-family and attached single-family structures at a maximum density of eight units per acre. The project proposes nine residential buildings, two of which will have 6-units each, 3 that will have 4 units per building, and the remaining 4 buildings will have 2 units per building. The project will have a total of 32 units located on 7.364 acres, or 4.35 units per acre (Site Plan – Attached to City Exhibit 3).

The request is to conditionally zone the property to permit the applicant to construct a 32-unit condominium development. The project site plan indicates nine residential buildings, a one-story with basement Common House, three small storage buildings, a bicycle shed, a 38-space parking area, a 10-space parking area, a central Village Green, a Court Yard, and a Plaza. One of the key elements of the proposal is the woodland conservation easement and the extensive network of nature trails and pedestrian paths meandering throughout the majority of the site.

The buildings are all situated facing the interior of the lot with parking located along the periphery of the lot. All of the buildings are located in southwest corner of the lot, providing for the preservation of a large undisturbed area. The site plan depicts that the five buildings on the interior of the site will have three stories at a height of 30 feet and the buildings closer to the streets will be two stories at a height of 20 feet. The individual units will have an average of 1,300

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square feet of floor area. All units will utilize the two common parking lots and no individual driveways are planned. The plan also depicts the preservation of existing trees along the street frontages, providing a buffer between the development and properties across the street.

The site plan depicts a 20-foot front yard along Virginia Avenue, with porches and/or patios encroaching into the front yard. The plan depicts a 15-foot front yard setback along Brotherton Avenue with an 8-foot porch or patio encroachment into the setback. The RM-8 district requires a 15-foot front yard setback along Virginia Avenue. Section 7-10-2 (c) of the Unified Development Ordinance (UDO) reduces the front setback along side streets by 50% of the requirement, therefore requiring a 7 ½ -foot setback along Brotherton Avenue. Section 7-10-2 (f) states that patios and uncovered decks with a height of not more than 30 inches may encroach up to ten feet into a required front yard setback. Parking has been provided at a ratio of 1.5 spaces per unit. The site plan depicts a "B" (10-foot with alternative compliance) buffer with a 6-foot fence along the adjacent detached single-family residences.

An issue raised by persons from the neighborhood commenting on this project involves the adequacy of the water infrastructure to support this development. The Water Resources Department has recently completed some improvements to the infrastructure. Tests of fire hydrants in this neighborhood indicate that these improvements have been effective in resolving this concern.

Mr. Green displayed three photos (City Exhibit 4) of a similar development built by Mr. Morse.

City Council must take formal action as set forth in section 7-5-5(e) of the UDO, and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's opinion is that all seven standards appear to be met.

1. *That the proposed use or development of the land will not materially endanger the public health or safety;*

   All public health and safety concerns have been addressed through the site plan development process and it appears that the proposed use and development will not materially endanger the public health or safety.

2. *That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and in the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;*

   The project site has been designed with every consideration for the natural and topographic features on the site and in the immediate vicinity. The development was designed to provide for the minimum changes and alterations to the existing conditions on the site.

3. *That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;*

   The project will preserve a significant amount of open space that may be used by people in the area. In addition, the project's proposed density is below the permitted density of either the existing or the proposed zoning. Building design and scale will be compatible with the surrounding development.

4. *That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;*

The project is designed to take advantage of the natural slope by incorporating basement units, instead of building higher buildings. The proposed density is consistent with the area's current development and the project will be compatible with the character of the area.

5. *That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the City;*

   The project proposes low density residential, which appears to be consistent with the 2010 plan.

6. *That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and*

   The project received conditional approval from City's Technical Review Committee, including the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department and Public Works Department. Tests of fire hydrants in this neighborhood indicate that recent improvements to the water infrastructure have been effective in resolving a neighborhood concern about fire flow.

7. *That the proposed use will not cause undue traffic congestion or create a traffic hazard.*

   The project is designed with pedestrian oriented characteristics. Any traffic impact generated by the proposed use will be minimal.

The Planning and Zoning Commission unanimously recommended approval of the request, with conditions, at their May 1, 2002, meeting. This recommendation incorporates comments made by members of the public at that meeting. Staff concurs with the recommendation to approve the conditional use rezoning and to issue the Conditional Use Permit for the proposed use. The recommended conditions are: (1)The site plan must be revised to identify forested areas to be preserved and provision must be made to protect these areas; (2) The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development; and (3) The architectural design of the proposed buildings shall be compatible with the surrounding neighborhood; in particular, the design of the buildings facing Virginia and/or Brotherton Avenues shall not present the appearance of "turning their back" to these streets.

Mr. Green responded to questions from Councilman Mumpower as they related to the property being previously owned by the Housing Authority and their earlier proposal to Council for development of the area.

Upon inquiry of Councilman Dunn, Community Development Director Charlotte Caplan said that we purchased the site from the Housing Authority for $120,000 and have invested less than $10,000 in preliminary work, i.e., site work, appraisals, environmental review, etc. The City has committed to the developer $250,000 plus the value of the land (which is now valued at $147,000). That total of $397,000 will be invested in the infrastructure, i.e., site work, putting in utilities, grading, retaining walls, etc. The City is prohibited in using Community Development Block Grant (CDBG) funds into the actual housing construction.

When Councilman Dunn asked about the average selling price for the affordable units, Ms. Caplan said that they would range from approximately $70,000 for a one bedroom up to $130,000 for a three bedroom unit and two or three of those are going to be market rate units that may go a little higher than that. But with the subsidy second mortgages, the affordable units will come down and will be priced within what a family at or below 80% of area median can afford.

Upon inquiry of Councilman Dunn, Ms. Caplan explained that a common house is similar to a clubhouse in a condominium development. It will have a large room used for dining or for meetings, a kitchen, office, couple of guest bedrooms, etc.

In response to Councilman Dunn, Ms. Caplan said that the property is not paying any taxes now, but when it is fully developed, it bring in roughly $20,000 annually in property tax revenue.

Ms. Caplan explained the Request for Proposal process that occurred for this development and also how the City of Asheville got involved.

Upon inquiry of Vice-Mayor Bellamy, Mr. Green said that if the property is not rezoned, 56 homes could be built on this property. He said a conditional use permit was requested to provide the Council, staff and the neighbors with more assurance of what will be built on that property. Given the topography of the site, development of it could have a significant detrimental impact on the neighborhood if it were completely developed. The City challenged the developer from the start to develop the site with housing that would be available for the working people and still preserve the unique features on the property.

Fire Marshal Wayne Hamilton said that a water line project on the southern part of the site adjacent to the interstate has been completed. One of the problems they had previously with this project was on the lower fire flows due primarily to dead-end fire lines in this immediate area. Due to the recently completed waterline extension from Virginia Avenue all the way around to Hubbard Avenue, there has been a significant change in the fire flow. Testing in previous years showed 340-400 gallons a minute and since the waterline has been extended, testing now shows an average of about 670 gallons a minute. This does meet our minimum standard for the proposed development. Another significant item is that since this property will be moving from single-family to a multi-family type facility, that will fall under the purview of State Fire and Building Codes and therefore more restrictive fire protection requirements will be established. The Fire Department has also been working with the developer to designate an interior pedestrian path as a fire line for the Fire Department's use only or other emergency vehicles. In addition, the Fire Department will require the developer to place an on-site fire hydrant in the interior part of the development. Even though he has not seen the proposed square footage of the common house, based upon the fire flow requirements that we currently have in our Standard Specifications and Details Manual, we can adjust the construction type and square footage type to meet the water amount that is available on the site.

Mr. Richard Nantelle, President of the West Asheville Community League, felt that this development does not fully meet some of the seven conditional use standards. He said that when development was proposed on this site seven years ago by the Housing Authority, it suffered from three major safety infrastructure deficits: (1) inadequate water supply; (2) congested streets plagued with speeding traffic; and (3) lack of sidewalks. The City has now corrected the water issue but not the other two unresolved safety factors. With the recent budget cuts and a possible tax increase, the City has no funds to resolve these concerns. He felt it would be best to construct this development somewhere else where improvements are not necessary.

Mr. Dick Rice, representing the West Asheville Business Association, was opposed against the rezoning and conditional use permit for this project. He felt that the single-family designation should not change. He felt that four of the seven conditional use standards have not been met. He said that Virginia Avenue, which is narrow and dangerous with no sidewalks, couldn't handle the additional traffic from the development. He urged Council to keep the character of the neighborhood intact.

Ms. Sylvia Montgomery, resident on Virginia Avenue, spoke in opposition of the development in that they have just received adequate fire flow protection and now the City plans to add more houses to the line which will reduce the flow again.

Mr. Carlos Montgomery, resident on Virginia Avenue, was opposed to the development for water fire flow reasons. He also was concerned that if I-240 is widened, water problems will occur again in that area.

Mr. Jack Morse, representing Morse Properties, spoke in support of the development. He said that the most expensive unit would be $160,000 but they will have 21 affordable units, which will average in the mid-$70,000. He said this is a mixed income development and there will be 11 units at the market rate. He said the project meets some affordable housing goals and smart growth goals that the City has set for itself. He pledged to work with the neighborhood.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:22 p.m.

Discussion occurred with regard to the additional traffic from the development on Virginia Avenue. Mr. Shuford said that this proposal does not change the density that would be allowed under the existing zoning, so in effect there is no net increase beyond what could occur with the current zoning.

Mr. Hamilton responded to various questions from Councilman Peterson regarding water, some being, but are not limited to: what would happen to the waterlines if I-240 were widened, why are they requiring an additional fire hydrant on the site, are there adequate fire hydrants along Virginia Avenue, what are the requirements for fire separation between the units, and is there any report of a problem on Virginia Avenue of the waterline being inadequate and having frequently leaks.

Councilman Mumpower asked if the new waterline extension was a planned extension or in response to this site need. Mayor Worley, Vice-Chair of the Regional Water Authority, said that there has been a serious concern about fire flow in that area since the Housing Authority project was before Council about seven years ago. At that time, it was reported that the Regional Water Authority had plans in progress to make this connection, but it hadn't been done at that point in time.

Upon inquiry of Vice-Mayor Bellamy, Mr. Hamilton explained that since the rezoning is from a single-family development to a multi-family development more stringent requirements are place on it – not just from the fire flow aspect, but also from the commercial building code and the statewide fire codes. There are more stringent requirements on this project than would be on a single-family development.

Councilman Ellis moved to adopt Ordinance No. 2922 to rezone the property located at Brotherton Avenue and Virginia Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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Councilman Mumpower was concerned about the real traffic safety issue on Virginia Avenue and asked if it would be appropriate to get the developer involved in traffic management on that street and what kind of cost factors are involved for traffic calming devices. Mr. Green responded that a condition could be placed on the conditional use permit regarding traffic calming on Virginia Avenue. He said that a study and implementation could cost $50-60,000.

Mr. Shuford said that speed humps cost approximately $1,500-2,500 and suggested that Council direct staff to make sure that Virginia Avenue is on the priority list for traffic calming measures. He said the City certainly would not want to install traffic calming devices in a neighborhood without getting the neighborhood involved in deciding what those would be.

Councilman Mumpower suggested a condition be placed on the permit that some arrangement be made whereby the developer pays a set amount (perhaps $5-7,000) and the developer, staff and neighborhood work together to develop traffic management on Virginia Avenue.

City Attorney Oast said that a condition could be placed in the conditional use permit that would require the developer to contribute an amount of money towards the effort of traffic calming on Virginia Avenue, if the City makes that recommendation within a certain amount of time.

Upon inquiry of Councilman Peterson, Ms. Caplan said that CDBG funds could not be used for traffic calming.

Councilwoman Jones and Councilman Ellis felt that Virginia Avenue is not a major thoroughfare but just a neighborhood street traveled primarily by the residents. They felt that residents in the area need to hold each other accountable for the speeding.

Councilman Peterson was concerned about the water, however, it looks as though the Water Department has taken measures to correct those concerns and satisfy the Fire Department. The developer has tried to make the property along Virginia Avenue to be similar to the property across the street from it and whatever gets developed on the site will increase traffic. He didn't think that co-housing would be the best approach for that property; however, the developer has made it as sensitive as possible. He said that the problems on Virginia Avenue (water pressure, need for road improvements, traffic calming) are not uncommon to other streets in the City and we don't restrict development on those streets.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2923 to issue the conditional use permit to allow for construction of a 32-unit condominium development, subject to the following conditions: (1) The site plan must be revised to identify forested areas to be preserved and provision must be made to protect these areas; (2) The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development; and (3) The architectural design of the proposed buildings shall be compatible with the surrounding neighborhood; in particular, the design of the buildings facing Virginia and/or Brotherton Avenues shall not present the appearance of "turning their back" to these streets. This motion was seconded by Councilwoman Jones.

Discussion occurred about (1) whether Virginia Avenue should by-pass the traffic calming policy since there are currently a number of streets that have already been identified; (2) the uncertainty of what type of traffic calming measures are needed since no study has been done; (3) whether the developer or the City should pay for a study and implementation; and (4) getting neighborhood involvement in the process.

Councilman Mumpower moved to amend the motion made earlier to add a condition that the developer to provide financial support up to $15,000 to support a traffic management plan as designed and implemented by City staff, with the understanding that it include strong neighborhood input. This motion was seconded by Councilman Peterson.

Mr. Morse pointed out that one main facet of the project is the affordable units and he has a fixed fee. Therefore, anything added to the cost of the project will have to be passed onto the buyers, which will affect the affordability of the units.

Vice-Mayor Bellamy asked that City staff follow-up with the residents on the neighborhood. City Manager Westbrook said that City Council has adopted a traffic calming priority list and he would look to see if Virginia Avenue is on that list. He said the list might have to come back to Council for re-prioritization.

The amended motion by Councilman Mumpower and seconded by Councilman Peterson failed on a 2-5 vote, with Councilman Mumpower and Councilman Peterson voting "yes" and Mayor Worley, Vice-Mayor Bellamy, Councilman Dunn, Councilman Ellis, and Councilwoman Jones voting "no".

The main motion made by Vice-Mayor Bellamy and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mayor Worley announced a short break.

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C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY AT 400 CARIBOU ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mr. Robert Tucker, property owner at 400 Caribou Road, withdrew his petition to rezone 400 Caribou Road from RS-8 Residential Single-Family High Density District to Neighborhood District since the neighbors are opposed to this rezoning request.

D. PUBLIC HEARING RELATIVE TO ANNEXING REYNOLDS MOUNTAIN SUBDIVISION, PHASE I

ORDINANCE NO. 2924 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED NORTH OF WINDSOR ROAD AND IDENTIFIED AS REYNOLDS MOUNTAIN SUBDIVISION, PHASE I

Mayor Worley opened the public hearing at 8:28 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located north of Windsor Road and identified as the Reynolds Mountain Subdivision, Phase I. This public hearing was advertised on May 17, 2002.

Thomas O. Meyer, representing T & T Meyer, LLC, and Kirk Boone, representing Reynolds Mountain Development, LLC, sole owners of the Reynolds Mountain Subdivision, Phase I, have submitted an annexation petition for that subdivision. This area is contiguous to the existing corporate limits, being bordered to the south by the existing municipal boundary.

The area proposed for annexation consists of approximately 80 acres and is platted for single-family residential development. The area will be accessed by primarily by Elmwood Place. This area is within the City's extraterritorial jurisdiction and is currently zoned RS-2 Residential Single-Family Low Density District.

The owners/petitioners are developing utilities and streets. City services will begin on the effective date of annexation. The petitioners have requested that the effective date of annexation be set for June 30, 2002.

City staff recommends that City Council adopt the ordinance extending the corporate limits to include Reynolds Mountain Subdivision, Phase I.

Upon inquiry of Vice-Mayor Bellamy, Mr. David Foster from the Public Works Department, said that the streets in this subdivision would be constructed to City standards.

City Manager Westbrook responded to an inquiry of Vice-Mayor Bellamy regarding the school system.

Mr. Benson responded to Councilman Peterson with regard to the extraterritorial jurisdiction extension in that area.

Mayor Worley closed the public hearing at 8:45 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2924. This motion was seconded by Councilwoman Jones and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER THE DESIGNATION OF THE SOUTH ASHEVILLE CEMETERY ON CHURCH ROAD AT THE END OF DALTON STREET AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2925 - ORDINANCE DESIGNATING THE SOUTH ASHEVILLE CEMETERY ON CHURCH ROAD AT THE END OF DALTON STREET AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 8:46 p.m.

Ms. Victoria Houser, former intern from UNC-A who worked with the Historic Resources Commission Director, said that this is consideration of an ordinance designating the South Asheville Cemetery on Church Road at the end of Dalton Street as a local historic landmark. This public hearing was advertised on May 17 and 24, 2002.

The South Asheville Cemetery is located within the Kenilworth neighborhood on a plot of land consisting of 2.025 acres. The cemetery is nestled north of St. John "A" Baptist Church, off Church Road, at the end of Dalton Street. The cemetery is in the mist of a wooded area. To the north and east of the cemetery is the encroachment of mid-twentieth century residential development. To the west is a steep hillside of dense woods approachable by the cemetery access road. The Cemetery itself is hilly, however, the sinking graves have contributed to the falling and rising landscape. Several estimates have been made about the number of graves and it is most likely that number is around twenty-four hundred.

The South Asheville Cemetery, established by James McConnell Smith around 1850 for burial of his slaves, is a site that possesses local historic significance as a tangible reminder of the ethnic heritage of African Americans in western North Carolina from the mid-nineteenth century to the mid-twentieth century. The South Asheville Cemetery serves not only as a visual reminder of the African-American heritage, it also serves as a reflection of the social history of African American burials. African-Americans in the South attached great importance to the death and burial of their fellow community members. The funerals were deemed a religious ritual in African American culture. Although no records exist that outline the specific burial practices, the Cemetery exhibits many characteristics among African-American burial grounds in the southeast.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes; however, this site is owned by the South Asheville Cemetery Association, a non-profit organization, and the property is tax exempt.

When a property is designated historic, restrictions are placed on the property and any modification to the land, the graves or grave markers must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

This ordinance designates the South Asheville Cemetery as a local historic landmark. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons for future generations.

The Historic Resources Commission of Asheville and Buncombe County (HRC), by unanimous vote, recommends to City Council that the South Asheville Cemetery be designated a local historic landmark. Staff concurs with the recommendation of the HRC to designate the South Asheville Cemetery a local historic landmark.

Upon inquiry of Councilman Peterson, Ms. Houser explained the efforts that volunteers made to restore the cemetery.

Mayor Worley closed the public hearing at 8:49 p.m.

Vice-Mayor Bellamy and Councilwoman Jones thanked the AmeriCorps volunteers and other members of the community who devoted countless hours to regain this rich history that had been lost.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2925. This motion was seconded by Councilman Peterson and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. DISCUSSION OF LEGISLATIVE CONCERNS RELATED TO THE BUDGET

Mayor Worley said that we have budgetary issues this year due to the State's budget crisis and we have a team from City Council traveling to Raleigh on May 29, 2002, to express concern to our delegation about the State's budgetary situation and its effect on cities. He thanked Councilman Mumpower for spearheading this trip.

Councilman Mumpower said they would share Council's concerns about two issues. One issue is that the State is hanging onto significant City funds in the form of reimbursements and we will ask that they not do that in the coming year. Secondly, to ask that they give consideration to providing the City with a more stable and reliable menu of revenue sources. Council would like to make our delegation aware of their concerns and would also like to make City residents aware that the City does not currently have a budget crisis – except as has been created by the State withholding funds. Some of Council feel strongly that if you have the authority to spend monies then you should have the responsibility for raising those monies too and not put that on the backs of cities like Asheville.

Mayor Worley said that the impact of the State withholding local government revenues from the City of Asheville has been devastating to our current year's budget. We ask our legislators to support the legislation which will be introduced to protect these local reimbursement revenues (utility franchise fees and alcohol taxes) from being taken by the Governor ever again. We also ask our legislators to support legislation to move up the implementation of the ½ cent local option sales tax, which will replace the other portion of our reimbursements. This is the third time in ten years that reimbursements have been withheld from cities and counties. Therefore, we urge our legislation to support giving cities and counties a menu of revenue options to chose from and eliminate our dependency on state reimbursements. This would place the burden of imposing those revenue sources at the local level and allow each city and county to utilize those sources that best suit local resources and needs.

Councilman Dunn stressed the need to find another revenue stream. He felt that the City should keep some of the room tax and earmark it for infrastructure. In addition, he felt a menu of revenue options is crucial to cities and counties.

Vice-Mayor Bellamy emphasized that Asheville provides many of the economic development opportunities and recreational activities for our citizens as well as those who are from neighboring cities and counties. She urged our local delegation to consider increasing the State's cigarette tax, the State's beer tax, and the wine tax. These three taxes would tax the users, not everyone, while providing a steady stream of income to our State. She also expressed the need of a menu of revenue options for cities and counties in order to have the revenue structure we need to be successful.

B. RESOLUTION NO. 02-98 - RESOLUTION AMENDING THE ASHEVILE STANDARD SPECIFICATIONS AND DETAILS MANUAL

Chief Planner Gerald Green said that this is the consideration of a resolution to amend the Asheville Standard Specifications and Details Manual to establish standards for lighting of parking lots, outdoor display areas, vehicular canopies and similar activities/uses to ensure adequate safety, night vision, and comfort and not cause excessive glare onto adjacent properties and public street rights-of-way.

Mr. Green said that this ordinance has been reviewed by a focus group, which included neighborhood representatives and people in the lighting industry. They are in agreement with the amendment to the Manual.

Citizens have consistently identified glare and light trespass as an adverse impact of non-residential development. In addition, citizens have expressed concern about the "over-lighting" of uses such as gas stations and convenience stores. In response to these concerns, the staff of the Public Works and Planning and Development Departments have worked with staff of CP&L to develop lighting standards designed to ensure adequate lighting for all uses while minimizing glare and light trespass. The ordinance establishes general lighting standards and specific standards for the following uses:

- Parking lots and outdoor areas;
- Vehicular canopies;
- Outdoor display areas;
- Outdoor sports fields and performance areas;
- Parking decks; and
- Signs.

The goal of the proposed standards is to provide developers, contractors, and property owners with standards that will ensure adequate lighting for the development being proposed while minimizing adverse impacts on adjacent properties and public rights-of-way caused by glare and light trespass. The City staff was fortunate to have the assistance of a lighting expert employed by CP&L to assist in the development of the lighting standards. Our goal was to provide reasonable standards that would meet the needs of and benefit the entire community.

The Public Works and Planning and Development staff recommend approval of the ordinance establishing lighting standards for the City of Asheville.

Mr. Green thanked Mr. Robert Henderson from Carolina Power & Light Company, and Mr. David Foster from the City's Public Works Department, who were primarily responsible for the development of these standards.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 02-98. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 174

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 3-16, 2002: Bernice Penn (Fire), Karen Tessier (Streets), Econo Lodge (Water) and McDowell Co. (Fire).

The following claims were received by the City during the period of May 17-23, 2002: Charles E. Clark (Engineering), Teresa Caldwell (Inspections), Stephanie Solomon (Streets), Blue Ridge Center (Water), Battery Park Apartments (Streets) and Jonathon Clark (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:19 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – June 4, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Multi-Family Housing Revenue Bonds for Asheville Terrace Apartments by Housing Authority

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Asheville Terrace Apartments project.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount up to $7,500,000 to refund existing bonds at a lower interest rate, and to provide funds for interior renovations for the 248 unit apartment development known as Asheville Terrace Apartments, which is operated by Asheville Assisted Housing, Inc., a nonprofit corporation affiliated with the Authority, for rental to elderly, disabled and handicapped persons and families of low and very low income.

The Housing Authority will hold a public hearing on June 11, 2002, on the question of the issuance of the bonds. The bonds must now be considered and approved by the Asheville City Council.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities (both for profit and not-for-profit) to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for Asheville Assisted Housing and issuer, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority prior to the City taking action, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Asheville Terrace Apartments project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

Minority Business Commission Appointment

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of who are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Ms. Carmella D. Watkins has been named by the NAACP to represent them on the Minority Business Commission. Ms. Watkins has been nominated to fill the position left vacant by Ms. Grace Dorn who died unexpectedly in December 2001. Ms. Watkins' term will run through August 2002 and then she will serve a full two-year term, which will run through August 2004.

City staff recommends City Council adopt the resolution confirming the appointment of a member of the Minority Business Commission.

New Street Name of "Secluded Vista Drive"

Summary: The consideration of a resolution accepting the new proposed street name of "Secluded Vista Drive."

Leo and Kendell Wentzel, owners of lots off of Ballantree Drive, have petitioned the City of Asheville to accept the street name " Secluded Vista Drive." The new street will begin at Ballantree Drive and end at the cul-de-sac on Secluded Vista Drive.

City staff recommends adoption of the resolution.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ECONOMIC DEVELOPMENT STRATEGIC PLAN TASK FORCE

Mr. Jack Cecil, Chair of the Economic Development Strategic Plan Task Force, reviewed with Council the Plan history and the economic development "influencers." He then updated Council on the Plan focus areas with strategic actions (which included the riverfront development, the development process, workforce education/training, and real estate).

Mr. Cecil said that the Task Force recognizes the past, current and future contributions by the City to many of the projects and initiatives highlighted and for the need for continued commitment to those efforts. In making the following recommendations, they also recognize the extreme pressures on local governments resulting from the ripple effect of the state budget crisis to meet existing commitments, much less take on new ones. Therefore, several of the recommendations presented require little or no cost. Their recommendations include (1) build and enhance community quality of place; (2) pursue aggressive/pro-active urban redevelopment; and (3) continuous improvement of development process. Additional recommendations include: (1) advocate legislative agenda seeking new or expanded local fiscal and regulatory powers to enhance development "toolbox"; (2) support "new economy" skills training programs of UNC-A, NCSU Mechatronics Engineering/Multimedia/Computer Science; (3) continue support of Buncombe County ECD specifically for marketing Asheville to "knowledge-based" enterprises; and (4) foster small business and entrepreneur development, retention, expansion and recruitment.

On behalf of City Council, Mayor Worley thanked Mr. Cecil and the entire Task Force for their dedication to this task and will look forward to another update.

AUTOMATED COLLECTION SYSTEM PROJECT

Mr. Richard Grant, Solid Waste Manager, said that an automated trash collection system for households was implemented April 3, 2000.

He explained that the automated trash collection system has many advantages over the traditional rear packer system. Savings are generated from utilizing one person with the automated system compared to three people for the rear packer system. This saves approximately $40,000 per year per truck in labor costs. Injuries to personnel are reduced to almost zero. Street cleanliness is improved as all bagged trash is placed in a roll out container with a lid. The city-supplied containers also provide uniform containers for all residents.

In 2000 staff conducted a pilot program for 3,400 customers. After one year of program assessment, comments and a survey, citizens were overwhelmingly in favor of such a system. Based on the pilot program, City Council approved the full implementation of the program for all residents.

Beginning July 1, 2002, 8,000 customers will be added to the new system. Containers and literature are currently being distributed.

Councilman Dunn wanted to make sure that we are not sacrificing efficiency for service. City Manager Westbrook assured him that this is not the case.

Mr. Grant responded to Councilman Mumpower's question regarding recycling.

On behalf of Council, Mayor Worley thanked Mr. Grant for the briefing.

HOUSING CODE REVIEW TASK FORCE

Mr. Jeff Baker, Housing Code Coordinator, said that this is the consideration of a resolution supporting a Housing Code Review Task Force.

At the City Council 2002 planning retreat, staff gave a presentation that reviewed the development and regulatory processes. City Council was presented with 10 issues that would need Council consideration for streamlining and improving the processes in the City. One of the issues was reviewing and updating the Housing Code. Since Council has approved no updates to the Code since May 1999, staff is recommending that a Citizen Task Force be established to review the Housing Code and its enforcement.

The Housing Code was amended in 1993, effective July 1, 1994, with rental units required to be in compliance with the Code effective July 1,1999. In May 1999 City Council approved some updates to the Code and approved a 6-month extension for rental units to be in compliance by January 1, 2000. Other fees and penalties were approved to encourage landlords to be in compliance with the ordinance. The Code has been effective in bringing over 12,000 of the 30,000 residential units of the City up to a minimum standard. The Code was designed to be proactive in that it requires all rental units, and units being sold to show proof that the unit is up to the minimum requirements. Enforcement of the Code has allowed owners, landlords, and investors and staff an opportunity to assess the strength and weaknesses in the Housing Code. Staff has reviewed with the Council's Housing and Community Development Committee various areas of the Code that needed revisions. A review of the Code should involve the sectors of the population who have significant involvement with the Code. It is recommended that the Task Force be comprised of representatives from the Carolina Real Estate Investor Association, the Apartment Association, the Board of Realtors, Homebuilders Association, nonprofit organizations and other industry representatives. The review would be lead by staff that will forward suggested amendments and issues to the Council's Housing and Community Development Committee. The review will take place during the summer with presentation of an amended Code targeted for the fall.

City staff recommends City Council approve the resolution to create a Housing Code Task Force to review and recommend changes to the Housing Code and its enforcement. A list of the potential membership has been provided to Council. If any City Council member would like an additional citizen(s) to participate, they should contact Terry Summey before June 30th in order for the Task Force to begin work in mid-July.

Upon inquiry of Vice-Mayor Bellamy, Mr. Baker said that a list of approximately 30 items has already been compiled that need specific attention and he would be happy to furnish Council with a copy of that list. In addition, at the request of Vice-Mayor Bellamy, Mr. Baker said that he would try to obtain statistics regarding the number of deaths associated with fire resulting from substandard housing.

Vice-Mayor Bellamy wanted to make sure that the Housing Code remains top-notch and that we continue to have a product for safe, decent and affordable housing.

At the request of Councilman Jones and Councilman Peterson, it was the consensus to expand the Task Force membership to include three tenants, a representative from the local architectural association, and two or three representatives from neighborhood groups that have substantial rental housing.

Councilman Mumpower felt that the existing Housing Code lays a heavy regulatory hand on our City and is expensive, thus ultimately affecting affordable housing in our community. He was pleased that both positive and negative impacts of the Code would be reviewed.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CITY-COUNTY HOUSING TASK FORCE

Community Development Director Charlotte Caplan said that this is the consideration of a resolution endorsing the creation of a joint County-City Task Force to provide information on current housing issues, and recommend policy changes.

The Affordable Housing Coalition has approached Buncombe County and City of Asheville officials with a view to setting up a joint task force to look at housing needs and policies County-wide. The problems created by a high-priced housing market in a relatively low-wage economy are common to both the County and the City, and are serious enough to warrant exploration of new policies. While there is at present no clear consensus on what approaches to adopt, there is widespread agreement that any solution will require a coordinated approach in which both County and City governments take action together.

The Coalition's proposal is to explore options through an advisory task force, with members appointed jointly by the Mayor and the County Commission Chairman. The purpose of the task force would be to provide the Buncombe County Commissioners and the Asheville City Council with information on current housing needs and programs, recommend changes to current housing policies, including the potential for a joint Housing Trust Fund, and help raise awareness and support throughout the community for housing issues.

The task force would have an inclusive membership representing all local stakeholders with an interest in housing, including for-profits, non-profits, and neighborhood residents. The County, the City, and the Coalition would jointly provide staff support.

The task force's first job would be to review its purpose and membership and create a work program. Its first report back to the County Commission and City Council would be to present this program and recommend any changes needed to its purpose and membership.

No budget changes are required to implement this proposal.

City staff recommends City Council approve a resolution to create a County-City Housing Task Force.

Councilwoman Jones felt there needed to be a balance from the public and private sector on the Task Force. As a result, it was the consensus of Council to ask the Affordable Housing Coalition to provide two additional recommendations from the public sector.

Ms. Caplan responded to Councilman Peterson about the scope of the work from the Homes for Asheville-Buncombe Task Force created by the Chamber of Commerce.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 4:30 p.m., Mayor Worley announced a short break.

BUDGET WORKSESSION

Discussion was held regarding the Fiscal Year 2002-03 budget.

CLOSED SESSION

At 8:00 p.m., Councilman Mumpower moved to go into closed session to (1) establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - G.S. 143-318.11(a)(5); and (2) consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Betty Donoho, County of Buncombe, Western North Carolina Air Pollution Control Agency, Noccalula M. Moon and City of Asheville. - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Ellis and carried unanimously.

At 9:10 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 11, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Mayor Worley asked that an additional item be placed on the Consent Agenda conferring the Mayor's powers and duties to the Vice-Mayor during his absence next week.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 28, 2002, AND THE WORKSESSION HELD ON JUNE 4, 2002

B. RESOLUTION NO. 02-99 - RESOLUTION APPROVING ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS (ASHEVILLE TERRACE APARTMENTS)

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Asheville Terrace Apartments project.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount up to $7,500,000 to refund existing bonds at a lower interest rate, and to provide funds for interior renovations for the 248 unit apartment development known as Asheville Terrace Apartments, which is operated by Asheville Assisted Housing, Inc., a nonprofit corporation affiliated with the Authority, for rental to elderly, disabled and handicapped persons and families of low and very low income.

A public hearing will be held by the Housing Authority on June 11, 2002, on the question of the issuance of the bonds. The bonds must now be considered and approved by the Asheville City Council.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities (both for profit and not-for-profit) to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for Asheville Assisted Housing and issuer, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority prior to the City taking action, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Asheville Terrace Apartments project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 27 – PAGE 182

C. RESOLUTION NO. 02-100 - RESOLUTION CONFIRMING THE APPOINTMENT OF A MEMBER TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of who are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

Ms. Carmella D. Watkins has been named by the NAACP to represent them on the Minority Business Commission. Ms. Watkins has been nominated to fill the position left vacant by Ms. Grace Dorn who died unexpectedly in December 2001. Ms. Watkins' term will run through August 2002 and then she will serve a full two-year term, which will run through August 2004.

City staff recommends City Council adopt the resolution confirming the appointment of a member of the Minority Business Commission.

RESOLUTION BOOK NO. 27 – PAGE 183

D. RESOLUTION NO. 02-101 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "SECLUDED VISTA DRIVE"

Summary: The consideration of a resolution accepting the new proposed street name of "Secluded Vista Drive."

Leo and Kendell Wentzel, owners of lots off of Ballantree Drive, have petitioned the City of Asheville to accept the street name " Secluded Vista Drive." The new street will begin at Ballantree Drive and end at the cul-de-sac on Secluded Vista Drive.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 184

E. RESOLUTION NO. 02-102 - RESOLUTION CREATING A HOUSING CODE TASK FORCE

Summary: The consideration of a resolution supporting a Housing Code Review Task Force.

At the City Council 2002 planning retreat, staff gave a presentation that reviewed the development and regulatory processes. City Council was presented with 10 issues that would need Council consideration for streamlining and improving the processes in the City. One of the

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issues was reviewing and updating the Housing Code. Since Council has approved no updates to the Code since May 1999, staff is recommending that a Citizen Task Force be established to review the Housing Code and its enforcement.

The Housing Code was amended in 1993, effective July 1, 1994, with rental units required to be in compliance with the Code effective July 1,1999. In May 1999 City Council approved some updates to the Code and approved a 6-month extension for rental units to be in compliance by January 1, 2000. Other fees and penalties were approved to encourage landlords to be in compliance with the ordinance. The Code has been effective in bringing over 12,000 of the 30,000 residential units of the City up to a minimum standard. The Code was designed to be proactive in that it requires all rental units, and units being sold to show proof that the unit is up to the minimum requirements. Enforcement of the Code has allowed owners, landlords, and investors and staff an opportunity to assess the strength and weaknesses in the Housing Code. Staff has reviewed with the Council's Housing and Community Development Committee various areas of the Code that needed revisions. A review of the Code should involve the sectors of the population who have significant involvement with the Code. It is recommended that the Task Force be comprised of representatives from the Carolina Real Estate Investor Association, the Apartment Association, the Board of Realtors, Homebuilders Association, nonprofit organizations and other industry representatives. The review would be lead by staff that will forward suggested amendments and issues to the Council's Housing and Community Development Committee. The review will take place during the summer with presentation of an amended Code targeted for the fall.

City staff recommends City Council approve the resolution to create a Housing Code Task Force to review and recommend changes to the Housing Code and its enforcement. If any City Council member would like an additional citizen(s) to participate, they should contact Terry Summey before June 30th in order for the Task Force to begin work in mid-July.

RESOLUTION BOOK NO. 27 – PAGE 185

F. RESOLUTION NO. 02-103 - RESOLUTION ENDORSING THE CREATING OF A JOINT COUNTY-CITY TASK FORCE TO PROVIDE INFORMATION ON CURRENT HOUSING ISSUES AND RECOMMEND POLICY CHANGES

Summary: The consideration of a resolution endorsing the creation of a joint County-City Task Force to provide information on current housing issues, and recommend policy changes.

The Affordable Housing Coalition has approached Buncombe County and City of Asheville officials with a view to setting up a joint task force to look at housing needs and policies County-wide. The problems created by a high-priced housing market in a relatively low-wage economy are common to both the County and the City, and are serious enough to warrant exploration of new policies. While there is at present no clear consensus on what approaches to adopt, there is widespread agreement that any solution will require a coordinated approach in which both County and City governments take action together.

The Coalition's proposal is to explore options through an advisory task force, with members appointed jointly by the Mayor and the County Commission Chairman. The purpose of the task force would be:

To provide the Buncombe County Commissioners and the Asheville City Council with information on current housing needs and programs, recommend changes to current housing policies, including the potential for a joint Housing Trust Fund, and help raise awareness and support throughout the community for housing issues.

The task force would have an inclusive membership representing all local stakeholders with an interest in housing, including for-profits, non-profits, and neighborhood residents. The County, the City, and the Coalition would jointly provide staff support.

The task force's first job would be to review its purpose and membership and create a work program. Its first report back to the County Commission and City Council would be to present this program and recommend any changes needed to its purpose and membership.

No budget changes are required to implement this proposal.

City staff recommends City Council approve a resolution to create a County-City Housing Task Force.

RESOLUTION BOOK NO. 27 – PAGE 186

G. RESOLUTION NO. 02-104 – RESOLUTION CONFERRING MAYOR'S POWER AND DUTIES TO VICE-MAYOR DURING MAYOR'S ABSENCE

RESOLUTION BOOK NO. 27 – PAGE 187

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

ANNEXATION PUBLIC HEARINGS

Mr. Paul Benson, Urban Planner, explained that purpose of these hearings is for the City to explain the plan for extending City services to the proposed annexation area, and to give all persons resident or owning property within the areas, and all residents of the City, the opportunity to be heard. The effective date of the annexations will be June 30, 2003.

Mr. Benson said that the State of North Carolina enables cities to grow by annexation, and provides incentives in the form of various shared revenues tied to population and street mileage. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

In a growing urban area, annexation becomes an equity issue. This stems from the fact that the true "City of Asheville" (like most cities) is always growing and at any given time is larger than the area in the current city limits. North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population. The fact is that people living in close proximity to cities benefit from the cities, and state annexation law is designed to include these people in the costs and benefits of governing and servicing the City.

Mr. Benson then reviewed with Council the three statutory tests necessary to qualify areas for annexation. He explained the City's annexation strategy has been to target areas (1) that are clearly developed, (2) where water and sewer infrastructure is in place, (3) that improve the City's boundaries, (4) eliminate pockets of urban development that are essentially surrounded by the City or where all access is through the City; and (5) disburse the annexation areas geographically instead of just targeting one direction.

Mr. Benson then reviewed the various services that would be provided to the annexed areas. He then reviewed the following financial plan:

Revenue: Total ad valorem property tax revenue - $375,547; Total state utility tax revenue - $51,300; Total local option sales tax - $144,058; Total Powell Bill allocation - $37,393; and Total fees, permits, licenses and charges for services - $47,149. Total revenue - $655,447.

Annual recurring expenditures: Fire (rural fire department contracts expected to be in place for at least 5 years) - $64,564; Solid waste (tonnage fee) - $9,632; and Street lighting (electrical charge to CP&L) - $6,644. Total recurring expenditures - $80,840.

Annual capital expenditures: Water line improvements - $310,000; Sewer line improvements - $101,000; Solid waste (economic loss compensation for private solid waste haulers) - $25,920; Rollout containers - $12,040; Street signs - $1,599; Street repair - $2,500; and Street lighting - $2,307. Total one-time annual capital expenditure - $455,366.

Mr. Benson then reviewed with Council a chart of how Asheville is growing in comparison with other cities. It showed that Asheville's growth through annexation is 65%.

City staff responded to various questions from Councilman Dunn relating to the City's ability to provide faster police response, solid waste collection services and street maintenance services to the proposed annexed areas.

A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE LEICESTER HIGHWAY AREA

Mayor Worley opened the public hearing at 5:35 p.m.

Mr. Benson explained the Leicester Highway area – This is a one-mile corridor along Leicester Highway. This has 68 lots, is 64 acres, and has an estimated population of 113. It has a mixture of commercial and residential development and provides a more rational City boundary. Current boundary excludes a pocket on east side of the highway. This area meets all three qualifying tests. There is a one-time capital cost of $160,000 for improvements in fire protection water service.

Mr. Mike Anders, resident on Old County Home Road, spoke against the annexation in that he could not understand why the City wanted to annex only one side of Old County Home Road. He felt it wasn't fair that one side of the road will get free street lights and the other side would have to pay for it. Also, he felt they will never get sidewalks and there will be confusion in providing police and fire services.

Ms. Laura Hopper, property owner on Smile Avenue, felt that the Unified Development Ordinance is a random set of guidelines, which increases the cost of development.

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City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:47 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SHERWOOD HEIGHTS AREA

Mayor Worley opened the public hearing at 5:47 p.m.

Mr. Benson explained the Sherwood Heights area – This is a subdivision in North Asheville. This is the only pocket of development out of the City in this area and their only access is through the City of Asheville. This has 50 lots, is 97 acres and a population of 73. This area meets two of the qualifying tests.

Mr. Bruce Stirling, resident on Robinhood Road, felt that the residents in the Sherwood Heights area would not be receiving better service if annexed. They are happy with what they have. He asked that in the future, Council strongly consider whether they are inappropriately skewed toward annexation as a revenue base rather than other methods of tax revenue.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:50 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HUNTINGTON-CHASE AREA

Mayor Worley opened the public hearing at 5:50 p.m.

Mr. Benson explained the Huntington Chase area – This is a new subdivision in Haw Creek and forms isolated pocket out of the City. Their only access is through the City of Asheville. This has 41 lots, is 63 acres and a population of 68. This area meets two of the qualifying tests. There is a one-time capital cost of $105,000 for some sewer and fire protection water service improvements, which are planned.

Mr. Benson said that City staff will ask Council to amend the Annexation Services Plan on June 25, 2002, to eliminate a 12-acre tract classified agriculture vacant. Staff initially looked at including it for just boundary purposes, however, in line with our intent not to include vacant and agriculture land, staff is recommending that the Plan be amended to exclude this property.

Ms. Nancy Williams, resident in Huntington-Chase, felt that for City Council to annex any areas at this time is insensitive to the individuals involved. She felt that Council should consider staff's recommendations only as one source of information and then take that information and overlay the human component.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:56 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF A PORTION OF BELL ROAD

Mayor Worley opened the public hearing at 5:56 p.m.

Mr. Benson explained the Bell Road area – This is a section of Bell Road between two existing sections of the City in Haw Creek. There is currently a service delivery problem. This has 14 lots, 22 acres and a population of 32. This area meets one of the qualifying tests. There is a one-time capital cost of $116,000 for fire protection water service improvements, which are planned.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:57 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE FOREST LAKE AREA

Mayor Worley opened the public hearing at 5:57 p.m.

Mr. Benson explained the Forest Lake area – This is a large subdivision in South Asheville off of Sweeten Creek Road. Its access is only through the City. This has 128 lots, is 53 acres and a population of 250. This area meets all three qualifying tests.

Ms. Delores Constantino, resident of Forest Lake Subdivision, said the City would annex regardless of whether they have services to offer or not. They have adequate services in their subdivision and will not benefit from being annexed. Single parents, widows and retired senior citizens will feel the overburden of increase in taxes. She felt that if Asheville continues to grow that crime will increase and it will be a less desirable place to live. The City should strive to take care of existing residents before trying to annex more. She stressed that the City has nothing to offer Forest Lake residents except higher taxes.

Mr. Dennis Seeney, President of the Forest Lake Homeowners Association, presented City Council with a petition containing 180 signatures asking Council to vote against annexation of the Forest Lake Subdivision. He felt that now is not a good time for forced participation. He said the City doesn't have anything to offer the residents. The only benefit for him personally would be solid waste collection and after calculating expenses, he feels it would be a net loss of over $800 annually for him to become an Asheville citizen.

Mr. Stephen Galatioto, resident on Glen Woods Court, felt that the residents paid for all the work to be done in their subdivision and then the City comes in and takes over. He felt that it's time the City work with what they have or do less with what they currently have.

Mr. Jeff Grimm, resident on Goldfinch Lane, felt the City cannot provide better police protection service by asking the department to cover more territory with the same amount of officers.

Ms. Peggy Lyle, resident on Forest Lake Drive, stressed how annexation will double her taxes on an already stretched monthly budget.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:15 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

F. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE MILL STONE AREA

Mayor Worley opened the public hearing at 6:15 p.m.

Mr. Benson explained the Mill Stone area – This is a subdivision off Round Top Road and is in a corner formed by the City limits. This has a population of 51. This area meets all of the three qualifying tests. There is a one-time capital cost of $30,000 for some sewer improvements, which are planned.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:16 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

G. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE KENSINGTON-WINDSOR AREA

Mayor Worley opened the public hearing at 6:16 p.m.

Mr. Benson explained the Kensington-Windsor area – This is a large residential area off Sweeten Creek Road and Mills Gap Road. It includes two apartment complexes (Kensington Place and Pine Ridge Apartments) and the Windsor Park Subdivision. This has 30 lots, is 67 acres and has a population of 500. This area meets one of the qualifying tests.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Paul Benson and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:17 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 25, 2002.

On behalf of City Council, Mayor Worley thanked all speakers and stressed that all of Council approach annexation seriously and will recognize their obligations to the entire City of Asheville.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast explained the County representation on the City's Planning & Zoning Commission and the Board of Adjustment. He said that County's representatives vote on issues within the City of Asheville, even if they live in the extraterritorial jurisdiction area.

Police Chief Will Annarino responded to questions from Vice-Mayor Bellamy regarding 911 calls.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook explained how the Unified Development Ordinance was formed, noting that it was not a new document adopted in 1997 – just a compilation of development rules and regulations. He felt that less than 5% was new land use planning techniques that were not available in prior years.

At the request of Vice-Mayor Bellamy, City Attorney Oast said that in order to get water service in other cities, a developer has to petition the City for a voluntary annexation. In Asheville we don't have that degree of control.

After discussion, Councilman Dunn felt that the City should earmark the revenue brought in from annexation for specific things, like streets and sidewalks.

H. PUBLIC HEARING TO CONSIDER A REQUEST TO APPLY THE MANUFACTURED HOUSING OVERLAY ZONING CLASSIFICATION TO FIVE LOTS ZONED RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED ON POWERS ROAD AND GORMAN BRIDGE ROAD

ORDINANCE NO. 2926 - ORDINANCE APPLYING THE MANUFACTURED HOUSING OVERLAY ZONING CLASSIFICATION TO FIVE LOTS ZONED RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED ON POWERS ROAD AND GORMAN BRIDGE ROAD

Mayor Worley opened the public hearing at 6:37 p.m.

Mr. Carter Pettibone, Urban Planner, said that this is the consideration of an ordinance to apply Manufactured Housing Overlay District zoning to five properties located on Powers Road. This public hearing was advertised on May 31 and June 7, 2002.

The applicants, represented by Ricky Norton, are requesting the overlay zoning district to allow the construction of manufactured homes on the vacant lots within the proposed area, which is 7.02 acres (PIN Nos. 9639.05-09-3756, 9730.17-00-3012, 4135, 0315, and 6370). Two of the five properties are currently zoned RS-2, while the remaining three are RM-8. These properties are located within the extraterritorial jurisdiction (ETJ), in an area dominated by single-family residential land uses. Based upon a field investigation of the surrounding area, a mixture of stick-built, brick, and manufactured homes was observed, with 9 of the 20 immediately surrounding properties occupied by manufactured homes. Under "Guidelines for Identifying Manufactured Housing Districts," as listed in Section 7-9-4 of the Unified Development Ordinance, there are four criteria that shall be used in identifying potential areas for Manufactured Housing Overlay districts. The first criteria only applies during the development process, while the second criteria states that "Manufactured homes should be located in the area prior to its designation and at least 20% of the homes in area should be manufactured homes", the third criteria states that "vacant land should be available upon which to locate manufactured homes", and the fourth criteria states that "The area should be a minimum of five acres". Based on the information submitted by the applicant and a field investigation of the project and the surrounding areas, staff has determined at least 20% of the homes in the proposed area are manufactured homes, there is vacant land on which manufactured homes could be located, and the project area exceeds five acres (7.02 acres). In addition, the proposed overlay district would allow the establishment of manufactured homes on the lots, while the underlying zoning districts of RS-2 and RM-8 would still regulate density and setback requirements for the homes on the lots.

The Planning and Zoning Commission voted 6-1 to recommend approval a manufactured housing overlay for the five properties on Powers Road. The Planning and Development staff recommends approval of the requested rezoning as well.

Mr. Ricky Norton, property owner, spoke in support of the rezoning.

Mr. John Howard Olesky, resident on French Broad Street, spoke about police tactics.

Mayor Worley announced a short break.

Mayor Worley closed the public hearing at 7:10 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2926. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 500

I. PUBLIC HEARING ON THE FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET

Mayor Worley opened the public hearing at 7:12 p.m.

Budget Director Ben Durant said that the Fiscal 2002/2003 Annual Operating Budget and Capital Improvements Program was presented to City Council on May 13, 2002. On June 4, 2002, City Council held a worksession. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the public hearing was published on May 31 and June 7, 2002. Adoption of the budget ordinance is scheduled for June 27, 2002, at the City Council meeting.

The Fiscal Year 2002/2003 Annual Operating Budget is balanced with an Ad Valorem Tax rate of $0.51 per $100 of assessed value, which is lower than the current rate $0.56 per $100 as a result of re-valuation. Minor service reductions are included in this budget to offset potential state cuts to local reimbursement revenues.

A copy of the budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the ad valorem tax rate, which cannot be changed once adopted.

The following residents spoke in support of not closing the Burton Street Community Center:

Mr. Dwayne Barton, resident of West Asheville
Ms. Gloria Johnson, President of the Burton Street Community Center (presented Council with a petition containing 113 names)
Louis Grant, Pastor of Mt. Carmel Baptist Church in West Asheville
Ms. Anna Marie Smith
Ms. Alison Smith
Ms. Mary Thomas, resident on Bryant Street

City Manager Westbrook explained that the recommended budget does not include closing any community center, however, in the unlikely event that the State withholds franchise reimbursement fees in the amount of $4.2 million, the Burton Street Community Center is just one of many necessary cuts.

Mr. Water Plaue hoped that City Council would deal with cuts fairly and objectively.

Captain Michael Knisely, resident of West Asheville and Chief of the Executive Council of the Asheville Firefighters Association, presented City Council with a proposal for the creation of a special separation allowance for career firefighters. He showed how implementing the proposal would have immediate savings, in addition to savings in the future. As a result of this information, it was the consensus of City Council to place this proposal on the next worksession agenda for further information.

Mayor Worley closed the public hearing at 7:44 p.m.

Mayor Worley said that adoption of the budget has been scheduled for Thursday, June 27, 2002, at 3:00 p.m. in the Council Chamber, located on the 2nd Floor of the City Hall Building.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

Widening of I-240

At the request of Councilman Peterson and Councilwoman Jones, and after discussion of whether or not to take a formal vote at the June 18, 2002, worksession, it was the consensus of City Council to add the topic of I-240 improvements on the June 18, 2002, worksession agenda. Said topic will include review of a draft resolution prepared by Councilman Peterson giving direction to City staff as to what the sense of City Council stands with regard to the number of lanes on the I-26 connector. The public hearing by the Transportation Advisory Committee is scheduled for June 12, 2002, regarding their recommendation on the number of lanes and their final vote will be taken on June 20, 2002. Therefore, some form of Council direction is requested at Council's June 18, 2002, worksession.

Super Wal-Mart Public Hearing

After discussion, it was the consensus of City Council to hold the City Council public hearing on the Super Wal-Mart in the Council Chamber on June 25, 2002. Measures will be taken to assure that the process will be orderly and every effort will be taken to set up monitors and speakers for persons who will not be able to be promptly seated in the Chamber or in the First Floor North Conference Room.

As public comment is very important to City Council, a request will be made to those who wish to speak to adhere to time limits, not to repeat comments, present only relevant information, and to focus on the issues.

After discussion, it was the consensus of City Council to recess the June 25 meeting, if necessary, at approximately 11:00 p.m. At, or near that time, Council will then discuss when to reconvene or how they will proceed.

Bob Pressley

Councilman Dunn asked for City Council to honor Mr. Bob Pressley, a local NASCAR driver, for his contributions to our community.

VI. OTHER BUSINESS:

Lawsuits

The City filed a lawsuit on April 19, 2002, against Miranda Lynn and Jerry Rhew. The nature of the proceeding is a complaint for medical expenses resulting from injuries sustained by a City employee in a motor vehicle accident with defendants. This matter will be handled by attorney outside the City Attorney's Office.

The City received the following Complaint on June 4, 2002, filed by Michael T. and Rose Dixon. The nature of the proceeding is alleged denial of building and zoning permits for quadraplex at Morningside Park pursuant to approved site plan prior to property rezoning from R-3 to R1-A. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Dennis Seeney, resident of Forest Lake Subdivision, felt he could support annexation if he could be assured his money would be used for something worthwhile, like keeping the Burton Street Community Center open.

Mr. Walter Plaue asked City Council to consider forming a task force to review the Unified Development Ordinance. He felt it has done irreparable harm in terms of affordable housing in the City and needs to be more user-friendly.

Ms. Rebecca Campbell, resident in West Asheville, felt the Unified Development Ordinance needed to be reviewed as well. In addition, she felt the public hearing on the Super Wal-Mart should be moved to a larger venue.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:32 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – June 18, 2002 - 3:00 p.m.

Worksession

Present: Vice-Mayor Terry M. Bellamy, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Charles W. Worley

CONSENT:

Clerk to Advertise for Upset Bids on Disposal Parcel 218 on Water Street

Summary: The consideration of a resolution establishing the minimum price and directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 218 on Water Street.

Louise Gardner has submitted a bid for the purchase of Disposal Parcel 218 in the East Riverside Redevelopment Project in the amount of $1,500.

Disposal Parcel 218 is a residential lot near the corner of Water Street and Camby Street comprising 4,350 square feet. The assessed tax value on the lot is $8,300. Disposal Parcel 218 has been in the Community Development inventory for over 20 years and no previous bids have been received. The lot has been "shopped" to several non-profits and individuals and the upset bid process will determine the actual market value of the lot.

The bid from Louise Gardner for Disposal Parcel 218 includes the proposal to incorporate the lot with her property at 36 Water Street.

Approval of the resolution will establish the minimum price for Disposal Parcel 218 at $1,500 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution establishing the minimum price and directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 218 on Water Street.

Abandonment of Waterline Easement on Buckstone Place

Summary: The consideration of a resolution abandoning a waterline easement and authorizing the City Manager to execute documents to effect same.

In 2000 and 2001, during construction and development of the Spring Hill Suites Hotel on the north side of Tunnel Road, a waterline was damaged, resulting in its relocation by the developer on the same property, but in a different place. Appropriate easements and agreements have been executed for the relocated waterline, and the property owners are now requesting the City to abandon and release the old water line easement.

The Water Resources Department advises that it has no further use for the waterline (which will remain in the ground, but not be used) or the easement. The Water Authority's attorneys have reviewed this request, and concur. The resolution declares the waterline and easement to be abandoned, and authorizes the City Manager to execute appropriate documents to effect the abandonment.

Adoption of the resolution is recommended.

Vice-Mayor Bellamy asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AIRPORT PROPERTY REQUEST FOR PROPOSALS

Director of Economic Development Mac Williams said that this is the consideration of a resolution authorizing the City to issue a Request for Proposals (RFP) to developers soliciting proposals for development of city-owned land located across from Asheville Regional Airport.

The City owns a 13.08-acre parcel located directly across from the Asheville Regional Airport. A portion of the site had previously been used to house a small office building for the Federal Aviation Administration. The building was destroyed by fire and has since been demolished and the site cleared.

The location of the parcel in proximity to the Airport and I-26, the frontage and access off Airport Road, and the nature of existing development around the site make the parcel a valuable asset. Thus the City objectives (as stated in the proposed RFP) are *"to leverage this asset to enhance the City tax base, generate income to support other economic development initiatives, and establish high development standards for this important City corridor."*

The proposed RFP has been created to provide guidance to developers interested in partnering with the City to develop the site. In accordance with City procedure, the RFP has been circulated internally among department directors.

Staff recommends City Council authorize the City to issue the Request for Proposals as drafted.

Vice-Mayor Bellamy asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

COUNCIL REVIEW OF I-240 IMPROVEMENTS

Using a page from the Florida Highway Capacity Manual and information regarding traffic volume, projected traffic demand and concerns for air quality, Councilman Peterson explained why he was requesting City Council consideration and adoption of the following resolution: "City Council commits to cooperate with the I-26 Connector Project to the fullest possible extent and request the Federal Highway Administration, the N.C. Dept. of Transportation and the Transportation Advisory Committee of the Asheville Urban Area Metropolitan Planning Organization to (1) expedite the construction of the new I-26 Connector bridge over the French Broad River to the earliest possible date by concurrent study and design of the various lane options, the possible interchange alternatives, and the Connector bridge alternatives; or by reducing the number of interchange alternatives that would need to be studied in an Environmental Impact Statement (EIS); (2) recognize that it is the preference of Asheville City Council that any widening of I-240 through west Asheville be limited to six lanes; (3) study in the EIS for I-240 through west Asheville the options of varying cross sections for less than eight lanes; (4) as part of the EIS or other planning processes, provide for the City of Asheville possible options to reduce traffic demand in the I-26/240 corridor; and (5) minimize the future right-of-way purchases needed to accomplish this project so as to reduce the negative impact on the businesses and affordable housing." He said that since the Transportation Advisory Committee will be making their recommendation to the N.C. Dept. of Transportation on June 20, 2002, he requested City Council take action on the drafted resolution at this meeting.

Each Council member explained their comments/concerns with regard to adopting the resolution, and after discussion mostly surrounding procedure, Councilman Peterson moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones. Said motion failed on a 3-3 vote, with Vice-Mayor Bellamy, Councilman Peterson and Councilwoman Jones voting "yes" and Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

Councilman Mumpower felt that it might be beneficial to arrange a trip to Raleigh to visit N.C. Dept. of Transportation representatives on this very important project.

SPECIAL RETIREMENT SEPARATION ALLOWANCE PROPOSAL FOR FIREFIGHTERS

City Manager Westbrook said that he has investigated the special retirement separation allowance proposal for firefighters that Fire Captain Mike Knisely presented at the budget public hearing on June 11, 2002. He explained the history of the Asheville Firefighter social security contribution in which they voted not to join the Social Security Retirement Plan in 1953. Referendums were held again in 1978, 1988 and 1992 and each time firefighters voted not to join the Plan. He said that City Council must approve reimbursement of the City of Asheville employer contribution prior to the State entering into an agreement to accept the firefighters under the system and the estimated cost to the City annually would be $500,000. If instituted, the majority of the Fire Department would have to vote in favor of joining the system and they would begin contributing 7.65% of their gross pay as the required employee match.

He said that even though an actuarial study would be necessary, a ballpark estimated cost of instituting the firefighter special separation allowance would be $285,000. He said that if the benefit is adopted, it in no way relieves the City of responsibility to provide employer Social Security contribution if the benefit is later approved. Also, since there is no "catch-up" provision related to this benefit, based on the number of retirees within the next five to seven years, the cost of this program to the City may increase significantly.

City Manager Westbrook explained how based upon an annual salary of a firefighter upon 30-year retirement, their projected retirement earning would equate to 62% of the employee's annual gross salary.

He said that whenever a special retirement plan is set up, an actuarial study should be performed. An estimated cost would be approximately $1-2,000.

After an investigation of the proposal and due to the current budget crisis, City Manager Westbrook recommended that the City not enter into this proposal for a special retirement separation allowance for firefighters. He stressed that firefighters are valuable City employees and have a good retirement plan, however, this supplemental but Council needs to be careful about setting a precedent in allowing allowance would make it better.

City Manager Westbrook said that he would like to look at several fringe benefits items regarding all City employees, i.e., raising the 401-K to 5%, pay and classification issues, etc.

Fire Captain Mike Knisely spoke in support of the plan. He realized that the City is in a budget crisis, however, he explained why he felt there was a savings to the City. He said police officers receive a special separation retirement allowance, but their allowance was mandated by the State.

After discussion from Council about possible compensation to firefighters, the possibility of firefighters reconsidering joining the Social Security Retirement Plan, and if new hires can be required to join the Plan, it was the consensus of Council to have the City Manager let them know before the end of August the cost of an actuarial study and then consider this proposal again at the retreat when City Council sets it's goals and priorities.

Vice-Mayor Bellamy announced a short recess.

BOARDS AND COMMISSIONS

It was the consensus of City Council to (1) reappoint Arlis Queen to the WNC Regional Air Quality Agency; (2) reappoint Rhett Grotzinger and Albert Anderson to the Airport Authority; (3) reappoint Jimmy Hungerford and Betty Budd to the Citizens-Police Advisory Committee and readvertise for the East, Central and North representatives; (4) reappoint Denise Goodson to the Civic Center Commission and interview Leonard Jones and Max Alexander. In addition, Kathryn Nash is to be a candidate, but no interview is necessary; (5) reappoint Leslie Hennessee to the Crime-Stoppers Board of Directors and to interview Bill McGuire; (6) readvertise for one month the vacancies on the Historic Resources Commission; and (7) reappoint Ann Babcock and Jim Drummond to the Recreation Board; and to appoint Chuck Cloninger to the Board. In addition, City Council would like to interview Christopher Barkley.

MISCELLANEOUS

Councilwoman Jones asked City Council to reconsider changing the venue of the June 25, 2002, City Council public hearing on the Super Wal-Mart conditional use permit. After discussion, Councilwoman Jones moved to suspend the rules to take formal action at this meeting to change the venue of the June 25, 2002, City Council meeting. This motion was seconded by Councilman Peterson. Said motion failed on a 3-3 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

Councilman Dunn asked that the City Council recognize Bob Pressley (racing icon) for his contributions in our community.

At the request of Councilman Dunn, City Manager Westbrook said that he would provide Council with a budget report showing actual expenditures through May of 2002.

ADJOURNMENT:

Vice-Mayor Bellamy adjourned the meeting at 5:41 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – June 25, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. WELCOME OF DELEGATION FROM OUR SISTER CITY - SAUMUR, FRANCE

Mayor Worley welcomed Claude and Liliane Besomes; Andrea and Marie-Claude Daheuille; Jean and Josiane Lemair; and Michel and Colette Norman, all volunteers from ASRI (Association {of} Saumur {for} Relations International) and stated that the City of Asheville was delighted to have the delegation visit our area. The delegation thanked Mayor Worley and presented the City with a gift.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 11, 2002, AND THE WORKSESSION HELD ON JUNE 18, 2002

B. RESOLUTION NO. 02-105 - RESOLUTION ESTABLISHING THE MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS FOR DISPOSAL PARCEL 218 ON WATER STREET

Summary: The consideration of a resolution establishing the minimum price and directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 218 on Water Street.

Louise Gardner has submitted a bid for the purchase of Disposal Parcel 218 in the East Riverside Redevelopment Project in the amount of $1,500.

Disposal Parcel 218 is a residential lot near the corner of Water Street and Camby Street comprising 4,350 square feet. The assessed tax value on the lot is $8,300. Disposal Parcel 218 has been in the Community Development inventory for over 20 years and no previous bids have been received. The lot has been "shopped" to several non-profits and individuals and the upset bid process will determine the actual market value of the lot.

The bid from Louise Gardner for Disposal Parcel 218 includes the proposal to incorporate the lot with her property at 36 Water Street.

Approval of the resolution will establish the minimum price for Disposal Parcel 218 at $1,500 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution establishing the minimum price and directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 218 on Water Street.

RESOLUTION BOOK NO. 27 – PAGE 188

C. RESOLUTION NO. 02-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST FOR PROPOSALS FOR THE DEVELOPMENT OF LAND ON AIRPORT ROAD

Summary: The consideration of a resolution authorizing the City to issue a Request for Proposals (RFP) to developers soliciting proposals for development of city-owned land located across from Asheville Regional Airport.

The City owns a 13.08-acre parcel located directly across from the Asheville Regional Airport. A portion of the site had previously been used to house a small office building for the Federal Aviation Administration. The building was destroyed by fire and has since been demolished and the site cleared.

The location of the parcel in proximity to the Airport and I-26, the frontage and access off Airport Road, and the nature of existing development around the site make the parcel a valuable asset. Thus the City objectives (as stated in the proposed RFP) are *"to leverage this asset to enhance the City tax base, generate income to support other economic development initiatives, and establish high development standards for this important City corridor."*

The proposed RFP has been created to provide guidance to developers interested in partnering with the City to develop the site. In accordance with City procedure, the RFP has been circulated internally among department directors.

Staff recommends City Council authorize the City to issue the Request for Proposals as drafted.

RESOLUTION BOOK NO. 27 – PAGE 189

D. RESOLUTION NO. 02-107 - RESOLUTION ABANDONING WATERLINE AND EASEMENT ON BUCKSTONE PLACE AND AUTHORIZING THE CITY MANAGER TO EXECUTE INSTRUMENTS EFFECTING SAID ABANDONMENT

Summary: The consideration of a resolution abandoning a waterline easement and authorizing the City Manager to execute documents to affect same.

In 2000 and 2001, during construction and development of the Spring Hill Suites Hotel on the north side of Tunnel Road, a waterline was damaged, resulting in its relocation by the developer on the same property, but in a different place. Appropriate easements and agreements have been executed for the relocated waterline, and the property owners are now requesting the City to abandon and release the old water line easement.

The Water Resources Department advises that it has no further use for the waterline (which will remain in the ground, but not be used) or the easement. The Water Authority's attorneys have reviewed this request, and concur. The resolution declares the waterline and easement to be abandoned, and authorizes the City Manager to execute appropriate documents to effect the abandonment.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 27 – PAGE 190

E. RESOLUTION NO. 02-108 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY

Summary: The consideration of appointing a member to the WNC Regional Air Quality Agency.

The term of Arlis Queen, as a member on the WNC Regional Air Quality Agency, expires on July 1, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Queen to serve an additional six year term, term to expire July 1, 2008, or until his successor has been appointed.

Staff recommends City Council appoint a member to the WNC Regional Air Quality Agency.

RESOLUTION BOOK NO. 27 – PAGE 191

F. RESOLUTION NO. 02-109 - RESOLUTION REAPPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The consideration of appointing members to the Asheville Regional Airport Authority.

The terms of Rhett Grotzinger and Albert Anderson, as members on the Asheville Regional Airport Authority, expire on June 30, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Grotzinger and Dr. Anderson to each serve a four year term respectively, terms to expire June 30, 2006, or until their successors have been appointed.

Staff recommends City Council appoint members to the Asheville Regional Airport Authority.

RESOLUTION BOOK NO. 27 – PAGE 192

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. UNFINISHED BUSINESS:

RESOLUTION NO. 02-110 - RESOLUTION AMENDING THE 2002 ANNEXATION SERVICES PLAN TO REFLECT REDUCTION IN THE HUNTINGTON-CHASE ANNEXATION AREA

Urban Planner Paul Benson said that this is the consideration of a resolution amending the Annexation Services Plan for the 2002 annexations to reflect reduction in one of the annexation areas.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan, as long as the requirements for providing service to the annexation areas continue to be met.

At the public hearing on June 11, 2002, staff recommended that the size of the Huntington Chase Annexation Area be reduced by dropping one of the larger lots out. The lot is classified for tax purposes as "agricultural vacant," is currently unimproved, and is one of two "non-urban" areas in Huntington Chase. It is not part of the Huntington Chase subdivision. The effect of this change is that it causes the qualifications of the remaining area to improve somewhat, but does not cause the area to qualify under any additional tests.

Adoption of the resolution is recommended.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that as long as the Annexation Services Plan does not show the Huntington Chase Area, or any other area, as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

Councilman Dunn asked if the City could postpone for two weeks taking action on the amending the Plan in order to give Huntington-Chase area residents the opportunity to review the information to see if they find any errors with said amendment. City Manager Westbrook responded by saying that the Buncombe County Tax Office sends out property tax bills and requests the information be provided to them prior to June 30 for timely processing.

Councilman Peterson asked if Council could delay adoption of the Plan amendment and annexation ordinances until their scheduled meeting on June 27, 2002. City Manager Westbrook explained that the Annexation Services Plan is an integrated plan which incorporates information on all proposed seven annexation areas. If Council chooses not to annex one area, the Plan would need to be amended again.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved to adopt Resolution No. 02-110. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 193

ANNEXATION AREAS

Councilman Peterson moved to postpone action on adopting the following proposed seven annexation areas until June 27, 2002: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area and Kensington-Windsor area. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF 379,000 SQUARE FEET OF RETAIL SPACE FOR PHASE 1 OF THE DEVELOPMENT; AND REZONING OF A PORTION OF PROPERTY LOCATED AT 437 SWANNANOA RIVER ROAD, FORMERLY SAYLES BILTMORE BLEACHIERS, FROM

COMMERCIAL INDUSTRIAL DISTRICT TO URBAN VILLAGE DISTRICT FOR PHASE 2 OF THE DEVLEOPMENT

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. This matter does not require a conditional use rezoning, which is a legislative act, but it does require the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant or deny the conditional use permit. If the permit is granted, the second vote will be to grant the rezoning to Urban Village District. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

Mayor Worley said that Council would be discussing the issuance of the conditional use permit for a large national chain. Council's review of the request is limited to issues that directly affect the City of Asheville and its public services and infrastructure. Many citizens may have strong feelings about corporate hiring and purchasing practices, creation of jobs, wage structure for employees, economic benefits to Asheville, compensation of executives, corporate public involvement in the community, other potential uses for the property and similar issues. While this Council respects the views and concerns, they are not relevant to our decision about the issuance of the conditional use permit. Because they are not relevant, their discussion will serve no purpose other than to distract our attention away from the many complex issues we are charged with addressing, as well as needlessly prolonging the meeting. Consequently, he asked that these issues not be included in comments. He would remind the public of this request if the remarks stray into these areas. He asked that comments not be repeated as unnecessary redundancy can needlessly prolong a hearing and likewise distract Council from the issues that it must consider.

Mayor Worley then reviewed the order of the hearing itself and reviewed the standard time limitations. He reminded Council that the meeting will recess at 11:00 p.m., if necessary, and reconvene on another date.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:35 p.m.

Mr. Gerald Green, Chief Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Green said that this is the consideration of a motion to approve a Conditional Use Permit as outlined in the Unified Development Ordinance (UDO) to allow development of approximately 379,000 square feet of retail space on approximately 60 acres in Phase I of the development located at 437 Swannanoa River Road at the site of the former Sayles Biltmore Bleacheries; and to consider the rezoning of a portion of the site (approximately 19 acres) from Commercial Industrial District to Urban Village District in Phase II of the development.

Level III site plans for the development at the Sayles Biltmore Bleacheries located at 437 Swannanoa River Road (PIN No. 9658.15-52-4618) were initially submitted March 29, 2002. No plans have been submitted for Phase III of the development. The Technical Review Committee (TRC) reviewed these plans at their April 15, 2002, meeting. The submitted plans were found to be incomplete and TRC continued action on the request to their May 20 meeting. Revised plans were submitted May 6, 2002, that included the information needed for TRC action. At their May 20, 2002, meeting, the TRC recommended approval with conditions of the Level III site plan for the development of the Sayles Biltmore Bleacheries property. Many of the comments made by TRC identify technical requirements that must be addressed by the applicant when detailed site plans are submitted following political approval of the project by City Council.

The Planning and Zoning Commission reviewed the plans at their June 5, 2002, meeting. The Commission's meeting included a public hearing, during which significant public input was received regarding the proposed development. After receiving the public input, reviewing the plans, and considering the request, the Commission, with a vote of 4-2, to recommend that the Conditional Use Permit be issued with conditions for Phase I, and with a unanimous vote that Phase II be rezoned to Urban Village District. Efforts are underway by the project's design team to address the conditions identified by TRC and the Planning and Zoning Commission.

The City of Asheville River District Design Review Committee has reviewed the site plans and building designs. The applicant's design team worked with the Review Committee members and staff to develop building designs that would comply with the River District Design Guidelines. By a unanimous vote, the site plans and building designs have received conditional approval from the River District Design Review Committee.

The proposed site for the development is the former Sayles Biltmore Bleacheries property located at 437 Swannanoa River Road and consists of approximately 79 acres (City Exhibit 4). The property is split zoned, with a portion of it zoned River District and a portion zoned Commercial Industrial District (City Exhibit 3 – Location Map). Access to the property is currently via Swannanoa River Road, a two-lane N. C. Dept. of Transportation (NCDOT) road with a maximum capacity of 14,000 vehicles per day. As part of the development, a new road providing access from the project site to Fairview Road is proposed.

The proposed development will consist of three (3) phases, with the site plans providing information on the first two (2) phases. Phase I (approximately 60 acres) will consist of a major retail development that will have a total of 367,876 square feet of floor area and 1,839 parking spaces (City Exhibit 3 – Conceptual Site Plan). The following will be included in Phase I:

- A 219,622 square foot retail store with 1,095 parking spaces;
- An 88,474 square foot retail store with 442 parking spaces;
- 32, 000 square feet of retail shops with 152 parking spaces;
- 27,780 square feet of retail shops with 139 parking spaces; and
- Two outparcels, one at 1.31 acres and one at 1.41 acres.

A new 4-lane bridge crossing the Swannanoa River and the new access road that will provide access from the project site to Fairview Road near its intersection with I-240 and Stevens Street will be constructed in Phase I of the proposed development. Construction materials for the buildings in Phase I will include brick, quik-brik, and integral block. Building facades and roofs will be articulated and awnings will be used to help break up the massing of the buildings. The garden area will be fenced with a decorative metal fence. The parking areas will be heavily landscaped and the site will be buffered from Swannanoa River Road with a minimum 50' buffer.

Primary access to the site will be via Swannanoa River Road. A new 4-lane bridge will be constructed east (upstream) of the current bridge providing access to the site. The existing bridge will be demolished. Secondary access will be provided by a new 2-lane road that will link the development to Fairview Road. The new road will intersect Fairview Road at Stevens Street, west of the I-240/Fairview Road intersection. An unused railroad right-of-way and existing "tunnel" under I-240 will be used for the alignment of the new road.

The applicant is requesting Level III site plan review and issuance of a conditional use permit for the Phase I portion of the development to allow the development of approximately 379,000 square feet of retail space. Level III projects are conditional uses within the Commercial Industrial District. Conditional uses are uses, which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. In addition, this project must meet the supplemental development standards for large retail structures due to its size. The applicant appears to have met the applicable supplemental development standards.

The applicant is also requesting rezoning of the Phase II portion of the development of approximately 19 acres from Commercial Industrial District to Urban Village District. Phase II will provide a mix of retail, office, and residential uses in an Urban Village. Of the 19 acres in the proposed Urban Village, approximately 11 acres will be in residential uses and the remaining 8 acres will be occupied by retail/office uses. TRC review has indicated that the design of the Urban Village is not in complete accordance with the design standards for such developments. The proposed breakdown for the Urban Village is:

Residential

- 84 multi-family units
- 8 single family units
- 75 parking spaces

Retail/Office

- 115,042 square feet
- 172 parking spaces

An area adjacent to the Swannanoa River will be preserved as a park and the applicant proposes to convey this area to the City of Asheville for use as a public park. A greenway trail will be constructed along the river, through this park, and also proposed to be conveyed to the City for public use.

The Sayles Biltmore Bleacheries site has development constraints that make development or redevelopment of the site an expensive undertaking. A large scale project on this site will be necessary to overcome the constraints of the site. These constraints include (1) Access – The site is currently accessed by a narrow 2-lane bridge over the Swannanoa River. The current bridge is located downstream of the proposed bridge. Development on the site will require construction of a new bridge, which must meet federal flood standards of sufficient size to provide safe access to the site. (2) Building Rehabilitation or Demolition – The demolition or rehabilitation of the industrial buildings on the site is a major undertaking that will require significant investment. There are also environmental concerns resulting from the industrial use of the site that must be addressed. (3) Flood Designations of the Site – A large section on the site located in the northeast corner is designated as a floodway with no construction or fill permitted within a floodway. With a larger area designated as flood fringe, buildings must be elevated above the flood elevation if located in the flood fringe. Substantial cost is involved in complying with the flood protection standards that apply to the site.

The critical issues associated with the review of this project are stormwater and flood protection, traffic and design.

The applicant's proposal for handling stormwater involves the construction of stormwater holding ponds and the provision of some areas of pervious paving. Much of the project site is located within a designated flood hazard area, but the portion of the area to be developed currently is located within the designated floodway. The applicant is proposing to revise the floodway on the project site by providing storage areas for floodwaters. The floodway expansion areas will also serve as stormwater detention basins. To construct the floodway expansion areas, an area outside of the River Resource Yard (50' from the bank of the Swannanoa River) will be excavated to create a large holding area for floodwaters and stormwater runoff. The expansion areas will be approximately 10' to 15' deep, 50' to 125' wide, and 1100' long.

The site plan calls for a significant amount of paving in the areas currently designated as floodway. This results in a need to provide a compensating area that will contain floodwater on site and not result in a rise in the downstream flood elevations. Since an amount of land making up the floodway will be reduced, it is necessary to provide a deeper channel for containing the floodwater. Details of the plans to address stormwater and flood protection are addressed through the City's permitting process and the TRC conditions. The applicant's engineering consultant will present details and technical information regarding the measures planned to address the floodwaters.

The applicant is proposing the construction of a new bridge over the Swannanoa River to serve as a primary entrance to the proposed development (City Exhibit 5 – Proposed Overall Master Plan for Riverbend Marketplace). The proposed 4-lane bridge will be constructed upstream of the existing bridge. The main access road, which will be designed and constructed as a public street, will carry traffic through the development and will intersection Fairview Road at Stevens Street. The intersection of the proposed road and Fairview Road will serve as the secondary entrance to the proposed development. A Traffic Impact Analysis (TIA) was prepared for the proposed development. The TIA identifies traffic system improvements designed to mitigate the anticipated traffic impacts of the development.

A major concern identified that must be addressed prior to the approval detailed plans for the project is the traffic impact on Swannanoa River Road. Of the 17,000 weekday trips estimated to be generated by the proposed development, 10,700 or 63% will access the site from Swannanoa River Road. This impact has not been completely addressed due to the extensive study required to evaluate the viability of options for mitigating the impact. Four options for addressing this concern have been identified and are currently being studied by the applicant and by City staff. Selection of an alternative for addressing this concern has not been completed due to the need to get feedback from both the applicant and the NC Dept. of Transportation (NC DOT). The traffic issue for this proposed development is more complex than the traffic issue at the Gerber Road site due to the larger size of the development and the more integrate traffic patterns at the Tunnel Road site.

The third major issue to be considered in the review of this request is the design – both site and building design. The need to address the flood area designation of a portion of the site and the needs of the proposed tenants for number and location of parking spaces heavily influence the site design. The site design may change as a result of the need to accommodate the traffic impact mitigation. Building design for all buildings in Phase I of the development has been reviewed by the River District Design Review Committee for compliance with the River Design Guidelines. The Design Review Committee approved the design with conditions.

Mr. Green then showed pictures of building elevations (City Exhibit 6, City Exhibit 7 and City Exhibit 8).

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDO. City Council must make seven findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings.

1. That the proposed use or development of the land will not materially endanger the public health or safety;

   The project received technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering, and other City departments. The project must meet the technical standards set forth in the UDO, the Asheville Standard Specifications and Details Manual, the N. C. Building Code and other applicable laws and standards that protect the public health and safety. Proposed stormwater management control measures exceed City standards (the stormwater detention basins will accommodate the 100 year storm).

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

   The project is proposing the minimum grading necessary to develop the property with this type of intense use. A significant buffer will be preserved, including an area with mature trees that define the character of the area.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

   The size of the tract of land allows room for adequate buffering to alleviate impacts of noise and lighting on adjacent properties. Traffic impacts are an important consideration and are discussed in another section of this report. Stormwater control measures appear to result in an improvement over the current basinwide stormwater conditions if the project is developed as proposed. The development is consistent with the zoning requirements for the property.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

   The property is zoned Commercial Industrial and River District, which have no structure size standards. Much of the neighboring property is zoned Commercial Industrial or River District and is for the most part already developed with retail uses. The development will be heavily buffered from adjacent residential uses and from the highway.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

   The proposed development will comply with the City's plans and policies provided the traffic issue below is resolved.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

   The project received technical approval from the TRC, which includes representatives of the Water Resources Department, Metropolitan Sewerage District, Engineering, the Fire Department, and Public Works Department. The adequacy of the transportation facilities is addressed in a Traffic Impact Analysis conducted by the developer and supplemented by staff findings and requirements.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The developer submitted a TIA as required by the UDO. This analysis indicated the need for some off-site improvements, including the installation of a new traffic signal at the intersection of Fairview Road and Stevens Street, linking this new signal to other signals along Fairview Road in the immediate vicinity of this intersection, and the contribution of funding for traffic calming. Some of the proposed improvements may not be necessary, but others may require augmentation, according to staff and staff consultant analysis of the TIA. A major concern identified by TIA that must be addressed prior to the approval of the conceptual plans for the project is the traffic impact on Swannanoa River Road. The TIA prepared by the applicant's traffic consultant indicates that the proposed development would use essentially all the remaining capacity of the section of Swannanoa River Road east of South Tunnel Road. This would mean that if the proposed development were constructed with no improvements to Swannanoa River Road, additional development or redevelopment on other properties along this corridor might be precluded. This would violate the City's Sustainable Economic Development Strategic Plan and Smart Growth Policies, as well as not comply with some of the required standards for approval for conditional uses. A potential solution or solutions must be agreed to by the applicant in order for the development proposal to meet this standard for approval, as well as standards for approval 3, 5 and 6 above.

There are four options that have been identified to mitigate the traffic impact on Swannanoa River Road resulting from the proposed development. Staff is amenable to any of these options, combinations of these options, or other feasible alternatives not included below, such as access through the River Ridge shopping center or construction of a new road parallel to and on the opposite side of the river as Swannanoa River Road so long as a significant mitigation of the traffic impact is achieved. Each of the options would need to be fully designed, permitted, and constructed entirely at the developer's expense (or, alternately, through some other source of non-City funding) and in accordance with all appropriate local, state and federal procedures and regulations. In addition, while each option appears to have the potential to mitigate the traffic congestion impact, formal study of the selected option would be necessary to ascertain its specific effectiveness in addressing the capacity issue prior to approval of final plans by the City. The options, in order of staff preference, are:

1. Developer or non-City funding of a public transportation system that would create a "Shopper's Loop" that would circulate among the major retailers in the immediate vicinity. This option would involve the provision of a public transit system that would transport shoppers to major retailer destinations in a manner similar to a "park once and ride" program in use in many downtowns. If designed appropriately, this option has the benefits of maximizing the existing infrastructure, reducing air pollution, and providing a customer convenience amenity. Concerns include whether the system would be successful in reducing the traffic impact sufficiently and the permanence of the system.
2. Developer construction of an extension of Wood Avenue paralleling I-240 and intersecting the proposed Stevens Street extension. This option has several benefits in addition to reserving some capacity on Swannanoa River Road for future development,

including the resolution of a major cut-through traffic problem and maximization of the use of existing right-of-way. It is also the least expensive of the three options for the developer to construct and provides the most access for the developer's Phase III project site. There is some concern about the feasibility of using interstate right-of-way for a frontage road.

3. Developer construction of a "half-diamond" interchange (east-bound off-ramp and west-bound on-ramp) on I-240 between the Tunnel Road and Fairview Road interchanges. This would provide direct interstate access to the development site and improve the function of the Stevens Street extension. There is some concern about the feasibility of this option given the proximity of the new interchange to the interchanges immediately to the east and west as well as the cost of construction.
4. Developer widening of Swannanoa River Road to a three lane cross-section from the I-240 overpass to Fairview Road. This improvement would directly increase the capacity of Swannanoa River Road. Feasibility of right-of-way acquisition by the developer and cost of construction are the primary drawbacks of this option.

The Planning and Zoning Commission, at their June 5, 2002, meeting, recommended by a vote of 4 to 2 issuance of a Conditional Use Permit subject to conditions for the Phase I development of the site. The Commission unanimously recommended approval of the rezoning from Commercial Industrial to Urban Village District of the Phase II portion of the site. If the Council agrees and issues the Conditional Use Permit, staff recommends the following conditions be part of the motion to recommend approval:

1. All conditions identified by the Technical Review Committee shall be met.
2. The developer shall mitigate the traffic impact of the development to Swannanoa River Road through implementation of a transportation improvement project acceptable to City Engineering staff. This project shall be designed, permitted, and constructed entirely at the developer's expense (or, alternately, using other non-City sources of funding) and in accordance with all appropriate local, state, and federal procedures and regulations. In addition, formal study of the selected mitigation project would be required at the developer's expense to ascertain its specific effectiveness in addressing the capacity issue prior to approval by the City; this study shall be performed under the City's supervision by a traffic consultant under contract with the City. Design, permitting, and initiation of construction of the mitigation project shall occur prior to the issuance of a building permit for any building in Phase I and project construction shall be completed within 12 months of the issuance of any certificate of occupancy, except that the public transportation option shall be in effect within 60 days of the issuance of any certificate of occupancy. The developer shall provide any necessary financial guarantees of this project completion schedule to the City Engineering Department.
3. The applicant shall install or fund the recommended improvements indicated in the TIA, except those specifically not desired by the City Engineering Department. In addition, the applicant shall be responsible for the full cost of linking the new signal at Stevens Street with the other signals in the immediate vicinity in such manner as required by City staff. The applicant shall escrow not less than $65,000 for a traffic calming study for the surrounding neighborhoods and its implementation, with any unused funds to be returned to the applicant upon completion of the traffic-calming project.
4. The applicant shall work with the Asheville Transit Services Director to locate and construct a transit center on the site to serve as a transit node. The transit center shall be constructed at the developer's expense and shall be architecturally compatible with the development design.
5. The applicant shall work with the City Parks and Recreation Department to convey the park area and greenway to the City of Asheville; such conveyance may require the applicant to create and fund a maintenance plan for this property.
6. A signage package that complies with the City's sign code shall be submitted for review and approval prior to formal approval of this project.

7. The design of the urban village shall be modified in accordance with the standards for such developments as enumerated in the Urban Village zoning district; the applicant shall be able to construct the proposed number of residential units and the proposed square footage of the office and retail space.
8. Within 90 days of the issuance of a certificate of occupancy for the Wal-Mart building, the Wal-Mart Corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall terminate any leasehold of the existing Tunnel Road Wal-Mart building and property or, in the event the building and/or property is owned by the Wal-Mart Corporation, said corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall place the building and/or property for sale or lease for commercial or other purposes allowed under the applicable zoning at fair market prices. The purpose of this condition is to ensure that the Tunnel Road building and/or property is not kept in a vacant state for an extended period of time.
9. The access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.

In addition to the above conditions, should City Council choose to approve this request, staff recommends that Council direct staff to undertake the following two tasks:

1. Perform a zoning study for the River District to ascertain the geographical extent of future large-scale retail structures in the district.
2. Work toward making the Riverside Parkway the City's top priority on the Metropolitan Planning Organization Transportation Improvement Program.

The condition for mitigating the traffic impact identifies four options for further study rather than a single solution. Options are provided due to the need for extensive study of each option to ensure that the selected options will address the problem. The feasibility of these options to the City staff, the City's traffic engineer consultant and the developer's schedule requires a timely decision from Council regarding this project.

Mr. Green entered into the record City Exhibit 9 - Smart Growth Definition and Policies, City Exhibit 10 – Executive Summary of A Strategic Plan for the Sustainable Economic Development of the City of Asheville, North Carolina, and City Exhibit 11 – Riverbend Marketplace Traffic Impact Evaluation (TIA) dated March 2002.

Mr. Mark Teague, Division Traffic Engineer for the NC DOT, said that they have done preliminary reviews on the half-diamond interchange, the frontage road, and the widening of Swannanoa River Road. Ultimately the decision is going to rest with the Federal Highway Administration (FHWA) on all three issues, however, an FHWA representative was consulted and they have been told that it's a very slim chance that approval would be given, but not totally out of the question. In order for approval, there would have to be extensive studies performed and there are a list of conditions that have to me met in order for approval.

With regard to the "half-diamond" interchange, typically the federal government likes to see a one-mile separation between interchanges and this proposed location is much closer than that. Mr. Teague said that to violate the one-mile interchange spacing rule, it has to be shown that what is out there right now cannot be improved anymore to accommodate the traffic. He said all reasonable alternatives have to be exhausted. Another rule is that the proposed access point does not have a significant adverse affect on the affect of safety, and operation of the interstate facility. With regard to cost, a ballpark figure for the "half-diamond" interchange would be about $5 million.

Councilman Peterson asked if it was typical for a developer to pay the costs if the interchange was more than one mile from another interchange or if the NC DOT pays if there is going to be a lot of traffic. Mr. Teague said that it's fairly typical for a developer to pay for the costs and cited the example of a developer in Durham who is heavily involved in funding a new interchange on I-40. There may be cases where the NC DOT can assist.

Councilman Peterson said that most NC DOT funds are for fixed projects and if NC DOT participated in this project, would there be a potential that our other fixed road projects might not be funded. Mr. Teague said that if this goes through the Transportation Improvement Plan process, and most likely it would need to, there would be certain projects that would have to be bumped back in order to move other projects forward.

Councilman Peterson asked about the construction of an extension of Wood Avenue paralleling I-240 and intersecting the proposed Stevens Street extension. Mr. Teague said that was explored in the same light as the "half-diamond" interchange option and the FHWA will have the final decision on that as well. Again, he has been told that it is slim that it would be approved. He said that their reasoning is that when I-240 was built a designated right-of-way was established. To give up that right-of-way for a frontage road, with the risk of needing the right-of-way back it in the future is doubtful. With regard to cost, Mr. Teague felt it might be the least expensive alternative of the three options NC DOT reviewed.

With regard to whether there has been any exploration of the widening of Swannanoa River Road, which is a state road, Mr. Teague said that widening that road is currently not on the NC DOT's TIP program. Any expense in doing that would most likely would fall on the developer. He said that if the road was widened to multi-lanes that would solve the problem of capacity. He said if you could take the rock cliff curve out of the picture, the rest of the construction would be a lot easier, but you would still have right-of-way issues. With regard to cost, Mr. Teague was not able to give Council even a ballpark figure.

Upon inquiry of Councilman Dunn, Mr. Teague said that the "half diamond" interchange can be presented to the FHWA and it would take approximately one year for a decision to be made on whether the project is feasible or not or whether they will even entertain the idea. If NC DOT were totally involved, with planning, permitting, right-of-way, construction, etc., it would take approximately 20 years for total completion (using the Sweeten Creek Road interchange as an example). A lot of times private developers can do things faster and if the money and the approval were there, he felt the developer could probably achieve it in approximately two years.

Mr. Robert Deutsch, attorney representing both applicants, said that this is almost a 100 acre parcel of land in the City limits which the sustainable economic development and smart growth urges be infilled with some development in order to discourage sprawl. To widen Swannanoa River Road is in the City's 2025 plan. The area is a dilapidated eyesore for Asheville. There are a lot of factors supporting development of this process and the applicants have bent over backwards to try to meet the various requirements of the City, state and federal agencies. They have attempted to address the legitimate concerns of the opposition. They have received the unanimous approval of the River District Design Review Committee, the approval of the TRC, and the affirmative vote of the Planning & Zoning Commission. He felt the applicants are entitled to a conditional use permit with the conditions set forth. He said there are a few areas in which they do not agree with the staff recommendations and they mainly have to do with traffic mitigation. We feel that building this additional access road at a cost of approximately $4 million, and adding the additional capacity to your existing traffic system, that we have beyond anything reasonable to mitigate the traffic. However, we are willing to attempt to do the other conditions in order to further mitigate the traffic. He pointed out that the preference of the City's staff is the transportation loop. He said that it fits in with sustainable growth goals. He said that another condition concern is that the applicants have not agreed to fund the maintenance of the park set forth in Condition No. 5. With respect to Condition No. 8, he said that was not something totally within the control of the applicants. They will do the best they are able to in order to make sure that the building does not stay dark for a continuous period, but he wasn't sure who owns the building. Regarding No. 9 of the access easement through River Ridge, this is something that will take their agreement and it's his understanding they do not agree to this. This is not within their control and urged Council not to include this as a condition on the permit. He said that the proposed development satisfies the City's smart growth land use policies for mixed use developments, infill development, sustainable land development patterns, environmentally sensitive areas and smart growth transportation. He urged Council to adopt both applications in that they comply with the UDO and they would be good for Asheville and Buncombe County. We will be taking away a deteriorating, eyesore building from an obvious part of the community, it will also have a lot of other good impacts on the City. He asked that the following documents be entered into the record: Applicant Exhibit 1 – Site Plan; Applicant Exhibit 2 – Grading Plan; Applicant Exhibit 3 – Landscape Plan; Applicant Exhibit 4 – Preliminary Hydrology Study and Water Quality Calculations; Applicant Exhibit 5 – Pole Lighting Specifications; Applicant Exhibit 6 – Hydraulic Analysis; Applicant Exhibit 7 – Floodway Expansion Cross Sections; Applicant Exhibit 8 – Elevation Drawings for Wal-Mart; Applicant Exhibit 9 A & 9 B– Elevation Drawings for Kohls; Applicant Exhibit 10 A & 10 B – Elevation Drawings for Shops and Additional Retail

Mr. Harley Dunn, Riverbend Business Park, LLC, briefly reviewed with Council the development team and a history of the site. (Applicant Exhibit 11 - Power Point Presentation). After the building closed there were significant numbers of containers containing various chemicals left around the building and an environmental study was commissioned in 1993. In 1995 there was a fire in the building and Superfund came in and cleaned up all the containers. In 1999 the N.C. Dept. of Environment and Natural Resources (DENR) said that there was one small area (150 feet x 300 feet) that had dry cleaning fluid in it and needed remediation. He said that this level of contamination of water is about 4.7 parts per billion and the federal drinking water standard is 5 parts per billion. DENR has required them to remediate that down to .7 parts per billion. He wanted Council to understand this is not some toxic waste dump leeching something into the river – that someone could drink the water and not be at a risk.

Mr. Mark Masters, Architect from Masters Gentry Architects, explained how all the different features of the site were examined and then planned how best they site could be utilized. They believe that the historical value of the site meets Condition No. 4 as far as the character. Even though they cannot keep any of the existing structures, they do pay respect to the existing structures. One example is by using the round-around (which is the location of the existing smokestack) as a focal and entrance point to the site. With regard to Condition No. 4 regarding scale, he pointed out that in addition to a large scale retail project, they also have other small scale buildings within the property as well as creating a walkable community with an urban village. Because across the river is the Lowe's site, Home Depot site and the Asheville Mall they feel the project is well within the keeping of the scale and bulk of the vicinity. With regard to Condition Nos. 2 and No. 5 regarding connectivity, this project reconnects the site to Fairview Road as well as the proposed connection to River Ridge Marketplace and the Swannanoa River. The site is currently somewhat isolated from the surrounding neighborhoods and at one time the site was connected to Oakley before I-240 split those connections. They think that reconnecting isolated sites for properties is good for smart growth planning. He felt that Condition No. 2 has been met regarding providing good services, housing, streets and parks because they are proposing 100 inter-urban residential units and preserving open spaces. They feel that Condition No. 5 is met due to the uniqueness of the project creating the Urban Village concept Condition No. 2 is met in that they feel the project adds amenities to the City that will serve a large cross-section of the population by creating living, working and recreational opportunities to the general public.

Mr. Dunn said that the complex issue of floodway management is governed by Federal Emergency Management Agency (FEMA), which requires that the average elevation of the land surface is not raised. They require a Conditional Letter of Map Revision and again, it is a complex process. We have existing some 800-1,200 feet of existing asphalt riverbank and they are proposing to take it up and seed and grass it.

Mr. Todd Seldonridge, engineer, said that the City's minimum stormwater requirements is to provide detention for a 10 year storm. They are providing stormwater detention for up to a 100 year storm. They will also implementing some best management practices to handle water quality. He said they have pervious pavement on some of the fringes of the parking lots. They are going to see how well the pervious pavement holds up over time since it is a heavily traveled area and the pervious material is very porous and tends to break up over time. He said they have approximately 22,000 square feet of pervious material, which is about 2-3% of the entire paving area.

Upon inquiry of Councilman Mumpower, Mr. Seldonridge said that there is approximately 22 acres of impervious material now and in Phase I there will be about 30 acres.

Mr. Greg Holden, environmental engineer, said that there is an area of groundwater that extends to the river, which contains tetrachloroethylene. Whether it actually goes into the river or not is unknown, but that will be a subject of further feasibility study. When they do the remediation plan, everything will be in compliance with the state requirements.

Upon inquiry of Councilman Dunn on if there is any water contamination now, Mr. Holden explained that at very low flow conditions during an extreme drought, there might be actual charge of the river from the groundwater. Under those conditions there could be some movement of the plume into the river. Under normal conditions, it's the opposite – the river is actually a hydraulic barrier and the water is higher in the river than it is in the groundwater so the water flows from the river into the groundwater.

Mr. Dunn explained the stormwater detention in Phase II. Using pervious pavement to satisfy the runoff around one of the seven buildings in the retail village, instead of placement of a pond, is just one of many combination of things which are very cost effective. This seems to work very well in small scales. It's just that it's very expensive on a large scale. Pervious pavement is approximately $5 a square foot compared to asphalt at $2.00-$2.25 a square foot.

Mr. Becky White, Traffic Engineer, said that the development team has taken very seriously their obligation to mitigate the traffic impacts associated with this development. Through that process they developed a mitigation plan. That plan includes construction of 1.7 miles of new roadway that is the connector roadway that extends from Swannanoa River Road to Fairview Road. The primary motivation for constructing this new public roadway was to provide additional capacity for this development's traffic in order to offset impacts to Swannanoa River Road and also to provide connectivity for other public travel in this area. It is stated in the TIA that the proposed project will generate approximately 17,000 vehicles trip per day. That includes a portion of traffic that is currently on the roadway network and would stop by the development on way to another destination. Those trips are not new trips. Once you take out that portion of traffic, we estimate we are generating 14,500 new trips on the roadway network. The new roadway, which they are planning to construct, will have a minimum capacity of 14,000 vehicles per day. In other words, we are constructing approximately 2 miles of roadway that would have a capacity equivalent to the number of new trips that the development would add to the roadway network. In addition to the construction of this new roadway, which is estimated at a cost of about $4 million, it includes a bridge over the river as well as a bridge over the railroad that runs through the Oakley area. The development team has agreed to fund traffic calming improvements in adjacent neighborhoods, construct a signal system on Fairview Road that would extend from the

Cedar/Liberty intersections to the new intersection that we propose to build at Stevens Street. We also propose to construct additional turn-lane improvements on Swannanoa River Road. That is a safety, as well as a capacity, improvement to Swannanoa River Road where our proposed new road would tie into that facility. We believe these improvements more than mitigate the impacts of this development and we disagree with the staff findings that the development uses all of the available capacity on Swannanoa River Road. She clarified that by staying that the traffic volume projections in the TIA are a conservatively high estimate of traffic on the adjacent roadways. A couple of things were not allowed to be taken into account in the TIA. The development has proposed a connection to the existing River Hills Shopping Center, but no trip reductions were allowed. In addition, no trip reductions were allowed for the traffic that will enter the development through the existing intersection that aligns with the ramps on Fairview Road. But, in order to be conservative, we did not include that in the TIA. Further, we believe as congestion builds on Swannanoa River Road, shoppers to Riverbend Marketplace will divert to the point of least resistance which is the back access to Fairview, which we have already projected with our TIA will have excess capacity on it. It is expected to have a minimum capacity of 14,000 vehicles and our projections are only for using up only about 6,000 vehicles per day. Traffic congestion is an important issue in this area. Although we disagree with the staff recommendation that further options are necessary, we have agreed to pursue Option No. 1, the transit system, as our preferred alternative. Options 2-4 contain many requirements that are out of our control. Not only are they extremely expensive, they require permitted from a federal agency, which takes time. Option No. 1 is the most doable of the four options. We have committed to pursue Option No. 1. Improved transit service in this area goes along with the smart growth policies in this area. It reduces pollution and there are a lot of benefits to the overall area. We believe we have mitigated the traffic impacts associated with this development and that we have successfully addressed Condition No. 7.

Upon inquiry of Vice-Mayor Bellamy about Option No. 1, Ms. White said that they envision a shoppers loop that would serve this area of retail development, the Asheville Mall area, the K-Mart shopping center area, and the new Target area – all the retail concentrated in this specific interchange area. It would not only shave trips off this development, but also potentially reduce traffic impact of the existing shopping centers. We envision it would be a public bus system and we are currently pursuing options for some public funding for transit for this area. This is an on-going commitment - not like a construction project that you go in and build it and you are done. It would need to continue in perpetuity so it goes beyond something that just this one development would take on.

Mr. Dunn said that this exciting shoppers loop is envisioned for anyone to go to one of the shopping areas in this area and park. From there, they can get on a bus that would run frequently throughout the loop. He thinks this is a good marketing tool for the area. The idea is that there would be dedicated buses that would possibly be overseen by the City's Transit Services Department. In fact, when they talked to Congressman Charles Taylor for possible federal funding of interstate highways, he suggested a concept like this. Mr. Dunn said that he sees this as a blending of public and private transportation and a way that we can not only mitigate this traffic issue, but at the same time start having people who drive buy into the idea of public transportation. He said that Congressman Taylor has committed to helping us find funding for this concept.

Upon inquiry of Councilwoman Jones, Ms. White said that they have additional research on areas where transit and shopping is combined successfully. There are excellent models of a transit loop system.

Mr. Bill Boyden, architect, said they went through a very thorough process with the River District Design Review Committee and it was because of their willingness to give very frank feedback that we were able to design buildings that are very reflective of what you see down in the River District. In the process of documenting and cataloging all the buildings in the district, it became apparent that the industrial feel of the River District is only part of the story and that the Biltmore Village and some of the other buildings are every bit as important and part of the fabric of the river as the traditional warehouses that we see along there. What we have come up with in terms of building designs is a new definition of the river based on what was there and what is on there now. He felt we have a very successful design that is unique to Asheville and the River District area.

Upon inquiry of Councilman Mumpower, Mr. Boyden said that this in no way is a traditional Wal-Mart model. He said the traditional Wal-Mart building is a navy and gray with a red strip and it's built out of cinderblock and painted. This is a brick-type product with decorative canopies, vestibules, an enhanced central sign element and garden area. This deviates from a traditional Wal-Mart in just about every respect.

Mr. Vic Knight, landscape engineer, said that the basis for the landscape plan was to create a pallet of trees and shrubs that are indigenous to the Asheville area and that frequently occur in wet areas such as along the Swannanoa River. Plants will be located along the public roadway, the parking areas and on the buffers of the property. The trees that will be used along the public roadway are sycamores and this was done for the purpose of tying back to the historical context to the property. Over 600 trees to be used in and around the parking areas will be positioned to spread out the canopies. In the 50-foot required buffer along Swannanoa River Road, there are close to 800 trees. There is a large preservation area to the north side of the property which they will be preserving a lot of mature hardwood trees. The greenway will be connected into the development in several locations to allow visitors to the shopping center. Along the greenway there are several spaces provided for public art to be displayed and that area will be turned over to the City. The concept is to use indigenous plants that are typical along river areas and through this we hope to control noise and light pollution and help to filter sediment as they move from the parking areas into the sediment basins.

Mr. Dunn said that the Wal-Mart Corporation is sponsoring a design competition for our local artists to bring art into the four art exhibit areas along the greenway. We envision funding the competition in such a way that we can sell off a piece or two every six months to a year and re-bid it so the exhibit areas would continue to grow and develop.

Mr. Rick Presley, President of Horne Properties, Inc., which is the lead developer in this partnership in the Phase I retail development, said that good ideas have come out of all the groups they have met with but there were certain economic limitations and site limitations to some of the ideas. They were diligent to put into the plan all of the good ideas. This gives us a plan that works, it is functionally responsible, is a good plan and quite an economic upgrade for an under-producing site in the community. The facts before Council include (1) FEMA will certainly take care of floodway management for the community; (2) there will be environmental clean up. There will be demolition of the building to get to our construction point. It will be a better site from an environmental standpoint; (3) this development represents one of the largest revenue resources for the community and City when built. Those dollars can go toward other road improvements or wherever City Council deems it most important; (4) the involvement of Wal-Mart stores is good for underwriting the program; and (5) the community can count on parking, fire, safety, police protection, etc. through all the standards which need to be met. We feel that all seven conditional use standards have been met and we believe this is a project that serves the highest and best use for this piece of property. With all the roadway improvements, we hoped that the mitigation proposed with the Fairview Road involvement, would be enough, however, we are willing to look at the other proposals.

Mr. Deutsch said that his legal research on traffic mitigation shows that it is not necessary or incumbent upon the developer to show zero traffic impact. What they have to show is reasonable mitigation measures.

Mr. Lawrence Henson, President of D.O. Creasman Co., said that his company is located on Swannanoa River Road directly across from where the proposed new bridge will be built. He felt this development would increase his property values.

Mr. John Carson, restaurant owner on Swannanoa River Road, said that the property value of his business would increase if this development occurs and urged Council to vote in favor of the conditional use permit. (Note by City Clerk: This witness was not sworn in.)

At 7:40 p.m., Mayor Worley announced a short break.

Ms. Betty Lawrence, one of two attorneys representing the Beverly Hills Neighborhood Association, the Oakley Community Association and Community Supported Development, said that they are asking City Council to deny the conditional use permit because it fails Conditions No. 1 and 2. In terms of the topography, it will be shown that they are actually digging into the channel of the Swannanoa River according to their cross-sections - 1,300 linear feet of the Swannanoa River banks will be changed. The widening of Swannanoa River Road would be cutting into a cliff. There is a tremendous amount of impact on the site itself. In terms of trying to meet the floodway ordinance, they are actually doing an awful lot of moving of the floodway. It will be shown that there will be damage to property value to property owners who live close by. The proposed development will not be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood in which it is located. Even the River Ridge Shopping Plaza pales in comparison to this proposed development. There is no doubt that the development will cause undue traffic congestion and create a traffic hazard. Council's only question is if it's possible to mitigate and evidence will be presented to show that it is not - at least not under any scheme thus far.

Mr. Charles Houser, resident of Houser Road in Oakley, announced his credentials which includes a BS in Civil Engineering and formerly being employed by the FHWA as a field engineer manager. Using both City Exhibit 5 (overall master plan) and portions of Applicant Exhibit 2 (grading plan), Mr. Houser explained in detail the existing topography of the site and the differences of the topography after the site is developed, noting that one of the conditions is that the topography and the terrain before and after should be somewhat similar, the nature of the site should not be changed, etc. He explained how there would be probably in excess of 25,000-30,000 cubic yards of material moved out to dig the ravine for the overflow effort, which is a significant amount. He wasn't sure if the area would be seen by drivers on Swannanoa River Road, but if so, it would be a significant visual impact In one of the hydraulic reports, it was noted that the channel would be impacted by dredging and that it will extend probably 1,600 feet up and down left and right of the bridge. Using the grading plan, he showed how even with the proposed stormwater management control measures of the 100 year storm, the back-up would impact the center of the bridge. He explained how the new channel excavation will be graded stating that there will be a different view of the riverside than what is there now. Mr. Houser showed on grading diagram (Applicant Exhibit 2) where 75 feet of a hill is proposed to be removed, which will be a visual impact as you drive on Swannanoa River Road. Mr. Houser said that the portion of the hill to be removed appears to be outside of the property line shown on the grading plan. He explained that there is quite a massive cut section (roughly 110 feet in elevation), which lies to the south of I-240 and that is a significant amount of change to the site. On the new access road proposed to be built, Mr. Houser said he wasn't sure that the old railroad right-of-way could accommodate three lanes and that would limit the capacity of this section of road. In his experience with contaminated sites, once you get in and start excavating and digging, you will find more than you really bargained for which will mean more time and expense.

Mr. Bob Born, consulting civil engineer with over 50 years of experience in the design of flood control and hydrology projects, said that he is a member of the Board of Directors of the Viewpointe Homeowners Association and is speaking on their behalf. He said it is a joke to think that FEMA is going to take care of the City of Asheville. He has had experience in representing FEMA in two actions they have brought against contract cities, such as the City of Asheville, for violating their own floodplain ordinance. In one case, the community lost its participation in the Flood Insurance Program because of its failure to follow its own ordinance. He pointed out that the ordinance the City of Asheville adopted is a contract between the City and FEMA and it is enforceable under contract law. Using Page CD7:261 from the UDO with a figure entitled "Area of Application for Flood-Proofing Regulations (Neighborhood Exhibit 1), Mr. Born explained that there is an illegal fill in the Swannanoa River Watershed and that upstream illegal fill could influence the flooding of the downstream area. There is a report prepared by the Tennessee Valley Authority (TVA) on the history of flooding of the Swannanoa River and the French Broad River and the report points out the potential for extreme flooding along the Swannanoa River in the area under discussion. In looking at the engineering for this project, he didn't think that the upstream development that has occurred over the years has been properly considered. The most recent flood insurance rate map is not recent and there have been a lot of developments, including the question of the illegal fill along the Swannanoa River. (Neighborhood Exhibit 2 – 3 pages from Flood Insurance Rate Map) Those points have not been considered, as far as he could tell, in the technical analysis of the flooding potential at this site. He said that on the hydraulic analysis (Applicant Exhibit 6), they considered the SCS analysis method of analysis for the hydraulics of the flooding potential at this site. In his view, that is not a recent type of analysis – it's only suitable for determining hydrographic shape and cannot be used for analysis of the actual magnitude of the flood that would occur under the 100-year or other magnitudes. He doesn't think that the full potential for development and the urbanization that has already occurred upstream of the development has been considered in calculating what will be the 50 or 100-year flood event. That is a significant deficiency in the analysis presented.

Mr. John Sticpewich said that the problem of remediation of the groundwater pollution is a state concern, however, what is important in Council's decision is when that mediation takes place. The work done preformed by the environmental associates is thorough but he disputed the model of the plume presented to Council. He doesn't agree with the exchange between the groundwater and the river water. There is quite a lot of evidence, and it is well published, that the water table changes as the flood level rises in the immediate environment. The problem is that to contour the concentrations in this way (Neighborhood Exhibit 3 – Analysis Report from Holton Environmental Associates), you must have uniformity between two data points, and the last thing we have in these sediments is continuity. He explained in detail that as soon as the first bulldozer cut is made over the area or adjacent to it, the way the rain is taken into the ground and affects the groundwater table and its pollutants will change – change in a way that is not predictable by any methods he was of aware of for the past 40 years. If remediation is done before any groundbreaking occurs, then there is a fairly good idea where the pollutants are but as soon as you change the nature of the surface, we don't. He felt it was very important to do the remediation before there is any work on the site. Using Neighborhood Exhibit 4, he explained what the wells are and what data is coming from them. In addition he showed what features are being built on top of area of the plume. Using a portion of the grading map (Applicant Exhibit 2), he showed that the area of contamination lies in the excavation for the floodway. Again, when you start digging you change the conditions.

Professor David Clark, teacher of civil engineering at Clemson University, said that he thoroughly reviewed the material prepared by the developer's consultants regarding traffic. He said the methodology that was used to prepare the TIA in general is very standard and straightforward and would work in the vast majority of situations. It is apparent here though that there are some traffic problems and specifically capacity concerns on Swannanoa River Road. In looking at Swannanoa River Road and the numbers that were generated, he agreed that it appears that we are very close to using up all the available capacity – at least during some hours during the day, if not during the entire day. When he looked at the traffic volume data that was used, especially the background and the adjusted future year for development, he had some concerns about the count information that was used. Specifically it looked like one day or two day counts were used to come up with the volumes at surrounding intersections. He could not ascertain whether these counts had been adjusted to represent true averages. He obtained information from the NC DOT'S Office of Statewide Planning which showed higher ADT's in the year 2000 from their count program on Swannanoa River Road, or portions thereof in the vicinity of the development, than were reflected in the counts that were taken and used in the study. It's possible that traffic has gone down, but in general I think there is a continual escalation in traffic volumes. He would feel more comfortable if the traffic data were adjusted using data from continuous count stations somewhere in the vicinity to reflect true average values throughout the year. It's well known that traffic volumes fluctuate and there is no way to tell on the basis of one day's count. The report examined morning and p.m. peak hours and these are typically high hours of the day for most locations, especially during the week. However, the City took traffic data on Fairview Road near the intersection of Stevens Street, which indicated that the noontime hour was a peak. In essence, it was higher than the morning hour. That could have an affect on the overall analysis and he would feel more comfortable if that were addressed. If traffic follows that pattern on Fairview Road, then one wonders whether the other roads, which are in close proximity in the study area, would have similar characteristics. If we were not so close to the apparent capacity on Swannanoa River Road, this may not matter at all but it should be looked at in more detail. Swannanoa River Road has a number of deficiencies and it does not meet current AASHTO recommendations for roadway design. The lanes are narrow, there are minimal shoulders, there are numerous restricted lateral clearances, and it's 100% no pass zones. This leads me to believe that the capacity issue is a real one. All of those deficiencies would lower the ability of the road to handle traffic. In addition, the horizontal alignment has numerous curves as the road follows the river. Despite those curves, you have a relatively high speed limit of 45 miles per hour. To my mind, improvements to that road need to be looked at very carefully if it's going to bear the type of traffic that it is being counted on to withstand as a result of this development. He did not see anything in the analysis to look at safety issues – either on Swannanoa River Road or on other roads in the vicinity. The UDO requires that the TIA look at safety issues and maybe there aren't any, but this needs to be addressed. The NC DOT provided their latest crash data and Swannanoa River Road showed a higher crash rate than Tunnel Road – despite the fact that Tunnel Road has twice the average daily traffic. We had a fatality on Swannanoa River Road within the State's reporting period. He felt that since there will be additional traffic on Swannanoa River Road and in view of the fact that the design of the road is not up to current standards, it needs to be carefully looked at as part of whatever mitigation process is done. Ms. White pointed out that the new Stevens Street extension would provide adequate capacity for approximately 14,000 vehicles a day and provide a backdoor to the site and that would hopefully alleviate some of the congestion and the problems with Swannanoa River Road. That is very likely the case, however, if we are going to count on that, then the analysis needs to be redone such that traffic equilibrium is included as part of the analysis methodology. You have to consider shifts in traffic due to congestion, as travelers due tend to seek routes that have lower travel times. We may very likely be introducing additional traffic to other areas that was not counted on in the TIA and a refined analysis might point those out. We might find additional mitigation to be needed or we might find less mitigation to be needed. These questions should be answered before a final decision is made. The use of I-240 for either the right-of-way for the Wood Avenue extension or for the interchange for the site offers probably better chances for removing traffic from the existing service street system. But, as Mr. Teague pointed out, there are very severe questions about whether the FHWA would allow the use of their rights-of-way for these projects or whether the operational impacts of a new interchange would be detrimental to the overall performance of I-240. I-240 obviously carries very high traffic volumes compared to these streets and problems there would have a major impact on more citizens in the Asheville area. The existing road configuration of the major entrances on Swannanoa River Road and Fairview Road might possibly draw through cut-through traffic that hasn't been counted in the TIA. He wondered what would the effect of that be on traffic in the other areas. The trip generation rates for super centers are a fairly small sample at present. He recalled the current ITE has about nine observations in the data set. Statisticians say that does not give a very tight tolerance on any estimates that are produced with such a small sample. They would prefer to have at least 30-100 data points from super centers in the data set to reliably and confidently use the generation rates that are in ITE. In addition, none of those nine sites are in the western North Carolina area, so we don't know if they represent travel behavior that reflects the citizens of Asheville. That normally is not a major problem, but given we are at the marginal capacity right now, we have to be very cautious about the trip generation rates. His opinion is that the use of transit as a mitigating option will not be very successful. His reason is that we are dealing with a large number of shopping-type trips. If we have a shuttle-type service serving shopping-type destinations, then he thought only captive transit riders would use the transit service. It is very inconvenient to carry packages around with you if you are going from store to store. The automobile will still attract the majority of trips to the site no matter what kind of transit system is put in. In addition, the developer has provided ample parking, which is going to further encourage people to drive to the site. The transit option is very appealing but he didn't think in the majority of cases they would get much ridership from this segment. The only way he could say safety to encourage transit use would be to cut the parking out and force people to come in on transit. His sense is transit will probably not do a whole lot to mitigate unless there is some sort of major incentive to get people into those shuttles. His opinion is that we need to have a solution in hand before we go forth with the development. A little extra time and effort on this may develop that solution and give us the confidence that this whole package will fit in with the sustainable growth goals.

Upon inquiry of Vice-Mayor Bellamy, Professor Clark said that the frequency of crashes on Swannanoa River Road was higher and the rate per million vehicles miles was approximately twice the rate of Tunnel Road (section east of I-240 approximately one mile toward the Highway Patrol Station), despite the fact that Tunnel Road had the average annual daily traffic of approximately twice that of Swannanoa River Road.

Professor Clark responded to various questions from Councilman Peterson regarding how new and existing trips are calculated, what is the capacity of Swannanoa River Road and how is that determined, what will happen on Swannanoa River Road if the capacity is used up, and what would the process be if others want to development on that road.

Ms. Lawrence said that the new road through Stevens Street will not solve the traffic problem and rather than alleviating traffic on Swannanoa River Road, there is every chance it will create more traffic because of the attractive cut-through from Fairview to Swannanoa River Road. You may be adding trips on Swannanoa River Road at the same time you are building this new road. City staff says we have four alternatives and they want them all studied more. Then they want the City Engineering Department decide which one should be implemented. They all have problems. The interstate exit – you heard slim to none; the possibility of public funding is very slim; and if it is done through the TIP, it will delay the projects that we as a community have identified a need for. Wood Avenue extension – they would have to persuade the NC DOT to give up right-of-way, which they have already purchased and have in wait to widen I-240 in the future. Widening Swannanoa River Road – if they can get past the cliff, there would still be the problems of widening the road in the floodplain, neighborhoods, golf course, and problems in the City's River Parkway Plan. Many are passionate advocates for transit but we can't build our way out of traffic congestion. We need alternate forms of transportation that will work for people. However, we need a systems-wide approach to transit and clearly more than a shuttle bus between the Mall, K-Mart, Target and Wal-Mart stores. The UDO is not about giving conditional use permits so that you can give away things that the City as a whole would otherwise have and that's traffic. The hydraulic analysis (Applicant Exhibit 6) clear states that between cross sections

3.534 and 3.79 will be excavation from the existing channel of the Swannanoa River to the proposed 2 to 1 slope of the proposed fill. They are talking about 1,300 linear feet of the riverbank according to what has been presented. A portion of the letter from DENR dated June 24, 2002, states, "a remedial action plan must be submitted for the site. ... Plans currently underway for future development of the site must accommodate future remedial action at the site. The placement of structures around the plume, or significant grading may affect the groundwater gradient, and or hinder future remediation activities. Therefore, we recommend for construction plans to be designed to accommodate the contaminated plume and any possible type of remedial action that could take place. Please note that the best type of remedy to be used to address contaminated groundwater at the site has not yet been determined." (Neighborhood Exhibit 5) There is a deadline of 30 days to submit the plan. What Council needs to be aware of is the developer says they will remediate and they will also build over and dig in where it needs remediation. This is not good. Because the current owners of the property did not cause the pollution, there is a possibility they will not be required to do any remediation. They may say we'll follow DENR but that may mean do nothing. We think there is a very serious danger to public health and safety now because of the toxic plume because you don't know what is going to happen if it will be released into the river. Now is not the time to permit this kind of development around that sort of site.

Ms. Corinne Kurzmann, resident on Sayles Road, said that on a portion of Wood Avenue there are curves and no sidewalks. Building an access road is certainly a concern. She is concerned that her property value will decrease if a Super Wal-Mart is allowed in her backyard. Traffic on Wood Avenue is horrendous already. Fairview Road and Swannanoa River Road traffic is a mess. The site is contaminated and she could not imagine how building on it will not endanger the health of everyone in the community. She personally grows her own food on a 2,300 square foot site and this development is not in harmony with her property. You would not want this kind of development in your backyard. She could not find any smart growth principles that would apply to this development. This is not the best thing we can do with this site. Traffic will greatly impact her neighborhood.

Ms. Lawrence wanted to, but did not, request, at this time, that City Council table action on this request, since the UDO states that "Asheville City Council, after conducting the public hearing, may table the application pending submittal of additional information." She said that she believes they have put on a convincing case that this is a danger to public health and safety. The toxic plume effect on the river, being perhaps the most obvious, is not at all clear. The plan does call for putting fill on the floodway and raising the grade. That will have an affect on what happens with the water. They feel that the river resource yard is going to be violated. Regarding the compatibility with natural and topographic features, there are 43 extra acres paved, 1,300 linear feet of the riverbank that is not going to be natural anymore, and the cliff on Swannanoa River Road is a significant topographic feature. There has been evidence about property values. With regard to traffic, the staff's recommendation is to delegate to the City Engineer the authority to choose among those four options. The case Lancaster v. Mecklenburg County makes it very clear that that is an impermissible delegation to an administrative person. This is a quasi-judicial decision about what traffic would mitigate the congestion and hazard. If Council did delegate this authority, Council would be doing something that is clearly illegal. Since Council doesn't have enough information to decide about the traffic, she believed Council should either deny the permit or table it.

Mr. Deutsch asked Mr. Houser if it was his testimony that after the development is over, under the conditional use factors, that the terrain cannot be significantly different than it was before the development. Mr. Houser replied yes in that was how he read the condition. Mr. Deutsch then asked Mr. Houser where Condition No. 2 says it has to be the same. Mr. Houser said the terrain has to be similar in terms of the overall concept. Mr. Houser said that Condition No. 2 reads that the completed project should be compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given ...." Mr. Houser said that in other words, "reasonably compatible" to him means you don't build a mountain on it and you don't dig a lake on it. He said the developer will be digging significant excavation for the water and cutting some high cuts – not a lot of volume of earth work, but there is some high cut sections that he felt will be new from what is there now.

Mr. Deutsch said that they would waive their right to ask any further questions due to the cumbersome process.

Mr. Greg Gregory, one of two attorneys representing the Beverly Hills Neighborhood Association, the Oakley Community Association and Community Supported Development, asked Mr. Green if there is a property value impact analysis in the record for this project? Mr. Green replied that there was not.

Mr. Gregory asked Mr. Seldonridge if the floodway excavation areas and sediment ponds would be fenced to keep children away. Mr. Seldonridge replied yes. Mr. Gregory then asked how many feet of fence would be required. Mr. Seldonridge said he wasn't sure at this time but that they will fence all of the pond areas and the fence will probably be a chain-link fence unless there is some other type of City ordinance that would require them to do more than that.

City Attorney Oast said that Council should disregard e-mails and other items received from individuals who are not speaking at the hearing for purposes of the conditional use permit decision. Because those people are not present, they are not subject to being cross-examined. If speakers submit information, that information can be entered into the record. Petitions and other documents will be received for whatever value they have, but they have no evidentiary value and will not be considered with connection to the issuance of the conditional use permit.

The following individuals spoke against the issuance of the conditional use permit and rezoning. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: rezoning only a portion of the property to Urban Village would represent a lack of vision because small locally-owned businesses will not be able to compete with a Supercenter and if the Urban Village were Phase I instead of Phase II people may not purchase homes right next to a big-box retail store; this proposal contradicts smart growth goals in that it does not meet the needs of the present without compromising future generations to meet their needs; this development will preclude any future development on Swannanoa River Road; if there is no traffic mitigation by the developer, people will complain to City Council and the taxpayers will have to pay for that mitigation; smart growth policy states that industrial land should be preserved and this is turning that land into commercial; the development will destroy the peace and quiet of the Beverly Hills and Oakley neighborhoods; the applicant's conceptual site plan fails to comply with UDO in that the Parcel Identification Number shown on the plans is incorrect, all zoning districts are not shown on the plan, they have not depicted violations of existing federal, state, and local laws and regulations, and the plan indicates significant impacts on the resource yard and that the resource yard will be excavated on adjacent properties; concerns about the application and review process for the proposed development in that required documents were not submitted or major deficiencies were found in the site plan, flood hazard area plan, soil erosion and sedimentation plan, stormwater discharge plan, TIA and sign plan; UDO requires all TRC conditions be met on the revised plans prior to proceeding to public hearings and to date no new plans have been submitted; there are no studies for the four traffic mitigation options to be reviewed for feasibility; UDO states that for a phased project, Council must approve a master plan for the entire development site at the same time a conditional use permit is considered and the applicant has not supplied almost all the information required for Phase II of the project; topography in the Oakley community will be significantly altered if the Wood Avenue extension is built; unaware of plans for bike lanes on the existing dangerous roads and/or any new roads;

planet pollution; the development will saturate the traffic capacity thus violating smart growth policies; bad location for a new shopping center; values of the family will be negatively affected; commercialization along Swannanoa River Road will further degrade the residential neighborhoods; malls do not want any form of public transportation to service them so the shoppers loop to include the Asheville Mall will not work; the developer should link more routes with the Asheville Transit Services into neighborhoods and provide permanent funding guarantees; residents on Fairview Road would like a traffic calming project; the project has a maximum shell life of 30 years and therefore is not sustainable project; this project has "could be anywhere appearance" and isn't good for a gateway to the City; residents do not want a 10-acre parking lot on the Riverfront; choose a less intensive plan for development with smaller buildings, less paved area and more ground cover that absorbs flooding; there is no clear traffic plan in place; cumulative effect of the traffic from this development as well as the Target and other more appropriate smaller projects must be considered; the trees and topography of the site and the serenity that exists in the area will be gone; the NC Superfund Section of the NC Division of Waste Management will not grant a "no further action status" until the contaminants have been documented at/or below state groundwater standards; the City must require, before any recommendation, (1) a remediation plan which has completed the process for state approval including the public comment period to be sure that any construction will not impact groundwater remediation, (2) complete diagrams overlaying the characterized plume, sowing depth of monitoring wells, with planned construction of all buildings, parking lots, ditches and any other features that could either interfere with the hydrology of the site or present an exposure risk to the public; and (3) installation of any extraction wells and remediation equipment and at least six months of demonstration that the plume of contamination is being "captured" by the pump and treat system, before any site construction with 200 feet or up/gradient of the plume is to begin; City Council should require substantial warranties, such as completion bonds, to cover all unfulfilled proposals allowed in any conditional approval; limited stormwater control measures do not begin to address the stormwater impacts that will be attributable to the site and the additional roadways required for access; developers are just promising their way into compliance with environmental, traffic congestion, flood, pollution and safety guidelines; developer's connector to Fairview Road needs a bridge constructed over a privately-owned railroad and working with the railroad takes a long time; air, noise and light pollution impacts; destruction of historic buildings; who will take responsibility for the liability due to the holding ponds being located next to the greenway; request to add condition to permit to close Beechwood Road at or near its intersection with Swannanoa River Road in order to eliminate cut-through traffic; empty building on Tunnel Road will be an eyesore; no guarantee that Phase II of the Urban Village will occur; average price of the proposed condominiums is $150,000 which is not affordable housing; approximately 25 acres will require fill, up to 10 feet, in order to raise the No. 1 anchor store and associated parking out of the floodplain and floodway; 100 feet must be sliced off of a hilltop to create a level area of approximately 4 aces to accommodate the second anchor store; 75 feet of elevation off of a hill adjacent to the river will have to be removed; extensive floodway expansion and stormwater retention ponds will require conservatively another five acres of excavation; 19 acres in Phase II will be altered by cut and fill leaving nothing undisturbed; there is a point across from the U-Haul business just west of the property that looks like a good spot for a bridge to be built into that property; the applicant has made no showing that the railroad will permit the alteration to the overpass of the tracks; and crime will increase and additional police protection will be needed:

Ms. Sharon Martin, Asheville resident (Audience Exhibit 1)
Mr. Christopher Fielden, Liberty Street resident (Audience Exhibit 2)
Ms. Polly Gates, Canterbury Road resident
Mr. Mike Moody, Fairview Drive resident (Audience Exhibit 3)
Mr. Ned Guttman, Beechwood Road resident and speaking on behalf of the Coalition of Asheville Neighborhoods (Audience Exhibit 4)
Ms. Lola LaFey, London Road resident
Mr. Cicada Brokaw (Audience Exhibit 5)

Ms. Pamela Benes, Caledonia Road resident
Mr. Jeff Kelley (Audience Exhibit 6)
Mr. Stuart Roper, Fairview Road resident (Audience Exhibit 7 which included a Petition containing 82 signatures to initiate a traffic calming project on Fairview Road)
Ms. Sabra Kelley, Fairview Road resident
Mr. Jim Siemens, attorney and North Asheville resident, speaking on behalf of the Smart Growth Partners of Western North Carolina

(At 11:05 p.m., Mayor Worley recessed the meeting to be reconvened at 4:00 p.m. on Wednesday, June 26, 2002. The meeting reconvened at 4:00 p.m. on June 26, 2002, in the Council Chamber with all members of Council being present. Mayor Worley reviewed the rules and conduct of the meeting.)

Mr. Joe Swingle, Asheville resident
Ms Tamara Calabria, Beverly Hills resident (Audience Exhibits 10 A & 10 B)
Ms. Gail Moody, speaking on behalf of the Beverly Hills Homeowners Association (Audience Exhibits 11 A & 11 B)
Ms. Ann Bryan, Canterbury Road resident
Ms. Deborah Houser, speaking on behalf of Oakley Community and Police Resource Center (Audience Exhibit 12)
Ms. Rebecca Campbell, West Asheville resident
Ms. Davon E. Heath, East Hawthorne Drive resident
Ms. Debbie Applewhite, Beverly Hills resident
Mr. David Herbert, speaking on behalf of the Clean Water Fund of North Carolina (Audience Exhibit 14)
Mr. Roger Gold, Summerhaven Road resident
Ms. Christine Clark, Overbrook Place resident
Mr. Andrew Brown, Asheville resident
Mr. Alan Ditmore (Audience Exhibits 16 A & 16 B)
Mr. Mike Brown, speaking on behalf of Redwood Forest neighborhood
Mr. Herbert Parker, Pinehurst Road resident
Mr. Grant Millin, Oteen resident
Mr. Brad Carlton-Sisk (Audience Exhibit 17)
Ms. Beth Jezek, East Asheville resident (Audience Exhibit 18)
Mr. Cecil Bothwell, Haywood Street resident
Mr. Shane Perlowin, Holland Street resident
Mr. James Hurlston, Asheville resident
Ms. Leni Sitnick, Asheville resident
Mr. Jason Klein
Ms. Connie Duncan, Redwood Forest resident
Ms. Hazel Fobes, North Asheville resident
Mr. David Roat, Asheville resident (Audience Exhibit 19)
Ms. Heather Steele, Montford resident (Audience Exhibit 20)
Mr. John Perry, Sherwood Road resident (Audience Exhibit 21)
Mr. Clarence Lytle, Governor's View Road resident
Ms. Pam Harders, Skyland Circle resident (Audience Exhibit 22)
Mr. Gilian Kearns, Asheville resident
Mr. Brian Evans
Mr. George Clark

The following individuals spoke in favor of the conditional use permit and rezoning. If remarks were expressed by prior speakers or if they are not relevant to the decision before Council, they will not be repeated or included. Other comments include, but are not limited to: all conditions have been met except for traffic mitigation and the developers are addressing that; it will take big investors to renovate the magnificent site; cut-through traffic will not be significant; the crash data on the portion of Tunnel Road used and Swannanoa River Road is not a good comparison; developer will build a new street at their own expense to handle much of the traffic; the public transportation route will help to mitigate traffic congestion and diminish the environmental impact of automobile emissions; concept of Supercenter at one location for groceries and other goods will eliminate unnecessary car trips; project will include other retail establishments and housing on-site which will reduce traffic; actual footprint of new development is smaller than the old Sayles Biltmore Bleacheries factory; development is a vast improvement over the eyesore that is on the site now; change is inevitable; once three traffic signals on Fairview Road are synchronized, traffic will flow smoother; project will be a clean, open and friendly environment; the City will have another greenway at no charge; the project will add affordable housing; the Swannanoa River is designated mountain trout stream and if there was a water issue there, the N.C. Wildlife Resources Commission would not stocking it with fish; the River has mallard and wood ducks and no harm has been done to the wildlife on the river; this unused property is ready for development with water and sewer already in place; when big development goes in, property values have risen; and don't give the signal to the development community that they are not welcome in Asheville for future development:

Mr. Leon Govin
Ms. Vickie Gaddy, Asheville resident
Mr. Joel Belz, Haw Creek resident

(At 11:05 p.m., Mayor Worley recessed the meeting to be reconvened at 4:00 p.m. on Wednesday, June 26, 2002. The meeting reconvened at 4:00 p.m. on June 26, 2002, in the Council Chamber with all members of Council being present. Mayor Worley reviewed the rules and conduct of the meeting.)

Mr. Art Hutson, Wedgefield Drive resident
Mr. Jim Scott, Asheville resident
Ms. Kim Taylor, resident of Brevard, N.C. (Audience Exhibit 8)
Mr. Steven Waddell, Marble Way resident (Audience Exhibit 9). He also presented petition containing approximately 9,769 signatures in support of the development of a Wal-Mart Supercenter at Riverbend Market Place on Swannanoa River Road in Asheville. Also presented approximately 4,438 cards which support the development.
Ms. Kris Seagroves, Ashwood Drive resident
Mr. Charles Jaynes, Oakley resident
Ms. Jean Jaynes, Broadview Avenue resident
Ms. Kathy Bowman, Hendersonville Road resident
Ms. Judy Stevens, Beverly Hills resident
Mr. Van Gerrald, Haw Creek resident
Mr. Kevin Rollins, speaking on behalf of the Libertarian Party (Audience Exhibit 15)
Ms. Betty Donohoe, Gashes Creek Road resident
Mr. Jack Aycock, Buncombe County resident
Mr. John Sherlin, East Asheville resident
Mr. Jesse Rochester, Beverly Hills resident
Mr. Lester Bullock
Mr. Fred English, Haw Creek resident
Mr. Don Funderod, Haw Creek resident
Mr. George Morosani
Mr. John Jensen, Bent Tree Drive resident
Mr. Larry Smith, Greenwood Road resident
Ms. June Grant, owner of property in Asheville

During the rebuttal period, Mr. Deutsch said that there was testimony that there was going to be grading in the river resource yard. He asked Mr. Gary Tysinger, hydrological engineer to respond. Mr. Tysinger said that the cross-section map that was used was the old plan submitted before they met with City staff and went through the technical review. That map has been revised.

When Mr. Deutsch asked Mr. Tysinger what disturbance there will be within the river resource yard, Ms. Lawrence objected.

Ms. Lawrence objected on the basis that this was not information that was available until, as they heard it from the City, last week. Section 7-5-20 of the UDO states that "When the Planning & Development Director has determined that an application is complete and that a public hearing is required by this chapter, the director shall request that a date, time, and place be set for the required hearing and shall insure that all notices are provided pursuant to subsection 7-5-20 (a) above, this chapter, and the statutes." (Neighborhood Exhibit 6) This sets the time after which the application is completed will be considered on the merits at that time. This public hearing was noticed on June 14 and 21, 2002. It's all a matter to due process. Other boards, for example the Asheville-Buncombe Historic Resources Commission, that require quasi-judicial reviews have a two week deadline after which nothing can be considered because it has not been previously submitted. The reason for those deadlines is so the public has notice of what is being proposed.

Mr. Deutsch said he was not so concerned about the actual plan but the testimony given about what either will or will not be done in the river resource yard He assumed Council would prefer to have accurate information. He didn't think it was critical whether or not the actual map comes into evidence, because Council has already ruled that the actual map is the latest one in the possession of the City staff. All he would like is to have Mr. Tysinger tell Council what, if any, grading there will be done in the river resource yard.

Ms. Lawrence said this is a due process question and that if Mr. Deutsch wants up to the minute information that was not supplied to the public, that was not supplied to the staff before the application was certified as complete, and before the public had a right to expect that that's what they should study and prepare for at this meeting, then she believed that a continuance based on that fact alone would be in order. She did not believe it was legal under the UDO or under the Constitution for Council to consider this now. And whether it's in the form of introducing the map or introducing what he says the map says, the plan was submitted and was certified by the Planning Director as complete.

City Attorney Oast said that in the nature of projects like this as they proceed into development, there are details about plans that can and will change because of compliance with technical requirements. He doesn't think that it is relevant to the political approval of what is being sought here. A map could even change even after a conditional use permit is allowed. They may get into site development after the conditional use permit is issued that would case them to have changes to some of their plans. He didn't think that there is a basis for continuance that the revised map has since been submitted. He didn't know how relevant it is from either standpoint that this kind of technical information enters into Council's consideration at this point. Again, he didn't think there is a basis for a continuance. It was his option that it would be appropriate to overrule the objection and let Mr. Deutsch proceed, with the understanding that the information that he is eliciting may not be relevant to Council's consideration.

Ms. Lawrence submitted Wade v. Town of Ayden, 125 N.C.App. 650, 482 S.E.2d 44 as Neighborhood Exhibit 7.

Planning & Development Director Scott Shuford said that many of the opponents and some of the proponents think that at the conclusion of this hearing, if Council issues a conditional use permit, that's tantamount to issuing a building permit and that is not true. What was required from the applicant is a concept plan and if it is approved through this review process, Council will impose conditions that will make changes to that plan. That's why it's a conditional use permit. If it were fully complete, staff would come to Council and ask for approval as is, and then Council may or may not be in a position to make many adjustments to it. Assuming it gets passed, and this is true for any conditional use permit, there will still need to be formal site plan review by the Technical Review Committee, formal erosion and stormwater control review by City staff, and when the building permits come in, they will have to be reviewed by Building Safety Department and by the Fire Department. DENR will enforce any of the contamination requirements. FEMA rules will have to be followed and the Army Corp of Engineers, from what he understands, will have a say over the development of this project. There is a huge amount of technical information that still is going to be required of the developer in order to actually construct the project. This is a static plan subject to some change and modification through this process. However, the material that was presented by the represented opposition was based upon information that was in the Planning Department's files. That information changed. He didn't know when the changed information was received, but apparently it was last week. So, to hold the represented opposition accountable might not be fair. He noted that the City Attorney has advised Council that it may not be a relevant issue anyway.

Mr. Shuford said the City Engineer indicated that when the changed information was received, she did contact Mr. Guttman and passed it onto him at that time.

In the interest of time, Mr. Deutsch waived their right to put on any further rebuttal evidence.

Mayor Worley said that since Mr. Deutsch waived any rebuttal evidence, it would render the objection moot.

At 8:09 p.m., Mayor Worley announced a break.

Ms. Lawrence, one of the attorneys for the represented opposition, said the burden of proof in a conditional use permit hearing is on the applicant to make out a main case that he can meet these standards. She referred to the case SBA Inc. v. City of Asheville. We contend that the applicant has not met this burden of proof. Condition No. 1 has not been met – the proof she noticed was the assurances that it wouldn't, assurances that the toxic plume would be dealt with at some point, and that their extension of the floodplain would protect it from flood. None of these are substantial evidence. Council did hear substantial evidence that a toxic plume exists on the site, it will be around for another 5-15 years unless remediation takes place quicker, that it is about 15 feet underground and at one of the places above it, the plans call for grading down 14 feet – just being one foot of ground to protect the movement of that toxic plume. The recommendation is to get the remediation in place and working before you can be assured that it will be dealt with. All of the plans of the developer use the land over the toxic plume. This is a serious health and safety issue. It does not mean they can never do anything with the property. It means that right now you have a very serious safety issue. The runoff and the retention ponds are being used for two purposes – for stormwater and for flood control. To use them for two may mean that when the flood comes along, the ponds are full. There is significant work, according to the plans, in the river resource yard. Our ordinances prohibit anything going into the river resource yard that would require fill and this would. The requirement is that the proposed restricted use does not require fills or that the average elevation of the land surface is not raised. If you do not fill and you do not raise the land surface, then you can put parking areas there. But they are filling and they are raising the elevation of the land. They are putting some permeable parking but mostly impermeable because it costs more to put in permeable pavement. This is a flood hazard. This is 58 acres of pavement. Condition No. 2 – Council has heard how this will involve grading 25 acres and 1,300 linear feet of the river is going to be scooped out and straightened to a 2 to 1 fill. If you chose the widening of the Swannanoa River Road for traffic mitigation, that would mean a big impact on the cliff and many people have testified that it would cause horrible damage to the natural and topographic features. The applicant said that it would be compatible. We believe that is not meeting the burden of proof. Condition No. 3 – They would be overburdening the easement on the River Ridge Apartments and grading adjoining property. That certainly will have a value on River Ridge Apartments after it's graded. The applicant did not present any kind of market analysis as to property values. You heard a lot of opinion testimony but didn't have strong evidence acceptable to the finding that there would not be a decrease in property values. Condition No. 4 – The scale of the Wal-Mart building would be twice the size of the biggest building around which is Lowe's. There is a case called Vulcan Quarry that talks about what this standard might mean. Two of the three conditions they use is that it's surrounded by residential property and that it's a violation of the comprehensive plan. The 2010 plan does zone this site industrial. We admit that in the Vulcan case the nearest different use was a commercial use two miles away and given the City, we don't believe that we could meet that condition. But we think that the two out of three conditions are so compelling, along with the testimony that Council had on this point. Condition No. 5 – The developer testified that it would be smart growth and that the 2025 plan said it would be good. According to the 2010 plan, which is the official comprehensive plan, this is zoned industrial and that does not comply with our official plan. There was testimony that it does not comply with economic sustainability and the 2025 plan. In the 2025 draft plan, it makes a list of smart growth vs. sprawl and under sprawl is big-box development. The proof that it will conform is not there. Condition No. 6 – The evidence is that it did pass all of the technical boards that it's been through so far. The only thing we have brought up to question is that traffic congestion is going to interfere with all finds of emergency services and that is very substantial. Condition No. 7 – The applicant admitted that it would cause undue traffic congestion and a traffic hazard. The question is whether they can successfully mitigate that so that Council can make that finding in good faith. We have four choices. City staff is saying to leave that choice to the developer, with the final approval to be by staff. Lancaster County, S.C. vs. Mecklenburg County, N.C. (Neighborhood Exhibit 8) is a case that shows what you can and cannot delegate to an administrator. It says in quasi-judicial situations, such as this, you cannot give decisions which require decision-making discretion to your administrators. It is not their role to take on that kind of responsibility. If they make the final decision there will be no opportunity for the public to have input on any kind of specific mitigation plan. We have four choices – none of which are developed and none of which can be shown to work. It's hard to have meaningful input or study on that plan. If you look at all four choices, you see serious problems with each one. The shuttle buses - all we know is that Congressman Taylor may be able to find some money for it. We don't know if it will work. We have had vague reference to other cities where the bus systems in question are significantly different, such as Boulder and Chattanooga. Everyone will drive to the area to get on the bus and the obvious conclusion is that they will drive to Wal-Mart to park, even if they are going to get on the bus. If public transit funding is spent on this private shuttle system, it will deprive the Asheville community of desperately needed funding for the City bus system. The "half-diamond" interchange from I-240 is a remote possibility. It violates FHWA safety standards concerning the placement of exits. If they are too close, there is too much weaving and there is a safety hazard. You don't solve a safety hazard by creating another one. It will also be very costly and if done with public funds would push back the completion of the projects already identified as priority needs for the City. It would also require the taking of privately held lands. The construction of a frontage along Wood Avenue – this is an extremely remote possibility because the NC DOT is not fond of giving away right-of-way along interstates which they assume will need added lanes in the future. This would also be very costly. This option has the drawback of severely impacting the Sayles Village neighborhood and creating a traffic hazard there. The widening Swannanoa River Road. Many people think that would be a solution but it would be a very complex project because of the geography, environmental concern, and the cliff. This is a years long proposition and to widen a road in this state takes 10-12 years. To get a conditional use permit that you couldn't use for 10-12 years is not much good. If they use up all the capacity of Swannanoa River Road then that road is too congested, which would prohibit other large undeveloped lots along Swannanoa River Road to be developed. There is one small point about Stevens Street – we don't know how the developer will accomplish going over the railroad tracks. The minimum height clearance that NC DOT has been asking for gets raised almost every year and it's now to 25 feet. Whether or not that road can be engineered to meet Norfolk Southern's specifications is still an open question. The applicant has the burden of proving that traffic can be accommodated safely. It seems unlikely to us that that condition can be met. It certainly has not been proven to be met. Many, many rules of procedure of the City, in her opinion, have not been followed. The conceptual site plan was never revised after the TRC review and there is a very clear requirement for that to happen. It says it "shall" be amended and a new one presented before the Planning and Zoning Commission. That never happened. It makes it very hard to know what you are judging. She cited a case Freewood Association where the applicant applied for a conditional use permit for a private family campground and it turned out they were going to put in a nudist camp. The court said the use of the property has to be stated truthfully and accurately in the application. It's the right of the public to examine these things before so they can address Council. We haven't had that chance. Phase 2 is before Council for rezoning. We don't think that all of those requirements have been met. We don't really know what is going to happen in Phase 2 and Phase 3. It seems to me that the only way you can approach those two in terms of impacts that might be adverse, is that you need to look at the impacts of this proposal. Council needs to realize that there is absolutely no requirement for them to ever build the Urban Village. Will their plans erode the opposite bank of the Swannanoa River? We don't know. We do know that they will take down a 100-foot hill, there will be 25 acres of fill, and an additional 5 acres in the floodway. We do know that they are going to disturb 1,300 linear feet of the riverbank. We do know they will disturb the river for a new bridge. What will happen to property values? We don't know. You have heard a list of other reviews this project has to go through but what you didn't hear is any other chance for the public to have any input on this. We believe you cannot meet your duty responsibly by granting the conditional use permit on the basis of the evidence before Council today. We would urge you to deny it. If you do not deny it, we would urge you to continue it so that everybody does have a chance to examine the information. We believe if all the plans were submitted and all of the conditions that the TRC has asked to be complied with were done, they could not show you a plan that would work. They could only show you a plan that would require a variance because of disturbing the river resource yard and there are no variances from that. You cannot ask for a variance in a conditional use permit. We think this project would not happen if they had complete information.

Mr. David Matney, attorney representing the developers, emphasized that this project has been approved unanimously by the River District Design Review Committee, approved by the TRC and by the Planning & Zoning Commission. City staff has recommended approval with certain conditions. We agree the conditions with the exception of a couple. We do not agree that Ms. Lawrence and Mr. Gregory represent anyone who is distinctly affected by this project. We object to everything they said to the extent of their views doing that. Condition No. 1 – An important term is "materially" endanger the public health and safety. Anything anybody does affects somebody. That's not the issue. Is there going to be a little more traffic or is there going to be a little more danger – is it material? We have to comply with the engineering requirements about flooding. We have to make no difference for the floodway. Regarding environment, we have to comply with the State. The State isn't going to let us do anything that materially endangers. You don't have all the plans for that because this is a use. City Council is not the technical people to make that decision. Council needs to look to see if the use meets the seven conditional standards. You have all the evidence from City staff and from the City agencies that says it does not materially endanger. There will be someone injured or killed on Swannanoa River Road whether this development is built or not. Condition No. 2 – The proposed use is "reasonably" compatible. The only way you can make it totally compatible is to build it underground. Every development changes something. Staff has looked at this and has said the developer has disturbed the site as little as possible. It is correct that we will be disturbing on the riverbank, but what we are doing (and Ms. Lawrence was not at the Planning & Zoning Commission hearing when this issue was first brought up) is removing asphalt that the Sayles people put along the riverbank to stabilize it. We don't think that's a good idea So, yes, we are disturbing that part of the riverbank to take up asphalt. If you don't want us to do that, we won't – but it seems like the sensible thing to do is to change it from asphalt to the natural topography of dirt and plants. The only other two things they will be doing is taking up one bridge and putting in another bridge. In reading through the report of our flood engineer, moving that actually helps the flood because the existing bridge is narrow and restricts the flow and the new bridge will not restrict the flow. So, moving it from the one location to the different location and making it wider will actually be helpful. We are not doing any digging or drilling in the river resource yard and we know we can't – that could be one of the conditions is that we don't do that. We won't do that The flood water issue is a non-issue from Council's perspective other than saying "comply with our technical people." Whatever permits we have to have, we will comply. Pollution. It's the same non-issue from Council's perspective because what the City requires is that we meet applicable governmental requirements. We will meet DENR requirements. If the Environmental Protection Agency is involved, we will meet those requirements as well. One man testified that this is on a Superfund site because of the groundwater. That's incorrect. It was on the Superfund site because the drums that were left there when Sayles Biltmore Bleacheries went out of business. The Superfund had to clean up the chemicals that were contained in drums - not because of the groundwater. The opposition experts talked about the environmental, water, etc but not a single one of them had done a study. They looked at our reports and said those reports were good but disagreed with their conclusions. That is not evidence. They haven't done their own studies – they just don't like what we've done. Condition No. 3 – "...development . . will not substantially injure the value of adjoining or abutting property." The people who testified for the applicant talked about the property around the development and that it's value will not go down. The people who said it's going to hurt their property values were up on Fairview Road and in Beverly Hills – they are not adjoining or abutting. The closest residence is either across either I-240 or on the other side of Swannanoa River Road and behind the commercial development. The closest residents are people in the apartments and there was no testimony that it would hurt their values. Condition No. 4 – We are taking a 650,000 square foot building that is presently on the property and reducing it to 400,000 square feet. We are making it smaller. The neighborhood consists of commercial development and the interstate. When you look at the scale, yes, this is bigger than what is around it, but it is smaller than what is there now. Condition No. 5 – "...development ... will generally conform ..." There are a lot of things in the proposed 2025 plan which talks about concentrated pockets of urban development (our urban village) because they are easier to serve with public transit and the opportunity for people to park once and go to several destinations. It talks about concentrated urban villages along major corridors. When we start looking at the City's plan, the Riverside Parkway says that there would be a gateway boulevard, which adjacent development should occur on larger parcels with few access points. That is what we are doing. It said it should also be apartment complexes, office parks or a concentrated commercial development. I think we meet all of that. The plan talks about infill (taking vacant or underused lots) and this development is not sprawl – this is coming back in. Condition No. 6 – All of City staff and agencies that have said this condition is met. A concern was expressed about rescue vehicles. What they are talking about is problems right now. No one has done a traffic study and said that there will be interference with rescue vehicles. Condition No. 7 – "... use will not cause undue traffic ..." Most people say we have traffic problems right now. The development is not causing those. People on Fairview Road say that there is a problem. There is no evidence that this is going to "cause" traffic. We were instructed by City staff to make a decision that won't use up all the capacity on Swannanoa River Road. First traffic mitigation – we build a 1.7 mile road from Swannanoa River Road to Fairview Road. Second, we are doing to synchronization the lights on Fairview Road, which helps existing as well as future traffic. Third, we are going to widen Swannanoa River Road at our entrance and add

turning lanes for people traveling each way to help the traffic and make it safer. Plus, we have agreed to pay a substantial sum for a traffic calming study to see what else might be needed. If you look through our numbers, which he doesn't think the City's traffic engineer has disagreed with – we use substantially all of the capacity on Swannanoa River Road. That's not all, most, but not all. We think we have satisfied everything and we don't need to do anymore. But, it's a political decision if substantially all is close enough to all or if something more is needed. We recognize that being close is enough to have to do something. We met with City staff and the NC DOT and City staff felt that all four options would all work from a traffic mitigation standpoint. Whether or not any or all of them can be done is a different issue. What Council is looking at is if City staff and our engineers say these work, Council can approve the permit saying that they find that any one of these four options would be a significant traffic mitigation. Then the developer would work with the City's technical staff to see if they can meet one of these. If the developer can meet one of these options, the project proceeds. To put off the use until we meet one of these would probably be another lengthy meeting. Contrary to what Ms. Lawrence says, Council can delegate certain things, but not the decision. Council would be saying to staff that they approve this, provided the developer meets the technical requirements. City staff has to confirm that the developer has met technical requirements. In each one of the four options it would be up to City staff to determine that the developer has met the technical requirements on the one that the developer picks. And basically that is the way procedurally to do it. Professor Clark was very careful about what he said and what he said was that he couldn't say it was wrong. He said he might have done it differently, but he can't say it's wrong. That is not evidence. If he had done it differently, that would have been evidence. So, the only evidence Council has is the developer's staff saying the mitigation things that the developer has done is enough. City staff is saying what you have done is almost enough – but you need to do one of these other four things.
In number 8 of the staff's recommended conditions, about the Wal-Mart lease over the existing facility, we don't want it dark either. We understand Wal-Mart's intentions are to sell it (as a matter of fact our developer wants to buy it if it's been on the market), but we have no control. We are not lessor and we are not lessee. No applicant has any control over that. We don't mind a condition that we exert our best efforts to talk them into this, but we can't control that. In number 9 of the staff's recommended conditions, regarding the access easement, we don't have the control or ability to transfer that without the permission of the adjoining property owner. We are willing to do whatever we can legally do, but he believed the City Attorney has received a letter from the adjoining property owner's attorney saying they don't know that they are going to agree to it. Given all of the discussion, in number 2 of the staff's recommendations, he wasn't sure if 12 months is long enough if the developer ends up having to do one of the options off I-240. He asked that Council extend that to 24 months.

At 9:10 p.m., Mayor Worley closed the public hearing.

City Attorney Oast said that this action requires two separate votes. There are two applications in an integrated plan. The applicants would prefer that Council vote up or down on the conditional use permit before a vote is taken on the rezoning for the Urban Village District. It was his understanding that the applicant might with withdraw their application for the rezoning if they conditional use permit is not granted.

Mr. Shuford said that one purpose of a public hearing is to get more information on a particular project and the end result is usually to get a better project. He said that traffic engineering numbers are not derived from an exact science. Some facts are not in dispute from a general sense is that the current volume on Swannanoa River Road traffic volume is roughly 8,600 cars a day and that current volume is about 60% of the bottom level of Level of Service D capacity of the roadway. The proposed development would add roughly 5,000 trips a day to that roadway. That development would use about 35% of the total Level of Service D capacity of that roadway, which is more than a 50% increase over the base conditions. That is the basis for staff's insistence on mitigating that impact. As we went through this process we did discuss the turning lanes for people traveling each way to help the traffic and make it safer. Plus, we have agreed to pay a substantial sum for a traffic calming study to see what else might be needed. If you look through our numbers, which he doesn't think the City's traffic engineer has disagreed with – we use substantially all of the capacity on Swannanoa River Road. That's not all, most, but not all. We think we have satisfied everything and we don't need to do anymore. But, it's a political decision if substantially all is close enough to all or if something more is needed. We recognize that being close is enough to have to do something. We met with City staff and the NC DOT and City staff felt that all four options would all work from a traffic mitigation standpoint. Whether or not any or all of them can be done is a different issue. What Council is looking at is if City staff and our engineers say these work, Council can approve the permit saying that they find that any one of these four options would be a significant traffic mitigation. Then the developer would work with the City's technical staff to see if they can meet one of these. If the developer can meet one of these options, the project proceeds. To put off the use until we meet one of these would probably be another lengthy meeting. Contrary to what Ms. Lawrence says, Council can delegate certain things, but not the decision. Council would be saying to staff that they approve this, provided the developer meets the technical requirements. City staff has to confirm that the developer has met technical requirements. In each one of the four options it would be up to City staff to determine that the developer has met the technical requirements on the one that the developer picks. And basically that is the way procedurally to do it. Professor Clark was very careful about what he said and what he said was that he couldn't say it was wrong. He said he might have done it differently, but he can't say it's wrong. That is not evidence. If he had done it differently, that would have been evidence. So, the only evidence Council has is the developer's staff saying the mitigation things that the developer has done is enough. City staff is saying what you have done is almost enough – but you need to do one of these other four things. In number 8 of the staff's recommended conditions, about the Wal-Mart lease over the existing facility, we don't want it dark either. We understand Wal-Mart's intentions are to sell it (as a matter of fact our developer wants to buy it if it's been on the market), but we have no control. We are not lessor and we are not lessee. No applicant has any control over that. We don't mind a condition that we exert our best efforts to talk them into this, but we can't control that. In number 9 of the staff's recommended conditions, regarding the access easement, we don't have the control or ability to transfer that without the permission of the adjoining property owner. We are willing to do whatever we can legally do, but he believed the City Attorney has received a letter from the adjoining property owner's attorney saying they don't know that they are going to agree to it. Given all of the discussion, in number 2 of the staff's recommendations, he wasn't sure if 12 months is long enough if the developer ends up having to do one of the options off I-240. He asked that Council extend that to 24 months.

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traffic matter in great detail from the very beginning with the applicant. Of the four proposed traffic mitigation options presented by staff, the first three were all suggested by the applicant as possible ways to resolve it. The only option that unilaterally came from staff was the widening of Swannanoa River Road. Given the testimony heard at this hearing, it is clear that the most direct method of addressing the capacity issue is imposing a condition of widening Swannanoa River Road from South Tunnel Road to Fairview Road as a condition. As a consequence, and given the information we have heard through the public hearing, staff would now recommend that Council select that option as a condition of approval, if they wish to select a specific option. The road widening will be quite expensive and we would not want to put ourselves in a situation where there wasn't some flexibility on the part of the applicant to perhaps consider eliminating the 1.7 mile connection through to Fairview Road as a means of reducing that expense. He explained that the developer proposed the 1.7 mile new road as a method to mitigate the traffic on Swannanoa River Road and it takes off approximately 15-20% of the total project traffic that would use Swannanoa River Road. Since the 1.7 mile new road is a very expensive option on the part of the developer to create a road improvement that mitigates a fairly small amount of the impact on the network, staff is suggesting that if they didn't want to go to that expense and build the 1.7 mile of new road at this time, to use that money to widen Swannanoa River Road, so long as the mitigation of the traffic gets to a reasonable number. That would be something at the developer's option to address. There has been some pressure from both sides to try to get to that number more exact. He read the following suggested condition: "The developer shall mitigate the traffic impact of the development to Swannanoa River Road through the implementation of the following transportation improvement project: Swannanoa River Road shall be widened from South Tunnel Road to Fairview Road to such an extent that it retains not less than 10% of its design capacity (for that Level of Service D) for use by future development. This project shall be designed, permitted, and constructed entirely at the developer's expense and in accordance with all appropriate local, state, and federal procedures and regulations. In addition, formal study of the mitigation project would be required at the developer's expense in order to ascertain its specific effectiveness in addressing the capacity condition prior to approval by the City. This study shall be performed under the City's supervision by a traffic consultant under contract with the City. Design, permitting, and initiation of construction of the mitigation project shall occur prior to the issuance of a building permit for any building in Phase I and project construction shall be completed within 12 months of the issuance of any certificate of occupancy. The developer shall provide any necessary financial guarantees of this project completion schedule to the satisfaction of the City Engineering Department." The reason for the delay is, as are the first building to be constructed will be the largest building on the site, but that is only a percentage of the total site development for this project, so having time for future build-out as that project occurs, it does make sense to have a delay built in there. In effect, if Council wants to select a particular option, that would be the one staff recommends. Should Council approve the conditional use permit subject to that option and we get to some point in the future where there is some reason why it cannot be done, that option can come back to City Council (go through the same public process) for further debate and decision.

When Councilman Mumpower asked about the 1.7 mile access road, Mr. Shuford said that access road was a component of the developer's project at the beginning as a way to address the traffic which would have some benefit for their project. Obviously having a connection to another spot in which there is an interstate interchange would be a great way to address that issue and it also provides a good access when they get ready to develop the Phase 3 area in the future. It was not until City staff got through the TIA in mid-to-late May that we knew the total extent of the relief that that particular option provided to Swannanoa River Road and that was at the point in time that City staff started discussing options for the developer. That was when the developer brought forward the first three options that they felt were appropriate. Then staff suggested the fourth option of widening Swannanoa River Road.

When Councilman Mumpower asked if it is staff's opinion that the mitigation efforts on the part of the developers on the traffic issue are not adequate, as they currently exist in the plan. Mr. Shuford replied that they are not and that has been said from the very beginning. The issue is what method to use to get to that point. At the outset of the process we suggested four alternatives and as we have gone through the public hearing process, we feel comfortable in narrowing it to one option and to leave it broad enough so that some aspects of it can result in cost savings for the developer by adjusting it.

Vice-Mayor Bellamy said that Professor Clark gave his opinion on the four traffic mitigation options and he did spend a little more time in talking about the improvements on Swannanoa River Road. After listening to his testimony, she felt he did support the widening of Swannanoa River Road.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that Professor Clark was rendering his opinion on technical information that had been supplied to him by the staff. An earlier point Mr. Matney made was that Professor Clark is not a licensed professional engineer in North Carolina and as such may not qualify as an expert in some forms in this state. City Attorney Oast felt Council can take note of his qualifications and evaluate them however they wish.

Ms. Gaye Sprague, the City's traffic consultant who is licensed in the State of North Carolina, said that the City had presented four alternatives to Council of ways that the issue of almost being at the top of Level of Service D on Swannanoa River Road could be addressed. After listening to the public hearing and the issue of what can and cannot be delegated to staff, the staff decided that the one we can most firmly put our finger on knowing that we can add a certain amount of more capacity on the road was widening.

Ms. Sprague said Council has to have is an objective and reasonable way to assess the operations of traffic with and without whatever the proposal is. And you have to also clearly lay out what is required to address any deficiencies identified. In Asheville, you require an applicant to produce a TIA. You have very clear methodology on how that has to be handled and that methodology is the generally accepted methodology. You can take the method of doing it and any traffic engineer should accept it. In Asheville the precedence has also been set that the applicant must make recommendations on how to mitigate any location that exceeds Level of Service D. In most cases we are looking at intersections only. This applicant was required to analyze 13 intersections because this is a big development. The applicant's traffic engineer worked with the City's traffic engineer and went over all the assumptions. They were cleared through the City's traffic engineer. There are assumptions in any study that is done. They then identified those intersections where we were going over Level of Service D. The intersections that the applicant identified and recommended mitigation are (1) at the entrance to the development, and (2) a signal at Fairview Road and Stevens Street. In addition they recognized that traffic calming is an issue. City staff agreed with those recommendations, but we disagreed on the degree of problem that traffic calming was and we asked them to give more money to that. We pointed out that the closed spacing along Fairview Road was a problem and that we would want them to do a signal system to correct that. The issue that is getting the most attention is the operation of Swannanoa River Road. We, as staff, want Council to remember that we are close to going over the guideline number we use for Level of Service D over 24 hours.

Upon inquiry of Councilman Peterson, Ms. White defined interceptor trips as people who stop by a development on route to another destination, which is their primary destination. We did not try to forecast how much cut-through traffic might use the new 1.7 mile access road.

Councilman Peterson said that we now estimate Swannanoa River Road can handled approximately 14,000 trips per day. If it were widened to 4 lanes, divided with perhaps nice turn lanes, how much traffic could it hold then? Mr. Shuford guessed if the road were widened to a 3-lane cross section, which is an acceptable gateway design in both our proposed 2025 plan and in the long range TIP that the Transportation Advisory Committee has adopted, it would hold approximately 18,000. It the road was widened to 4-lanes, it would hold approximately 27,000. Either one of those widenings appears to overcome the issue, with or without the 1.7 mile new access road to Fairview Road.

Councilman Peterson's traffic calculations show that if the new 1.7 access road is not built and all the traffic comes in from Swannanoa River Road, then they would have to widen Swannanoa River Road to 4-lanes.

Mayor Worley understood (and Mr. Shuford confirmed) that the staff's new condition is not 3-lanes or 4-lanes, but to widen Swannanoa River Road to the point where you maintain a minimum of 10% unused capacity. He took that to mean that if it's 3 lanes, they may still need to keep the new 1.7 mile access road and if it's 4 lanes they may not need to keep the access road. The condition would be the mitigation necessary to maintain at least 10% unused capacity on Swannanoa River Road.

Councilman Peterson felt that if Swannanoa River Road were designed as a 4-lane parkway and there was no access road the impact in Oakley would be a lot less.

Mr. Shuford said since traffic engineering is not an exact science, that instead of getting into a preference, the condition would need to be studied and go through a process in a way that would result in us having at least a series of very strong assumptions about what would happen before we have a final decision – that is why we structured the condition that way.

Councilman Peterson felt the public expects Council to make that decision. He was a little uncomfortable of giving too many options. He didn't want to give the public the impression that Council is not making the decision about where major roads will be constructed.

Councilman Mumpower asked if the developer's traffic engineer agrees with staff's position that there needs to be a 10% minimum excess capacity on Swannanoa River Road and that their mitigation efforts do not provide for that. Ms. White said that she understands how they came up with the 10% but she doesn't agree that it should necessarily be a requirement. The requirements for the TIA require us to mitigate to a Level of Service D and it does not specifically say to a Level of Service D with 10% of the traffic still remaining. This is the first time a percentage has been defined.

Ms. White agrees that widening Swannanoa River Road is an ideal solution. If that were totally within our power we would have pursued that as the total access plan for the site and would not have pursued the 1.7 mile road access to the back. What is problematic for us from a standpoint of making that happen is that the right-of-way is very prescriptive and very narrow. The end of Swannanoa River Road near Fairview Road runs by the golf course. As a private entity we have no power to take property from the golf course to provide the required amount of right-of-way for a wider section. That would mean we would be restricted to the one side of the river, which is a narrow piece of land off of the existing shoulder of the road to do all of the widening. We don't believe that it is physically possible for us to accommodate that given the limits of our power as private landowners. We cannot condemn property and we cannot force someone to sell to us in order to provide the required amount of right-of-way. City staff has indicated that the City is not able to offer assistance in that way. Our next best plan to mitigate the traffic impacts of this development was to seek alternative access to the site and that's where the rear access proposal was developed.

Mr. Shuford said that the TIA requirement for the City deals with a Level of Service D at intersections and not necessarily for a road segment, because it's intersections that generally are the controlling factor in the level of service determination. Ms. White is correct in that the developer did the right thing according to the TIA requirements, but there is a condition regarding traffic with the issuance of a conditional use permit. It is in staff's opinion that we are close enough to the traffic capacity on this road that there is going to be an undue level of congestion. We have tried to work with the developer to resolve this. There are limits on what the developer can do for any of the four traffic mitigation options. They don't have the ability to condemn land and we did discuss the possibility of the state doing that. This particular project would have to be put on the TIP before they would be in a position to do that. The City is not able to assist with the condemnation of property if that is what is necessary. The golf course is owned by Buncombe County and he didn't know if they would be willing or able to accommodate the right-of-way but that is something that needs to be study, especially if Swannanoa River Road is going to be widened in the future.

Councilwoman Jones asked if consideration was given to make the development smaller thus creating less traffic. Ms. White said that there was a different proposal presented and because there were problems with dealing with traffic on that issue, the developers made a lot of changes to that development plan incorporating the urban village concept to get sharing of trips between different land uses, the intensity of out-parcel usage (like restaurants) was downsized. That proposal was more intensive from an overall traffic standpoint.

When Councilwoman Jones asked what percentage of traffic would come from the Supercenter, Ms. White said it would be approximately half for full build-out, which would include Phase 3.

Councilman Ellis preferred the new 1.7 mile new access road. It appears that a lot of the traffic can get to the project with access to I-240. That would serve Swannanoa, Black Mountain, south Asheville and east Asheville. He felt that keeping the new access road, they might not need as much of mitigating traffic from the bridge to Fairview Road. What seems very important is from the bridge to South Tunnel Road.

Ms. White said that when they met with City staff to discuss options, Councilman Ellis' suggestion was discussed. City staff was not satisfied with that.

City Engineer Cathy Ball explained that what that option showed was that even with the access road built, there was the same amount of traffic on both sections of Swannanoa River Road from the bridge to South Tunnel Road and then from the bridge to Fairview Road. Even with having the back entrance it didn't decrease the amount of traffic on the section of Fairview Road to the bridge.

Upon inquiry of Mayor Worley, Ms. Ball said in reviewing the TIA, there is actually more traffic from the bridge to Fairview Road even with the back entrance. That was the basis of staff's recommendation that Swannanoa River Road be widened from South Tunnel Road to Fairview Road.

Mayor Worley asked if the money is made available, would that impact the State's ability, willingness and speed within which the project could be done. Mr. Ken Putman, Division Operations Engineer with the NC DOT, said that one of the big hurdles is money, so if the money came from a private source, that would take care of that issue. But, the planning, design and all environmental impacts would still have to be met. Availability of money would probably speed up the process some because if we were to put a new project in TIP today, it might be ten years before we see it done. In this case, that might knock off two-four years, so we are still talking about in excess of five years of all that planning and design.

Upon inquiry of Councilman Mumpower, Ms. White said that transit is a way to reduce vehicle trips. Turn lane improvements will also provide some additional capacity.

Councilman Mumpower asked if a continuance of this matter provide staff with an opportunity to explore options and possibilities on this one aspect. Mr. Shuford replied that it would and might be advisable to allow this option to be explored.

City Attorney Oast said that Council could continue this matter to obtain further information.

Councilman Peterson would be in favor of continuing the matter because he would like to see some preliminary designs of a nice 4-lane parkway on Swannanoa River Road, with some turn lanes. Also he'd like to know how much the impact would be, whether it is feasible, etc.

Councilman Dunn felt that the golf course has a lot of character and should not be disturbed for a 4-lane road.

Vice-Mayor Bellamy asked if some of the over 1,000 parking spaces could be reduced for more green space which might help control stormwater runoff. Mr. Green replied that the parking proposed by the developer is approaching the maximum that is permitted under the UDO. There is room to reduce the parking being proposed and still meet the City's UDO requirements. Their tenants have certain parking requirements so we would have to work closely with them. If the issue is continued and with the direction from Council, staff will work to assure that the tenant needs are being met also. Mr. Green said that staff will work with the developer, since reducing the stormwater runoff is the end goal, and maybe we can provide the parking but look at more pervious paving so that the needs of the tenants are met but the goal of reducing stormwater runoff is met also.

Ms. Lawrence felt that a continuance of this matter would be appropriate. We ask that it be continued until after all the requirements for all the different plans are met. We want a full and complete record so that Council can have that to consider and they can have that to give input on.

Mr. Matney said what he has heard the City say on the traffic issue is that we like this revised forth option that Mr. Shuford suggested. He didn't hear Mr. Shuford say that the others wouldn't mitigate he just thinks a lot of them couldn't be met because of other issues. If those could be accomplished that would be adequate mitigation. The revised forth option, if it could be accomplished, would be adequate mitigation. He felt Council could approve the permit and say you have five things that Council finds would mitigate the traffic. Some of them will not happen but leave it up to the developers to see if they can make it happen. If we can do any one of those, it is adequate mitigation. They would rather have more options than one.

Mayor Worley said that if Council decides to continue this matter, we would not be required to re-open the public hearing. City Attorney Oast said that the continuance would be to explore the option that Mr. Shuford has suggested (revised option no. 4). He didn't think that would require an additional public hearing.

Mayor Worley suggested that instead of the condition being to widen Swannanoa River Road so that we maintain a minimum capacity of at least 10%, what if we said to widen Swannanoa River Road and prepare a traffic mitigation plan that maintains the minimum of 10% excess capacity on Swannanoa River Road by whatever means that our traffic engineer confirms meets those tests.

City Attorney Oast said that there is case law to the effect that you should not leave some kinds of discretionary matters in the hands of the staff. He couldn't say for sure whether that proposal approaches that threshold or not. As long as staff's discretion is sufficiently confined within certain specific parameters, he felt it would be defensible. He noted that the less Council leaves in staff's discretion the more better defensible it is.

Vice-Mayor Bellamy and Councilman Peterson felt that Council should give clear direction to staff.

Mr. Shuford said that there are several other issues that can be addressed. One of the things raised was the urban village won't get built. The applicant did submit, as part of his materials, a schedule that basically ensures that there is simultaneous construction for all practical purposes of Phase I and Phase II (City Exhibit 12). If Council is concerned about that aspect, Council could make that a condition of the conditional use permit. He has some language, approved by DENR, on the environmental issue and how to address that. If Council is interested about the fencing issue raised, we have language we could suggest to Council. In addition, we have some responses for a couple of things that the developer's representatives indicated that they need some help on. One thing is the easement issue where they are not sure that it could be legally assigned to the City and obviously we would want to qualify it. Then the issue they raised about the possibility of having a condition that addresses the existing Wal-Mart store being kept vacant. We have a response to that as well. Basically, though, that response is that we would encourage Council to stay with the original condition. If this matter is continued, there may be another way to get some assurance that the building will not be kept vacant.

Vice-Mayor Bellamy asked about the feasibility of dead-ending Beechwood Road. Mr. Shuford said that instead of doing that, their condition is that there be a neighborhood calming study done. We're really not too enthusiastic about the possibility of simply closing that road off. If you restrict traffic in one area, it expands to another area. Solving the problem of Redwood Forest by simply closing the road might compound the problem of Governor's View Road or the roads in Beverly Hills. That is something that can be studied as part of the traffic calming study.

City Attorney Oast said that if the plan substantially changes then a modification with a public hearing on that part of it would be in order. We won't know if the plan substantially changes until we know the results of this discussion. Council can confine the subject matter, if an additional hearing is required, to just the new information.

At 10:40 p.m., Mayor Worley announced a short break.

Mr. Matney said that if the five options are approved, one of them being widening Swannanoa River Road, then allow the developer to do them, or some combination of them, to keep a minimum of 10% excess capacity on Swannanoa River Road, with the City's traffic engineer confirming the results. He felt that was a technical issue. He didn't think that was giving overbroad discretion to staff.

City Attorney Oast said that Mr. Matney is asking Council to establish a parameter of reserving 10% capacity on Swannanoa River Road and then leaving it to the developer within the five options suggested to figure out a way to reduce their volume to meet that 10% reserve. He advised Council again that the case law is that staff cannot have an undue amount of discretion although some discretion is permissible. The more Council confines that discretion, the more defensible the condition is. He felt that fairly strong arguments could be made that the developer would be expected to bear some of the burden of defending it.

Ms. Lawrence felt that Council should have a transportation plan on the table that Council can agree (after public input) would mitigate the traffic.

Councilman Mumpower is more concerned about the mitigation and that they resolve it based on our criteria rather than how they resolve it.

Mayor Worley said Council can (1) continue this matter to a date certain to give staff and the developer more time to explore the transit options; (2) approve the conditional use permit with a condition that sets standards for the mitigation but leaves some degree of flexibility of the five options or combinations to get the mitigation down; (3) approve the conditional use permit with one of the five conditions as being the flat out condition; and (4) turn it down.

City Manager Westbrook said the staff recommendation is widening Swannanoa River Road from South Tunnel Road to Fairview Road, to the point where a minimum of 10% unused capacity is maintained.

Mr. Shuford said that the way the conditional use permit process works, is that Council can vote on the permit and then at the next regular meeting the City Attorney presents an Order before Council, based upon the discussion, and Council has a chance to vote on that.

City Engineer Ball said that one of the things that has been very difficult for staff is that they do not particularly look forward to making a decision about one of these because there are technical issues that they would make a decision on that may not be the political will of the Council. So staff is not at all offended by Council saying they think they should make the decision. One of the things that has been a concern about the four issues raised is the feasibility of each of those. The reason staff made the revised fourth recommendation is primarily for that reason – there may be some legalities as to how much you can delegate to staff (not that staff is not technically capable of doing that. There is other information that comes in to make that decision, other than technical information. That is one of the reasons staff looked at this and said of the alternatives that we have on the table, which one do we think is most likely. In fact we have been working on a Riverside Parkway that would consist of widening this section of road in some form or fashion. That is the reason we came back to you and said these other ones are kind of up in the air, we don't know if they are going to happen, but we feel like this one is something we have been looking at anyway, so it's most likely to happen. We still don't know the cost. I don't think staff is opposed to, at this point in time, saying the developer needs to go back and explore the feasibility of each of these options and come back with a little more information on each of them. We have heard from the State that the changes of getting the off-ramps are questionable. The question of getting the frontage road is questionable. There has not been any detailed study on any of these options.

Councilman Peterson said that they will be building the development in phases and they will not be generating all the traffic in one year. He felt it would be best to continue to give staff time to look into their suggestion that the widening of Swannanoa River Road is the best option, how likely is that, what is the timeframe, and what would be the best and worst case scenarios. Then Council can have further discussion with staff about the other conditions and their concerns.

City Engineer Ball said that they would like to request that Council recommend that the developer assist City staff with the feasibility study of the four options, especially within the timeline we are talking about.

Mr. Matney said that he hasn't heard City staff say that the five options don't mitigate traffic and now they want the developer to pay money to do studies not knowing whether the concept will be approved. City staff said that the concept of each one of the options is acceptable if they can happen. We would request Council's approval on one of those five specifically or a 10% minimum capacity on Swannanoa River Road using one or more of the four. In addition, City staff has said that they were going to widen Swannanoa River Road anyway, so that means if we don't build this project you're going to widen it, but now they are asking us to widen it. That doesn't seem fair.

Councilman Mumpower moved to continue of this matter until July 23, 2002, to allow staff and developers time to come up with a doable concept traffic mitigation plan, within the confines of the four options (including the modified fourth option), that achieves a 10% extra capacity on Swannanoa River Road. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that if Council specifies the developer do something as a condition and it turns out they couldn't do it, then they could not proceed with the build-out of their project, unless they come back to Council to get a modification to either eliminate that condition or have another condition.

Ms. Sprague said that the practical application of Councilman Mumpower's motion is that we would see from the developer some actual lines on a map that show a 3 or 4-lane road. We have not done that to date. The lines on a map to widen Swannanoa River Road will point out to us those pinch points (if they do exist), whether the widening can be done (if they can get the right-of-way), or if it can't be done under any circumstances. It just gives Council more information on which to base their final decision. Some reduction in square footage might be part of it too. If we find out that we can only get 3 lanes for 2,000 feet, but they are willing to reduce the square footage, maybe that would be the appropriate answer. She didn't think the other options would happen, except transit.

Mr. Shuford said that staff would be comfortable with continuing the matter to allow these options to be more fully explored with some better realization of their feasibility so that when it does come back before Council, Council has a better range of certainty as to how well they will work and what can be done.

City Attorney Oast said that it was his understanding that the motion is to delay Council's consideration of whether to issue the conditional use permit pending receipt of more information on traffic mitigation.

Mayor Worley said that if we approve the motion to continue the matter, then the other concerns Council has on other issues would still be up for discussion at the continued meeting.

The motion made by Councilman Mumpower and seconded by Vice-Mayor Bellamy carried unanimously.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 24-June 13, 2002: Billie MaryAnn Jones (Streets), Dan David (Inspections), Nathan Clark (Streets), Allen Boyd (Police), Lonnie Hoglen (Streets) and Howard Wise (Water).

The City received the following claims during the period of June 14-20, 2002: William R. Burton (Water), Rebecca Gudger (Fire), Francis Cummings (Water), Elizabeth Ballard (Water), J.W. Collins (Water) and Mark White (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Grant Millin

Mr. Grant Million, east Asheville resident, spoke about the visioning in Asheville in terms of the development of land.

Comments by Alan Ditmore

Mr. Alan Ditmore, Leicester resident, was concerned that Wal-Mart's pharmacies have a policy of refusing to carry emergency contraceptives.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:35 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Thursday – June 27, 2002 - 3:00 p.m.
Council Chamber – 2nd Floor – City Hall

Special Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Worley gave the invocation.

NEW BUSINESS

A. **ORDINANCE NO. 2927 - ORDINANCE ADOPTING AN INTERIM BUDGET FOR THE MONTHS OF JULY AND AUGUST 2002 FOR THE FOLLOWING FUNDS: GENERAL FUND, GENERAL CAPITAL RESERVE FUND, TRANSIT SERVICES FUND, CIVIC CENTER FUND, STREET AND SIDEWALK FUND, PRINT SHOP FUND, CENTRAL STORES FUND, FLEET MANAGEMENT FUND, AND RISK MANAGEMENT FUND**

ORDINANCE NO. 2928 - ORDINANCE ADOPTING THE BUDGET FOR FISCAL YEAR 2002-03 FOR THE FOLLOWING FUNDS: WATER RESOURCES FUND, PARKING SERVICES FUND, FESTIVALS FUND, WATER MAJOR CAPITAL IMPROVEMENT FUND, COMMUNITY DEVELOPMENT FUND, AND HOME INVESTMENT TRUST FUND

Mayor Worley said that a public hearing was held on the Fiscal Year 2002-03 Annual Operating Budget on June 11, 2002.

On May 13, 2002, a proposed Fiscal Year 2002/2003 Annual Operating Budget was presented to City Council, which included an Ad Valorem tax rate of $0.51 per $100 of assessed valuation, adjusted for revaluation. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the public hearing was published on May 31 and June 7, 2002. The City Council conducted a public hearing on the budget on June 11, 2002.

City Manager Westbrook gave a brief review of the assumptions staff had in making up the budget. Changes Council has instructed staff to make thus far have been made. One item that we still have to include in the budget is $120,000 for the cost of the animal shelter. Phase I is based on the assumption that the State was not going to send the reimbursements to the cities this year which in Asheville's case is $2.6 million. That is in addition to the money they are withholding in the current fiscal year. As far as he is aware, there is no state legislation in the works right now that would send us that money now or in any other year. He thinks it is a permanent loss. In order to make that reduction in the budget, he prepared Phase I which showed $2.6 million in funding cuts. That is the budget in front of Council now. There is a potential reduction next year of an additional $4.2 million if the state decides to withhold the utility franchise fee. Thus far there are several pieces of legislation that have been introduced that would not allow the Governor to keep those next year, but that is still very much up in the air. To provide an alternative if that were to happen, we have presented Council with a Phase II budget which shows $4.2 million in reductions and it also had a 2-cent tax rate increase to make up part of that reduction. What we are talking about today is Phase I – there is no tax rate increase and that is simply to make up for the reimbursements from the State. In a worksession, Council instructed staff to add back into the budget a $116,000 in reductions for reduced hours and temporary staff at recreation centers. That has been done and is included in the budget in front of Council now. There was other discussion with regard to Phase I reductions and that was $900,000 in street and sidewalk maintenance. Where that discussion was left was that the Council would consider whether or not they would include that back in the budget when they consider adoption of the final budget on August 27, 2002, assuming Council adopts an interim budget today.

Budget Director Ben Durant said that there are a couple of issues that will impact our budget over a long-term period. He received information in early June about the structural problem that the state is experiencing with their budget. They are projecting a $2 billion deficit next year. They are also projecting a $1-$2 billion deficits on through 2007. They have a long-term structural problem in their budget that is going to impact municipalities on a long-term basis. Whatever decisions we made about our budget need to look beyond one year. We need to make sustainable cuts or adjustments to our revenue structure that will address long-term need.

In the current year the Governor took some money out of the Powell Bill fund and put it in his General Fund to help balance the budget and he has also plans to do that for next year as well. That is going to have an impact on our Powell Bill revenues because the revenues municipalities get for Powell Bill are based on what is in that state highway trust fund. We need to take a long-term focus. Next year we will lose $170,000 and we have accommodated that loss in our Phase I budget by additional cuts in department operating budgets. In 2004 we would lose $270,000 and so we are going to have to take steps to deal with that loss.

Another issue is what Buncombe County is going to do when they adopt their budget. If they adopt a 63-cent tax rate, which is what they have discussed, that will cost us $185,000 next year in estimated sales tax losses and we have not planned for that. In the subsequent year it would cost us $740,000. They have also talked about a 69.5-cent tax rate increase and we would lose $345,000 next year and $1.3 million in the following year.

Mr. Durant said that Buncombe County wants to charge the City $120,000 for taking animals to the animal shelter. City residents will be paying a double tax as a result. We have to make reductions outside of the Phase I and Phase II cuts already proposed. We propose to close one drop-off recycling site (South Asheville), which has only been opened for four month. That would save us approximately $50,000. We have looked at revenue estimates and we think we can increase those in order to accommodate the additional $70,000.

City Manager Westbrook recommended that, pursuant to N.C. General Statute sec. 159-16, City Council adopt an interim appropriation for the General Fund and other tax-supported funds covering the two-month period from July 1 to August 31, with the anticipation that no later than August 27, 2002, Council would pass a permanent budget and set the tax rate. If the Governor does not withhold other funding, such as the utility franchise fee, then the recommendation is that Council adopt the budget with a revenue neutral tax of 51 cents per $100 value. If the Governor does withhold additional funding, above the reimbursements which we are already sure of, then Council would have to look at the Phase II reductions and/or a tax rate increase to make up the difference. What staff presented was Phase II reductions of about $3 million and a 2-cent property tax increase which would create another $1 which would make up the roughly $4 million that we would lose. All that would be up to the Council discussion at that time. Also, by adopting an interim budget now, what that allows us to further monitor what the state does, allows us to further refine our revenue estimates, and work on the Phase II reductions to see if we can refine those to see if there are better reductions to make or if there are others that will cut long-term costs for us. There are some other benefits for adopting the interim budget at this time.

City Manger Westbrook also recommended City Council adopt the annual Budget Ordinance for the City's various enterprise and non-tax supported funds.

Councilman Peterson clarified that the pay raises for City employees under Phase I is a 3% increase to be paid in December and under Phase II there would be no raises at all. City Manager Westbrook recommended

Councilman Peterson also clarified that with regard to the outside agency funds, the Outside Agency Committee met to try to trim back approximately 15% and the Phase I recommendation is taking their recommendations and cutting them in half, but during the first two months, none of the outside agencies would get any of the funds. Under Phase II there would be no outside agency funding.

Councilman Peterson asked if the City has looked into the effect of the cuts in the Community Relations Council's budget. City Manager Westbrook said that he has made all of the outside agencies aware of status of the budget relative to Phase I and Phase II and he has not gotten any feedback from any of them. Vice-Mayor Bellamy said that City Council has received a letter from the Community Relations Council indicating that because of the drastic cuts they many not be able to fulfill all of the requirements needed for us to keep our Community Development Block Grant funds and HOME funds coming to the City of Asheville because of the staff – they will not be able to operate effectively. City Manager Westbrook said that he would get a copy of the letter and make a recommendation to Council.

It was the consensus of Council that even if the state does give the City the $4.2 million in utility reimbursement revenues, Council would like to review their priorities and what they really want to focus on. If the state does reimburse the City, City Manager Westbrook would recommend that the 3% merit increase remain for City employees.

Mayor Worley said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2927, with the addition $20,000 for 2/12 of the animal shelter costs. This motion was seconded by Councilman Mumpower.

Councilman Mumpower has made numerous efforts to look for waste, fat, and unhealthy processes in City government and he has been unsuccessful at every turn. He complimented the City Manager for presenting a budget to Council that is revenue neutral and is careful with taxpayer's money.

Upon inquiry of Councilwoman Jones, City Manager Westbrook explained how the $116,000 was adjusted for the recreation centers.

Upon inquiry of Councilwoman Jones, City Manager Westbrook said that as of right now, we are still balanced felt we will be okay at the end of the year. We will not add tremendously to Fund Balance this year, but we will wind up okay.

The motion made by Councilman Ellis and seconded by Councilman Mumpower and carried unanimously.

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Vice-Mayor Bellamy asked if she had a conflict of interest since HOME funds are included in the enterprise fund budget. City Attorney Oast advised her that he did not think she had a disqualifying conflict.

Councilman Mumpower moved for the adoption of Ordinance No. 2928. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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UNFINISHED BUSINESS

ANNEXATION ORDINANCES

Councilman Dunn said the City needs to grow. Citizens will gain some benefits from annexation and he realizes that voting against annexation is popular and easy and he doesn't really want to vote against it. The following are facts as he sees them. Annexation doesn't work. If you look at the City limits from 1927, the population is the same as it was about 30-50 years ago. Our staff has been diligent in explaining things, but he does not believe that we have enough police force in the City to take care of our citizens. The fact is that one policeman for every 300-400 citizens is the average and it was one for every 420 when we first started this. The Police Chief said that if we lose two or three officers, it would be critical mass. We have already lost two or three police officers. There was one police officer guarding the whole south end of town and he heard the Police Chief say they could have brought in more police officers from other parts of town. To him that is not adequate protection. We don't have enough police officers to patrol in downtown because our merchants complain about vagrants and dog feces. He didn't remember the statistics for our crime rates, but someone said that our crime rate is a lot higher than some other big cities in North Carolina. He just didn't think we have enough police officers. We are talking about cutting services due to the state and we are now annexing people and cutting services. He said that 1/6 of Asheville's population lives in Haw Creek and there are no sidewalks, no street maintenance or anything. We allocate $400,000 to parks and recreation, $400,000 to affordable housing, $380,000 to outside agencies, $400,000 for police and fire protection for festivals, and $150,000 for a division to oversee festivals – that is $1,730,000 that we allocate for other things but we can't seem to pave the streets in Asheville or take care of the people who live here. We don't even have animal control. People have animals in neighborhoods. When we annex people, it seems to me the money goes in a dark hole. I know that City staff cares about where the money goes but we have citizens that have been in the City for 20 years and they haven't had their streets paved. Yet, we are going to go out and take streets and sidewalks over and we can't even pave a street that's 20 years old. He felt there is a problem with the basic whole system of annexation. He bet that people in this city use streets and sidewalks a lot more than they use the parks and some other things in the City. Everybody uses streets. Between all the potholes and broken pavement, no wonder people can't get around. The fact is we need to make the City a little bit safer. We just wrestled with the budget. We don't know how we are going to fund street and sidewalks. We just cut $900,000 out of the budget but we are still going to keep these other things – affordable housing has $400,000 that is a sacred cow. You've got $400,000 that parks and recreation gets, but we'll sure cut $900,000 out of streets and sidewalks. When these people get annexed, he wants to look them in the eye and say we will provide service for you when we annex. My street in Ballantree was paved last year – it was the first time in 10-15 years. Annexation is important and he does think the people that don't want it is a little wrong. The City has to grow, but the City has to give you something in return and it's not doing it right now. If we are going to say these neighborhoods are qualified to be annexed then we should be qualified to take them over. And he's not sure we are right now. We need some money to do garbage pick-up. When are we going to do something for the people in Haw Creek? If we look at this proposal hard, it might work. We know in a year from now, if we annex these folks, we are going to get $400-500,000. Why can't we delegate $400,000 to streets and sidewalks and hiring a new police officer and make that etched in stone. It's just as important as the Housing Trust Fund and just as important as parks and recreation. If we fund $900,000 for streets and sidewalks – this needs to in addition to that. $1.2 million is what we need to keep our streets just in line. We need to stop worrying about keeping them level with other parts of the state, we need to get them fixed. That is the least we can do for people. I'd like to see us take $300,000 from the annexation and know right off the bat that we have that money – that it's untouchable and it's going to go into streets and sidewalks and the police. That it stays in place for three years – etched in stone, just like the Housing Trust Fund and parks and recreation. It can't be played around with. We know we are getting that now. That will help us solve some of our problems – streets. If we have to cut $900,000 out, maybe we could only cut $600,000 since we know that money is coming eventually. This locks in some money for streets and sidewalks. It creates some money for additional police patrol for downtown. Ten years from now the people that will be annexed will want their streets fixed. What are we going to do – tell them we don't have the money? That is the pattern now. We are not taking care of what we have right now. And we are going to go out and annex somebody else. He wants to vote with Council because he thinks the City has to grow. It's a tough decision for all of us to take people's money. Another thing that bothers him about this whole thing is that we annex just a small piece – where it's just enough people that can vote, but not vote out the Council. It protects us from hostile voters. If we are going to do it right, let's annex everybody that is qualified and quit playing political games here. That would keep some of the career politicians from running again. He thinks it's time for us to take a new look at how we are going to do things when we annex people. It's time to quit promising things that we know we can't deliver. There is no way we can deliver on what the staff has said. The police force isn't adequate. We haven't got the money to even pave the streets in a lot of the neighborhoods. We are cutting garbage service to people who we've annexed and blame it on the streets that are too small. Once you annex somebody that's our problem – not their problem. He asked Council that if we are going to annex, let's start looking ahead and maybe 10 years from now when we annex somebody we would have something to offer.

Councilman Mumpower felt that to imply that City Council and the people who guide us on annexation are selectively annexing people with an eye toward supporting our re-election or creating blocks of voters that would vote us out – he felt that was unkind. Nobody he knows on Council would approach it like that. He certainly doesn't feel safe from any voters. Council hears from them constantly about their frustrations. He is not voting on the basis of a need to be re-elected and he doesn't think that is what drives most of Council.

Councilman Dunn said that staff has told him that they want to protect Council from the voters. He said Council did not run to be protected. That's his point.

Councilman Mumpower said that he likes the idea to dedicate some monies that will come from the annexation for a short period of time. He didn't know if that would work with the budget structure we have or if it's pragmatic. But, he understands Councilman Dunn is trying to make an effort to say we will annex you, but we are going to try to see that some of your monies are dedicated. I would be willing to support that.

Councilman Ellis would be in favor of setting aside some money for streets and sidewalks, along with some other things. He doesn't think Council has the ability to make a commitment beyond one budget year.

Councilman Dunn said that he felt Council can commit monies. We have committed to the Housing Trust Fund, to parks and recreation, and police and fire protection for Bele Chere.

Vice-Mayor Bellamy understands Councilman Dunn's position and he is entitled to it. What you are asking us for is to make a decision based on knowledge that we don't really have.

She felt his suggestion was a good idea, after we have all the information, i.e., how can we do it, will it work.

Councilman Dunn said that his bottom line is for Council to start looking at the way we annex people.

Vice-Mayor Bellamy understands Councilman Dunn feels strongly about annexing and she feels strongly about the people who work in our day-cares, who are teachers, CNA's, non-profit organizations, bankers and where they have to live. She doesn't think it's bad to have a Housing Trust Fund to ensure that our community is representative. People who work in our community can actually afford to live in our community. She doesn't feel bad about supporting the Housing Trust Fund – it helps people. She says that when Council has discussions about taxes and other issues, the Housing Trust Fund has to be on the table as a negative thing. During the budget, everything is on the table. In fact, the Housing Trust Fund is already set to be cut for next year. She thinks we need to be fair because there are people who work hard in our community who live in affordable housing. She thinks it's insulting and frankly it needs to stop.

Councilman Dunn wasn't trying to insult people who live in affordable housing. He agrees that affordable housing is a very important priority and he's not asking to take it away, he's just saying let's have another priority of streets and sidewalks.

Mayor Worley responded to some of the comment by Councilman Dunn. There would be no zoning – there would be sprawl. We would just have a small enclave of orderly development within an urban area. We have one officer per 419 residents and that compares a little less favorably than the statewide average. The other statistic is that our crime rate is lower than the average city in North Carolina. Our fire incident rate and our deaths by fire have dropped drastically because of our high quality Fire and Building Safety Departments. If you look at the way we take in streets – we prioritize the need of every street in the City of Asheville and when we bring in an area that is annexed, those streets go into the same priority list. When they have needs in order to be repaired, they fall within the right priority. One of the keys of annexation is equal treatment. We are required when we annex an area to provide the same services – equal services and equal treatment to the annexed area that we provide the citizens already inside the City limits. You can't bring streets in an annexed area that fall low in the priority list and pave them quicker than you would those streets already in the City that have greater needs. Every one of Council is absolutely concerned about the money we put into streets and sidewalks. It's easy to say that he supports taking a portion of the annexation money and dedicating it to streets and sidewalks. Council has that capability each year when the budget is set. Of course this year we are looking at cutting $900,000 in streets and sidewalks and all of Council is concerned about that. We will continue over the next two months to be looking for ways to change that. We need to keep streets and sidewalks at the top of our priority list each year when we look at the budget with the needs that we have and the resources that we have to deal with. You talk about sacred cows and the penny that went for parks several years ago. Bear in mind that this year that penny is not dedicated. It is not a sacred cow – it is cut. The Housing Trust Fund is cut. The two-cents we dedicated to streets and sidewalks is cut. Those are one-year commitments. The fact that a prior Council said we're going to do a penny to deal with these things was just a one-year commitment at the time. It sort of sets a precedent, but each Council each year has the option to renew or not renew that commitment. Contrary to the belief of those annexed, annexation does provide them services and benefits as a part of the greater community and provides services and benefits in terms of maintaining their streets. We have even changed the rules with regard to annexing streets that are private streets that don't otherwise meet our standards. We now agree to maintain those. That is a substantial service to those residents in the private areas. On the balance, it is important for Asheville to grow and to annex not just for the money. He thinks that is one of the lesser things in the overall scheme of things. But, there is a net gain from annexation, but to maintain the cohesiveness, the services, and the safety of the entire urban area.

Councilman Mumpower said that Councilman Dunn serves on the Housing & Community Development Committee and he is passionate in his support of affordable housing. He did not hear his comments reflecting poorly upon the issue of affordable housing. What he did hear him saying is that he is concerned that it's too easy to push sidewalks and streets aside in the name of a lot of the pressing priorities and responsibilities that we have.

Mayor Worley said that he heard support for taking a good hard look and that is something Council has a year to do because if these annexations pass, we have one year before they come into effect.

A. ORDINANCE NO. 2929- ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE LEICESTER HIGHWAY AREA

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Leicester Highway area.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2003.

Staff recommends adoption of annexation ordinance for the Leicester Highway area, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2929. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

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B. ORDINANCE NO. 2930 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SHERWOOD HEIGHTS AREA

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Sherwood Heights area.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, and the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

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Staff recommends adoption of annexation ordinance for the Sherwood Heights area, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2930 This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Dunn voting "no."

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C. ORDINANCE NO. 2931 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HUNTINGTON-CHASE AREA

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Huntington-Chase area.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, and the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2003.

At the public hearing, staff recommended that the size of the Huntington Chase Annexation Area be reduced by dropping one of the larger lots out. The lot is classified for tax purposes as "agricultural vacant," is currently unimproved, and is one of two "non-urban" areas in Huntington Chase. It is not part of the Huntington Chase subdivision. The effect of this change is that it causes the qualifications of the remaining area to improve somewhat, but does not cause the area to qualify under any additional tests.

Mr. Benson said that there were questions about two of the calculations. One was the area of Huntington-Chase. Prior to the amendment the Plan listed it as 62.7 acres for the entire area. Subsequent to the amendment, we listed that area as 51.2 acres, which is 11.5 acre difference. The question was raised accurately that Buncombe County indicates this is a 12 acre parcel. So, we are removing a 12-acre parcel, but only reducing the annexation area by 11.5 acres. The reason for that is the way we calculate the area. Because a lot of the annexation areas involve roads rights-of-way, railroad rights-of-way or situations like that where the acreage is not listed under a particular parcel. Therefore, we can't sum all the parcels in the area and get an area for the annexation. He added that he thinks the numbers that they get from the Buncombe County tax records on those areas are pretty accurate but we could run into problems relying on those solely for the size of the annexation areas. So, we use our GIS software to basically plimerter the perimeter of the area. The original acreage came from plimerating the area and the revised acreage came from the same method. There are a number of ways the .5 acre could have crept in. When going around 8,000 feet of boundary, even with a very precise software program, being a pixel off here and there could amount to a couple thousand square feet. It could also be the size of the parcels shown in the GIS database didn't match exactly what was exactly shown on the survey. The only resolution to a .5 acre in an area of this size, with this much parameter, would be to do an actual field survey. The statutes do not require that and that is not something we have typically done for any of the annexation areas. The City Attorney has reviewed that issue and feels that the variance is well within the margin of error the statutes allow.

Mr. Benson said the other issue was the number of lots. Prior to the amendment, we listed 39 lots in the annexation area. We then removed the lot and listed the number of lots as 39. He explained that the number of lots for this annexation shown in the qualification pages of the annexation plan is not the actual number of lots in the area because we used a non-urban area. Originally, the 12-acre lot was indicated as a non-urban area. When you do that the statutes allow you to just remove that from the qualification calculations. So as far as the calculations were concerned, that lot wasn't in the annexation prior to the amendment. So, for the purpose of determining the percentage of developed lots and the percentage of lots under or over a certain size, that lot wasn't counted. The statutes allowed us to remove it. That is why prior to the amendment that lot had been already removed.

City Attorney Oast said that with respect to the deleted parcel he wasn't sure it was real important how big that parcel is, as long as we are satisfied that the acreage of the area that we are annexing is accurate. We are required under the law to use methods that are calculated to produce reasonably accurate results – they don't require 100% accuracy. He was satisfied this was within the legal margin of error and was satisfied that this is correct.

Councilman Mumpower understands the explanation of the issues, but he didn't think that the property owners clearly understand. He said that he believes the City Attorney in that we don't hold legal liability, but he was uncomfortable with the fog that it creates.

Ms. Nancy Williams, resident of Huntington-Chase, said that she is uncomfortable with the answers when asked if there would be any legal ramifications for postponing this decision. The statutes are clear that Council can adopt the ordinance "no sooner than the 10th day after the public hearing and not later than 90 days." The public hearing was June 11, 2002. Council has 90 days to adopt this annexation ordinance. Once Council adopts the ordinance you can affix an effective date – "no sooner than 70 days and no longer than 400 days." So Council can still keep the June 30, 2003, effective date and give the property owners more time to process it. She said it was unfortunate Council cannot proceed with annexing the others areas because there is an Integrated Annexation Services Plan. Ms. Williams said that they picked up the page amendments yesterday afternoon and immediately found the errors Mr. Benson has addressed. She stressed they had a very short time to review them and might find more errors.

Councilman Ellis stressed that at the public hearing on June 11, 2002, Mr. Benson advised Council that there would be a plan amendment to delete the 12-acre parcel and property owners were at that meeting. He felt that over two weeks was adequate time within which to review the amendment.

Staff recommends adoption of annexation ordinance for the Huntington-Chase area, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2931. This motion was seconded by Councilwoman Jones, and carried on a 6-1 vote, with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 19 – PAGE 517

D. ORDINANCE NO. 2932 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE A PORTION OF BELL ROAD

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to a portion of Bell Road.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, and the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2003.

Staff recommends adoption of annexation ordinance for a portion of Bell Road, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 2932. This motion was seconded by Councilman Ellis and carried on a 6-1, vote with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 19 – PAGE 521

E. ORDINANCE NO. 2933 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE FOREST LAKE AREA

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Forest Lake area.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, and the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2003.

Staff recommends adoption of annexation ordinance for the Forest Lake area, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2933. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 19 – PAGE 525

F. ORDINANCE NO. 2934 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE MILL STONE AREA

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Mill Stone area.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, and the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2003.

Staff recommends adoption of annexation ordinance for the Mill Stone area, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2934. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Dunn voting "no".

ORDINANCE BOOK NO. 19 – PAGE 529

G. ORDINANCE NO. 2935 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE KENSINGTON-WINDSOR AREA

Mayor Worley said that the public hearing on this matter was held on June 11, 2002.

Urban Planner Paul Benson said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Kensington-Windsor area.

On April 9, 2002, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Leicester Highway area, Sherwood Heights area, Huntington-Chase area, portion of Bell Road, Forest Lake area, Mill Stone area, and Kensington-Windsor area. The Annexation Services Plan for all of these areas was approved on April 23, 2002, and the Plan was amended on June 25, 2002. A public information meeting was held on June 3, 2002. Public hearings on each of annexations were held by City Council on June 11, 2002. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Benson said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2003.

Staff recommends adoption of annexation ordinance for the Kensington-Windsor area, with an effective date of June 30, 2003.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2935. This motion was seconded by Councilman Peterson and carried on a 6-1, vote with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 19 – PAGE 533

INFORMAL DISCUSSION AND PUBLIC COMMENT

At the request of Mayor Worley, Councilman Dunn said that he would get information for recognition of Mr. Bob Presley, NASCAR drive who contributes significantly to our community.

At the request of Councilman, City Attorney Oast said that he would provide City Council with a memorandum updating them on the police pay grievance matter.

Councilwoman Jones stated that she was sure that all of Council wants to see money budgeted for streets and sidewalks.

Mr. David Bottom, Huntington-Chase resident, felt that the residents were not given adequate time within which to review the amendments to their area.

ADJOURNMENT

Mayor Worley adjourned the meeting at 4:48 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 74

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Tuesday – July 9, 2002 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Vice-Mayor Terry M. Bellamy

INVOCATION

Councilman Peterson gave the Invocation.

I. PROCLAMATIONS:

A. MAYOR'S CUP RAFT RACE

Mayor Worley thanked Councilwoman Jones, Councilman Mumpower, Captain Mike Russell, Engineer Mark Rivord, Firefighter Jason Shoars and Firefighter Carley Cox for their substantial contribution participating in the City of Asheville's First Place Victory of the Mayor's Cup Raft Race held on June 2, 2002.

B. EXCELLENCE IN PUBLIC SERVICE AWARD WINNERS

Mayor Worley recognized the City of Asheville's Excellence in Public Service Award winners Rae Ferguson, Police Lieutenant in the Asheville Police Department, as Outstanding Manager; Jennifer Blevins, Secretary Senior in the Building Safety Department, as Outstanding Administrative Support; Keith Whittington, Park Warden in the Asheville Police Department, as Outstanding Trades, Crafts and Service Maintenance; and John B. Dankel, Crime Prevention Specialist in the Asheville Police Department as Outstanding Professional.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 25, 2002, AND THE REGULAR MEETING HELD ON JUNE 27, 2002

B. RESOLUTION NO. 02-111 – RESOLUTION AUTHORIZING THE SALE OF DISPOSAL PARCEL 218 ON WATER STREET TO LOUISE GARDNER

Summary: The consideration of a resolution authorizing the sale of Disposal Parcel 218 on Water Street to Louise Gardner in the amount of $1,500.

On June 25, 2002, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcel 218 on Weaver Street. The advertisement ran in the Asheville Citizen-Times on June 28, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Louise Gardner in the amount of $1,500 was not upset and the sale should be approved.

Community Development staff recommends adoption of the resolution authorizing the sale of Disposal Parcel 218 on Water Street to Louise Gardner in the amount of $1,500.

RESOLUTION BOOK NO. 27 – PAGE 195

C. RESOLUTION NO. 02-112 – RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE FOR A COMMUNITY MEETING ON TUESDAY, JULY 30, 2002, BEGINNING AT 7:00 P.M. IN THE EAST ASHEVILLE COMMUNITY CENTER LOCATED AT 906 TUNNEL ROAD, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 27 – PAGE 116

D. ORDINANCE NO. 2936 - BUDGET AMENDMENT FOR THE CULTURAL RENAISSANCE PROGRAM'S SUMMER ARTS PROGRAM AND THE MURAL AT REID COMMUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $20,000, for the Cultural Renaissance Program's Summer Arts Program and the Mural at Reid Community Center.

The City of Asheville applied for grant funds in February-June 2002 for two new Cultural Renaissance Program projects. Grants were recently awarded in the amount of $15,000, which are supplemented with $5,000 in matching funds already provided in the Parks and Recreation Department budget.

Cultural Renaissance Arts Program – A budget amendment, in the amount of $10,000, from a grant from the Wachovia Foundation to establish a budget for the Arts Program. Funds will be used for the operating cost of the program.

Cultural Renaissance Reid Mural– A budget amendment, in the amount of $5,000, from a grant from the North Carolina Arts Council to be matched with $5,000 in existing funds in the Parks and Recreation Department budget to establish a budget for the Reid Mural public art project. Funds will be used for the operating cost of the project.

The Parks and Recreation Department recommends City Council approve the budget amendment to establish budgets for the Cultural Renaissance Program's Summer Arts Program and the Mural at Reid Community Center.

ORDINANCE BOOK NO. [illegible] 20 – PAGE 1

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING 453 WEST HAYWOOD STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2937 – ORDINANCE REZONING PROPERTY AT 453 WEST HAYWOOD STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:17 p.m.

Mr. Carter Pettibone, Urban Planner, said that this is the consideration of an ordinance to rezone property located at northeast corner of West Haywood Street and Roberts Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on June 28 and July 5, 2002.

Mr. Diego Apunte, applicant, is requesting the rezoning of 0.18 acre (PIN No. 9638.08-98-2613) to allow for the establishment of a residential duplex on the property. The purpose of the RM-16 District is to permit a full range of high-density multi-family housing types.

This property is located in the City limits and has street frontage on both West Haywood Street and Roberts Street, with an existing house on the property oriented toward West Haywood. Development in the area is fairly sparse with the properties immediately adjacent to the property and across the streets vacant. Properties to the east and south are zoned RM-8 while the property to the west across Roberts Street is Commercial Industrial. The property directly north is a property that was recently rezoned to Community Business I with a conditional use permit to allow for a mixed-use building, but is yet to be developed.

Even though the property is currently zoned RM-8, which is intended for multi-family residential dwellings, the small lot size and minimum lot requirements of the district only allow a single-family residence on the property. Rezoning the property to RM-16 would provide the opportunity to convert the existing building into a duplex since the minimum lot size per unit would be cut in half. And, due to the property's small size, the maximum number of units that could be realized is two if rezoned.

This site would also help provide a transition from the Commercial Industrial and Community Business I/Conditional Use properties to the north and west to the lower intensity residential uses in the RM-8 district to the east.

In consideration of the shape and size of the lot, the existing building on the site, and the adjoining zoning and land uses in the area around the site, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the northeast corner of Haywood Street and Roberts Street from RM-8 to RM-16. The Planning and Development staff also recommends approval of the requested rezoning.

Upon inquiry of Councilman Peterson, City Attorney Oast explained why he didn't feel that this was a spot zoning issue.

Mayor Worley closed the public hearing at 5:24 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2937. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. [illegible] 20 - PAGE 4

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

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A. RESOLUTION NO. 02-113 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH H&M CONSTRUCTORS FOR RENOVATIONS TO FIRE STATION 3

RESOLUTION NO. 02-114 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JERRY PAYNE CONSTRUCTION COMPANY FOR RENOVATIONS TO FIRE STATION 8

Director of Parks and Recreation Irby Brinson said that this is the consideration of a resolution authorizing the City Manager to enter into contracts for the renovation of Fire Station #3 and #8.

In an effort to maintain City facilities, the City Council has approved funds for renovations to Fire Stations # 3 and #8. City staff solicited sealed bids from both minority and non-minority general contractors and received qualified bids from seven general contractors, none of which were minority contractors, for renovations that include new roofing, heating and air conditioning systems and more useable space. City staff has reviewed all bids received and determined that the lowest qualified bidder for each Fire Station is as follows:

Fire Station #3 - H & M Constructors a division of M. B. Haynes Corporation	Total bid amount	$ 92,650.00
Fire Station #8 - Jerry Payne Construction Company	Total bid amount	$ 274,870.00

City staff recommends acceptance of the total bid amount for each Fire Station.

Approved funding is available in the capital improvement project account to pay for these renovations.

The Parks and Recreation Department, in conjunction with the Fire Department, requests City Council authorize the City Manager to enter into a contract with H & M Constructors for Fire Station #3 in the amount of $92,650.00; and with Jerry Payne Construction Company for Fire Station #8 in the amount of $274,870.00.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilman Ellis moved for the adoption of Resolution No. 02-113. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 197

Councilman Mumpower moved for the adoption of Resolution No. 02-114. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 198

B. RESOLUTION NO. 02-115 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH WHEELER CONSTRUCTION COMPANY INC. FOR THE BREVARD ROAD ANNEXATION AREA PHASE III – CONTRACT "3" SANITARY SEWER SYSTEM IMPROVEMENTS

Mr. John Echeverri, Assistant Engineering Director said that this is the consideration of a resolution awarding the contract for Brevard Road Annexation Area Phase III Contract "3" Sanitary Sewer System Improvements to Wheeler Construction Company, Inc., in the amount of $167,680.00.

This project is the last Phase of the Brevard Road Annexation Area. It is called the Brevard Road Annexation Area Phase III - Contract "3" Sanitary Sewer System Improvements and consists of the installation of approximately 1,760 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened five (5) bids on Tuesday, June 18, 2002, 2000, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wheeler Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $ 167,680.00. The Engineer's estimate for this project was $201,061.15.

Funding for this project was included in the Fiscal Year 2001/2002 Capital Improvement Program and will be financed with monies generated by General Obligation Bonds Series 2000 of December, 2000.

Wheeler Construction Company, Inc., has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt a resolution awarding the bid for Brevard Road Annexation Area - Phase III - Contract "3" Sewer System Improvements to Wheeler Construction Company, Inc., the responsible low bidder and authorize the City Manager to execute all necessary agreements and contracts.

Upon inquiry of Councilman Peterson, Mr. Echeverri explained the different areas for the sewer line work.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 02-115. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 199

C. RESOLUTION NO. 02-116 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Mayor Worley said that the terms of Robert Swan, Richard Bowman and Denise Goodson, as members on the Civic Center Commission, expired on June 30, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Goodson to serve an additional three year term, term to expire June 30, 2005, or until her successor has been appointed.

On July 9, 2002, City Council interviewed Max Alexander.

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Kathryn Nash is a candidate, however, she did not need to be interviewed. In addition, Leonard Jones is a candidate, however, Mr. Jones was unable to take off work for the interview.

Councilman Peterson moved to (1) reappoint Denise Goodson to serve an additional three year term, term to expire June 30, 2005, or until her successor has been appointed, and (2) to appoint Max Alexander and Kathryn Nash to each serve a three year term respectively, terms to expire June 30, 2005, or until their successors have been appointed. This motion was seconded by Mayor Worley and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 206

D. RESOLUTION NO. 02-117 - RESOLUTION APPOINTING MEMBERS TO THE CRIME-STOPPERS BOARD

Mayor Worley said that the terms of Josefine Matty and Leslie Hennessee, as members on the Asheville-Buncombe Crime Stoppers Board of Directors, expired on June 30, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Hennessee to serve an additional three year term, term to expire June 30, 2005, or until her successor has been appointed.

On July 9, 2002, City Council interviewed Bill McGuire.

Councilman Ellis moved to (1) reappoint Leslie Hennessee to serve an additional three year term, term to expire June 30, 2005, or until her successor has been appointed, and (2) appoint Bill McGuire to serve a three year term, term to expire June 30, 2005, or until his successor has been appointed. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 207

E. RESOLUTION NO. 02-118 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Mayor Worley said that the terms of Ann Babcock, Susan Roderick, Charles Bullman and Jim Drummond, as members on the Recreation Board, expired on June 30, 2002.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to (1) reappoint Ms. Babcock and Mr. Drummond to each serve an additional three year term, terms to expire June 30, 2005, or until their successors have been appointed; and (2) appoint Chuck Cloninger to serve a three year term, term to expire June 30, 2005,or until his successor has been appointed.

On June 18, 2002, City Council instructed the City Clerk to arrange for an interview of Christopher Barkley. A phone message was left on June 19 for Mr. Barkley to call the City Clerk and on June 26, 2002, a letter was sent to Mr. Barkley asking him to contact the City Clerk to arrange for an interview. As of July 9, no response has been received.

Councilman Peterson moved to (1) reappoint Ms. Babcock, Mr. Bullman and Mr. Drummond to each serve an additional three year term, terms to expire June 30, 2005, or until their successors have been appointed; and (2) appoint Chuck Cloninger to serve a three year term, term to expire June 30, 2005; or until his successor has been appointed. This motion was seconded by Councilman Ellis and carried unanimously

VI. OTHER BUSINESS:

HOUSING AUTHORITY BOARD TERMS

Mayor Worley explained that our legislative delegation has an informal rule of not taking up anything controversial, in terms of local acts, in the Short Session. The City of Asheville has requested that the terms of the Housing Authority Board members be reduced from five years to three years. The Housing Authority disagrees. Therefore, Councilman Mumpower moved to ask our legislative delegation to delay consideration, by whatever means appropriate, on the City of Asheville's request until the Session of the General Assembly begins in 2003, in order for the City Council and Housing Authority Board members to discuss the matter. This motion was seconded by Councilman Ellis and carried unanimously.

POLICE PAY GRIEVANCE

Upon inquiry of Councilman Dunn and after discussion of the matter, City Manager Westbrook said that City Council has previously given staff guidance on how to proceed in the police pay matter and they are proceeding in accordance with those instructions. City Attorney Oast said that he would be prepared to update City Council at the next worksession in closed session since this is a legal matter and an attorney represents the officers. City Attorney Oast did point out that the City remains open to discussion on this matter.

CLAIMS

The following claims were received by the City of Asheville during the period of June 21 – July 3, 2002: Rick Haynes (Fire), Danny Shope (Police), Cheryl Simcox (Inspections), Gold Star Coatings (Engineering), Dana Dill (Water), Lisa Lindsay (Water), Bonnie Love (Transit Services), Christopher White (Sanitation) and Dan Throgmorton (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

LAWSUIT

The City filed a lawsuit on July 9, 2002, against Mattie Giles. The nature of the proceeding is a complaint, injunction, order of abatement for removal of aesthetic junked vehicle, which is in violation of Section 10-31 of the City of Asheville Code of Ordinances. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

COMMENTS BY SHARON MARTIN

Ms. Sharon Martin, representing the Community Supported Development, read a prepared statement in which she felt that at the City Council meeting on June 25, 2002, members of the public were subject to a discriminatory policy in which members of the public who were carrying backpacks were told they would have to leave their bags outside of the Council Chamber, while all those carrying purses and briefcases were allowed into the Chamber with no questions asked. She was given the response that the policy was for public safety reasons. She felt the policy singles out a single segment of our community. In trying to find out the reason for this discriminatory practice, she spoke to Police Chief Will Annarino who she felt treated her disrespectfully. She asked Council for a fair and equitable policy, where all members of the community are treated the same with respect to bags in the Council Chamber. She also asked

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Council consider how our public officials interact with members of the public. She asked Council to work to insure that the values of the Police Department are upheld.

City Manager Westbrook said that he would investigate the concerns raised by Ms. Martin with the Police Chief.

COMMENTS BY MICKEY MAHAFFEY

Mr. Mickey Mahaffey said that he was disappointed with the progress of the Citizen Study Committee on Campaign Finance Reform. He felt that the Committee members, who have done their best, were put into a difficult situation since they had very little background and knowledge on the subject matter in which they are supposed to be studying.

Councilman Mumpower said that City Council made an effort to appoint a diverse committee who wanted to make a difference and attack the hard issues. The Committee members are moving forward in a positive way and will be reporting to Council in the near future with their progress.

COMMENTS BY STEWART DAVID

Mr. Stewart David, President of Carolina Animal Action, asked City Council to review the policy that limits the number of non-profit groups that are allowed to sell items at their booths during the Bele Chere Festival. He said that last year 15 non-profit groups were allowed booths and this year that number has been reduced to ten – Carolina Animal Action was not allowed this year. He explained that a lottery was used to select the ten non-profits. However, he said that the Bele Chere Festival is their number one way of community outreach. It allows them to bring in donations, hand out literature, network and bring in new members. He felt that since there is no shortage of street space, non-profits should not be excluded.

Mayor Worley said that he would check into that policy decision.

COMMENTS BY ALTHEA GOODE

Ms. Althea Goode, resident on Eastview Avenue, urged Mayor Worley to appoint a person with empathy and compassion to the Housing Authority Board of Directors. She felt the Board members need to talk and visit people who live in public housing to find out their needs. She favored reducing the Housing Authority Board terms from five years to three years.

COMMENTS BY GABRIEL FERRARI

Mr. Gabriel Ferrari, resident on Sulphur Springs Road, briefed City Council on problems he is encountering as a result of a tattoo business across the street from his home. City Manager Westbrook said that since this is a zoning issue, he would have our Planning Department contact Mr. Ferrari regarding his concerns.

COMMENTS BY GRANT MILLIN

Mr. Grant Millin urged City Council to amend Resolution No. 01-144 (near the anniversary of September 11) condemning the terrorist attack and supporting the President. He also asked Council to adopt a bill of rights defense resolution similar to Carrboro, North Carolina. Mr. Millin submitted information for the record.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 16, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Budget Amendment for Azalea Road Park

Summary: The consideration of a budget amendment for Azalea Road Park totaling $319,990.89 received from a grant in the amount of $249,165 from the N. C. Dept. of Environment and Natural Resources and from private donations in the amount of $70,825.

The City of Asheville applied for funds in January 2002 for a grant from the N.C. Dept. of Environment and Natural Resources, Department of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund. The grant was recently awarded in the amount of $249,165. The City has also received the first two installments of a $350,000 gift from the Lewis Family Foundation at $70,825.89.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for development of Azalea Road Park.

Ms. Debbie Ivester, Superintendent of Administration, responded to questions from Vice-Mayor Bellamy.

Endorsement of TEA 21 Grants

Summary: The consideration of (1) a resolution authorizing the City Manager to apply to the N. C. Dept. of Transportation, through the Transportation Enhancement Program, for a grant for sidewalk improvements on New Haw Creek Road/Avon Road; and (2) a resolution for City sponsorship of grant applications from Pack Square Conservancy and Mountain Housing Opportunities.

Every two years, the N. C. Dept. of Transportation (NCDOT) puts out a call for applications for transportation enhancement funds. These are federal funds for transportation projects like sidewalks, greenways, streetscape improvements, beautification, and water quality improvements. The funds are part of the federal legislation that authorizes transportation funding known as TEA-21. If a project is awarded through the state selection process, costs are reimbursed at a rate of eighty percent (80%). The local match is twenty percent (20%).

Any public or private agency may apply for these funds, but each application must have a local government agency as the sponsor. In past years, the City of Asheville has received enhancements funds for projects such as the Urban Trail and the Weaver Boulevard Greenway. This year, the City of Asheville has prepared one application for sidewalk improvements on New Haw Creek Road and Avon Road. If awarded, the City of Asheville will provide the local match for the sidewalk project on New Haw Creek Road/Avon Road. This project was developed cooperatively with the Haw Creek Pedestrian Task Force over the past year. Staff has already surveyed and designed this project, and we are now waiting for a funding source for construction.

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In addition to the application from the City of Asheville, two outside agencies have applied for funding and have asked for sponsorship from the City of Asheville. The Pack Square Conservancy has applied for funds for Pack Square Streetscape Improvements and Mountain Housing Opportunities has applied for funds to construct a greenway and streetscape improvements in the West End/Clingman Avenue neighborhood. The City of Asheville is not responsible for the local match for the applications from outside agencies. The match will be provided by the applying agency. For these applications, the City of Asheville will be responsible for maintenance of any improvements that fall within public right of way, and may provide staff support for project implementation.

Listed below are summaries of the three grant applications presented for consideration.

1. **New Haw Creek Road/Avon Road Sidewalk Improvements**
   City of Asheville Match: $195,000
   Enhancement Funds Requested: 312,044
   Total Project Cost: $507,044

   Project Description: The proposed project entails construction of sidewalk, curb, gutter and storm drainage along the east side of Avon Road from the entrance of the East Asheville Library and Community Center to the entrance of Haw Creek Park; along the west side of Avon Road from the entrance of Haw Creek Park to the intersection with Beverly Road; and along the south side of New Haw Creek Road from the intersection with Arco Road to the intersection with Beverly Road. The project will require the acquisition of twenty-one (21) right-of-way easements.

2. **Pack Square Streetscape Improvements**
   City of Asheville Match: None
   Match by Pack Square Conservancy: $125,000
   Enhancements Funds Requested: $250,000 (street improvements)
   Total Project Cost: $2,500,000 (total project)

   Project Description: Pack Square Renaissance is a significant civic improvement project in the historic center of downtown Asheville, N.C. The project will "knit" together more than six acres of fragmented public property into a major new public park and revitalized historic square. A primary focus of the project is to provide more balance to the accommodation of both pedestrians and vehicles. The project includes the reorganization of multiple small green spaces into an important new " town green" as well as enhanced pedestrian amenities such as: new plazas, terraces, and sidewalks. Streetscape features such as street trees, benches and lighting will accompany public art, performance stages and water features. This application is to assist in the pedestrian enhancement/streetscape portion of the Year One improvements – the reorganization of the existing City-County Plaza into the major portion of the new "green" as well as two "forecourts" directly adjacent to both the Buncombe County Courthouse and the Asheville City Hall. Redesign and enhancement of pedestrian and vehicular circulation will be key components of this portion of the overall project.

3. **Clingman Avenue Streetscape and Greenway**
   City of Asheville Match: None
   Match by Mountain Housing Opportunities (and other sources): $243,150
   Enhancement Funds Requested: $266,550
   Total Project Cost: $509,700 (phase I and II)

   Project Description: This project proposes multi-modal transportation enhancements to Clingman Avenue and its adjacent greenway, a gateway corridor that connects downtown

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Asheville to its riverfront and West Asheville. The project area, approximately 25 acres, encompasses approximately 2000' of frontage on Clingman Avenue and Haywood Road and the adjacent right of way, extending from its intersection with Hilliard Street to the north and down to the West Asheville Bridge. This corridor includes Clingman Forest, an approximately 10 acre urban riparian forest parallel to Clingman Avenue to the east and extending to Aston Park to the north, the YWCA and Asheville Middle School to the East, and river warehouse district immediately to the south. Funding would provide for streetscape enhancements to Clingman Avenue, the historic heart of the racially and economically diverse West End/Clingman Avenue neighborhood that is currently undergoing dramatic revitalization. It would also support the development of a greenway parallel to Clingman Avenue through Clingman Forest, including innovative watershed-based stormwater management currently being developed. This project would build on existing broad based partnerships and community support to implement recommendations in the *City of Asheville 2010 Plan*, the *Asheville Greenways Master Plan*, and the award-winning *2001 West End/Clingman Avenue Neighborhood Citizens Master Plan*.

The TEA-21 Enhancements Grant Applications will be reviewed and awarded in the Fall of 2002.

City staff recommends City Council (1) approve a resolution authorizing the City Manager to apply to the State of North Carolina for a grant for New Haw Creek Road and Avon Road Sidewalk Improvements; and (2) approve a resolution designating the City of Asheville as the local government sponsor for grant applications for Pack Square Streetscape Improvements and Clingman Avenue Streetscape and Greenway.

Vice-Mayor Bellamy was pleased that the City is making a good effort to construct sidewalks in Haw Creek.

Upon inquiry of Councilwoman Jones, Mr. Dan Baechtold, Metropolitan Planning Organization Coordinator, said that the City should be notified in January of 2003 if they are awarded the grant.

After a brief discussion about the Pack Square Renaissance Project, Mayor Worley said that an agreement has been signed with the Pack Square Conservancy to move forward with the project and a copy of that agreement will be provided to Council. It was the consensus of Council to ask Pack Square Conservancy Inc. to update City Council at a future worksession and invite the Public Art Board to attend the meeting as well.

Acceptance of New Street Name "Applewood Drive"

Summary: The consideration of a resolution accepting the new proposed street name "Applewood Drive."

GPD of NC Inc., owner of lots in Applewood Subdivision, has petitioned the City of Asheville to accept the street name " Applewood Drive." The new street will begin at New Haw Creek Road and end at cul-de-sac on Applewood Drive.

City staff recommends adoption of the resolution accepting the new proposed street name "Applewood Drive."

Interlocal Agreement with the City of Durham, N.C.

Summary: The consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the City of Durham for the procurement of buses and bus equipment.

It is the plan of the Transit Services Department to replace several of the existing fleet each year with more modern low floor buses, pending state and federal funding. The Transit Services Department has therefore participated in a statewide effort to standardize transit bus purchases over the next two years. This is intended to radically diminish the lead time necessary to purchase buses, and to use the prospect of bulk purchases to intensify competition and obtain a lower bid from the bus manufacturers.

The lead agency, for the purpose of bidding the bus purchase, is the City of Durham. In order for Asheville to participate in this bid, there must be an interlocal agreement signed between the City of Asheville and the City of Durham. This agreement will not commit the City of Asheville to purchase any buses, but it allows the City to purchase buses off of the Durham bid if so desired. The City may also conduct its own bid process and purchase it's own buses if it wants to.

City staff recommends City Council authorize the City Manager to sign an Interlocal Agreement with the City of Durham, North Carolina.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON ASHEVILLE'S ISO BUILDING CODE EFFECTIVENESS RATING

Director of Building Safety Terry Summey said that on March 6, 2002, the City of Asheville was re-evaluated for a five (5) year renewal of its Insurance Service Office (ISO) Building-Code Effectiveness Grading Schedule (BCEGS) Ratings; the City Manager was notified of our maintaining our ratings of "2" on June 6, 2002. The ratings continue to be the "best in the State."

As a result of Hurricane Andrew in 1992 knocking the wind out of property/casualty insurers that covered homes and businesses, it was recognized that effective building code enforcement could lower insured losses. The Insurance Services Office (ISO), in cooperation with numerous organizations, developed the Building Code Effectiveness Grading Schedule (BCEGS). Studies of various catastrophes graphically demonstrated that effective code enforcement reduces loss in catastrophic events. Experts estimate that Hurricane Andrew losses could have been reduced 30% to 55% if building codes had been strictly enforced.

Since 1995, ISO has classified over 9,000 communities in the United States. The City of Asheville was evaluated in mid 1995 and received a rating of "4" for both new commercial and residential construction. Normally jurisdictions are evaluated every five years unless significant changes occur within the jurisdiction's inspection department. Due to changes, the City was evaluated again in November 1997 and received new ratings of "2," which were effective on May 1, 1998. In the most recent five (5) year re-evaluation of the City, the City maintained its "2" status. We did gain 6 points; with a score of 91.43, we came within 1.57 points of obtaining a rating of "1". Currently only 2 jurisdictions in the country have obtained a rating of "1", and 78 jurisdictions have obtained a rating of "2."

The benefits of an excellent "BCEGS" rating include the following:

- Using up-to-date building codes;
- Better building departments and improved code enforcement;

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- Catastrophe-resistant buildings;
- Reduced property losses from catastrophes; and
- A reduction in the economic and social disruption that results from catastrophes' serious and widespread destruction.

Staff has also appealed the score, and is still striving for a "1." Based upon a discussion with the ISO evaluator on July 2, several scores should change and we will be .75 points away from a "1." He will be visiting the City again in late July to re-examine the documentation.

No action by City Council is required. Due to rating credit tables not currently developed for North Carolina, staff will report back hopefully in the near future with any insurance cost savings to property owners as a result of the ratings. Staff will also be notifying Council of the final ISO ratings as a result of the appeal.

Councilman Ellis said that he had received high compliments from a developer in the area about Asheville's professional Building Safety Department. In the conversation, however, the developer questioned a landscape ordinance requirement. City Manager Westbrook said that he would obtain further information from Councilman Ellis and investigate the matter.

Vice-Mayor Bellamy felt that our "best in the State" ratings should be acknowledged on our Government Channel.

Councilman Dunn was concerned about the City imposing stricter regulations on homeowners. He was not saying that safer buildings are not important, however, he wondered if the City is imposing too many regulations, especially since he has talked to insurance companies and they have said that they will not use ISO ratings with regard to insurance costs.

SPECIAL MEETING FOR FINAL BUDGET ADOPTION

Due to a Council member being out of town on August 27, 2002, the date the final budget was scheduled to be adopted, it was the consensus of Council to schedule a special meeting on Thursday, August 29, 2002, at 5:00 p.m. to consider the final adoption of the 2002-03 Annual Operating Budget. In addition, it was the consensus of Council to have a budget worksession on Tuesday, August 20, 2002.

BOARDS/COMMISSIONS

It was the consensus of City Council to postpone filling two vacancies on the Historic Resources Commission until they receive a report from the City Manager on an overall review of the Asheville-Buncombe Historic Resources Commission, the City's Historic Resources Division and the funding. City Manager Westbrook said that he would have a report within a couple of months.

It was the consensus of City Council to confirm the reappointments of Clara Jeter, Claudia Thomas and Marvin Vierra on the Minority Business Commission. In addition, there will continue to be a vacancy for a minority businessperson on the Commission and Council will wait until they receive a recommendation from the Commission.

It was the consensus of City Council to reappoint Stephanie Cooper, James Lewis and Alexander Maitland to the Police Officers and Firefighters Disability Review Board.

It was the consensus of City Council to interview Louise Glickman, Joe Helms, Barbara Cary and Lois Mills for a vacancy on the Public Art Board.

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HEERY INTERNATIONAL FINAL CIVIC CENTER REPORT

Chair of the Future of the Civic Center Task Force Edward Hay said that it is extremely important to have a plan of action in order to move forward with whatever City Council chooses to do with the Civic Center.

Mayor Worley said that Council received a verbal final report from Heery International back in March of 2002 and received the written report in April. He acknowledged that there are degrees of concern regarding the Civic Center. Funding is highly dependent on assistance of our local delegation and the climate at the State level for funding is not very conducive for this year and we don't know what next year will bring. He felt that Council needs to discuss the issue at his point rather than have any final decision.

Mayor Worley expressed his personal overview of the issue in that the concept is possible and feasible to keep the arena and entertainment in the same location. It adds banquet, reception and mixed use areas; and maintains the downtown location.

He said objections regarding location has always been controversial. Access – you can't get there; and parking – there's not enough. Regarding access, people want the arena in a location on the interstate where they can get back home quickly. He reviewed with Council an aerial photo, which showed there are a multitude of ways to exit the Civic Center from the downtown location. Regarding parking, there are three parking garages within easy walking distance, another parking garage is being built, and there is on-street parking. He then reviewed with Council an aerial photo that showed the parking available around the Civic Center location.

Other concerns include (1) Cost – can we as a community finance the cost? We can work with architects to reduce costs, seek funding sources from the state, work with private sector to fund portion, call upon community to contribute to the entertainment portion of the project, and be realistic about our state's economic condition; (2) Community Consensus – other efforts are underway in the community which include a performing arts at another location; UNC-A discussed as potential arena site; and craft center or museum discussed for Civic Center site behind arena.

Although many think the arena should be moved, there is an effort underway to locate a sports complex at another site.

How can we move forward? We can work with serious efforts for performing arts. If others succeed in financing and construction, then we all have succeeded and can move to alternatives. We can work with ideas for a craft center or museum. If one idea is successful elsewhere, it will nurture others. We can also support a privately funded sports complex. If it succeeds, many of the City's burdens will be relieved.

In conclusion, Mayor Worley felt we have an excellent concept that will give us a modern arena; give us a new performing arts center; give us exhibition, banquet and meeting space; allow us to attract conventions and conferences; maintain a vibrant downtown that generates sales tax dollars and growing property tax values; and is flexible if one or more other efforts succeed.

On behalf of City Council, Mayor Worley thanked Mr. Richard Fort and his firm of Pearce, Brinkley Cease & Lee, P.A., (PBC & L) for preparing an alternative vision of urban design improvements to the area of town adjacent to and including the existing Civic Center. Said alternative proposal was uncommissioned and City Council appreciated the time, effort and costs associated with it.

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All of Council agreed that funding was a major obstacle in the proposal and that there was not a clear consensus on a plan for the Civic Center.

Mr. Hay stressed that the options need to be narrowed down so there is a concept you can work towards. Then you can start building community consensus and look for funding options.

Councilwoman Jones felt that the community needs to step forward within a timeframe so that the City will know what they can depend on.

Councilman Mumpower agreed that it would be nice to commit to a plan, but it has to be a plan of reasonable consensus. He suggested Council add this item to their monthly worksession meetings for updates. In addition, he suggested the Mayor appoint Council members to actively pursue some options and sort out the well-intended wishes from those which are workable realities that the City can help develop.

Vice-Mayor Bellamy felt the City should put the question on the November ballot and ask the community what they want.

Councilman Peterson did not feel like there was a consensus on Council for the Heery concept or anything else. Since he personally did not support the Heery concept, he suggested Council look at other options, some of which were in the recent proposal submitted by PBC & L. He agreed that we do need a plan of action, however, there is no consensus on what that plan needs to be.

Mr. Hay noted that the Future of the Civic Center Task Force's recommendation was to move forward with the following: CP-1 ($72.8 million) site improvements including utilities, grading and roadwork; Lexington Street motor court; performance center auditorium; lower bowl seating and lower concourse in arena; rotunda; and service plaza for areas; and CP-2 ($13.1 million) conversion of the Thomas Wolfe Auditorium to great hall ballroom, including kitchen and support; and expansion and improvement of arena support and operations spaces. This would be a total cost of $85.9 million. The rest of the $115 million price tag were enhancements.

After discussion, it was the consensus of Council to postpone action on this matter for at least 5-6 months, with the possibility of developing legislation to go to our local delegation during their Long Session. In the meantime, Mayor Worley will contact individual Council members to assign them to actively pursue options and work with the Task Force members for background information. This period of time will also give other groups the opportunity to come forward with solid plans.

CLOSED SESSION

At 5:27 p.m., Councilman Mumpower moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: City of Asheville, Kenneth Bowman, Joseph Boerner and others. This is the City's appeal of the Civil Service Board decision on the police officer pay grievance. There are about 25 names and the City Attorney has a written list of the names if anyone wants to see it. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Ellis and carried unanimously.

At 6:35 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:35 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 23, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Vice-Mayor Bellamy asked that Consent Agenda Item "D" be removed from the Consent Agenda due to her conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 9, 2002, AND THE WORKSESSION HELD ON JULY 16, 2002

B. ORDINANCE NO. 2938 - BUDGET AMENDMENT FOR AZALEA ROAD PARK

Summary: The consideration of a budget amendment for Azalea Road Park totaling $319,990.89 received from a grant in the amount of $249,165 from the N. C. Dept. of Environment and Natural Resources and from private donations in the amount of $70,825.

The City of Asheville applied for funds in January 2002 for a grant from the N.C. Dept. of Environment and Natural Resources, Department of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund. The grant was recently awarded in the amount of $249,165. The City has also received the first two installments of a $350,000 gift from the Lewis Family Foundation at $70,825.89.

The Parks and Recreation Department recommends City Council approve the budget amendment to increase the budget for development of Azalea Road Park.

ORDINANCE BOOK NO. 20 – PAGE 6

C. RESOLUTION NO. 02-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO THE N.C. DEPT. OF TRANSPORTATION FOR A GRANT FOR SIDEWALK IMPROVEMENTS ON NEW HAW CREEK ROAD/AVON ROAD

Summary: The consideration of (1) a resolution authorizing the City Manager to apply to the N. C. Dept. of Transportation, through the Transportation Enhancement Program, for a grant for sidewalk improvements on New Haw Creek Road/Avon Road; and (2) a resolution for City sponsorship of grant applications from Pack Square Conservancy and Mountain Housing Opportunities.

Every two years, the N. C. Dept. of Transportation (NCDOT) puts out a call for applications for transportation enhancement funds. These are federal funds for transportation projects like sidewalks, greenways, streetscape improvements, beautification, and water quality improvements. The funds are part of the federal legislation that authorizes transportation funding known as TEA-21. If a project is awarded through the state selection process, costs are reimbursed at a rate of eighty percent (80%). The local match is twenty percent (20%).

Any public or private agency may apply for these funds, but each application must have a local government agency as the sponsor. In past years, the City of Asheville has received enhancements funds for projects such as the Urban Trail and the Weaver Boulevard Greenway. This year, the City of Asheville has prepared one application for sidewalk improvements on New Haw Creek Road and Avon Road. If awarded, the City of Asheville will provide the local match for the sidewalk project on New Haw Creek Road/Avon Road. This project was developed cooperatively with the Haw Creek Pedestrian Task Force over the past year. Staff has already surveyed and designed this project, and we are now waiting for a funding source for construction.

In addition to the application from the City of Asheville, two outside agencies have applied for funding and have asked for sponsorship from the City of Asheville. The Pack Square Conservancy has applied for funds for Pack Square Streetscape Improvements and Mountain Housing Opportunities has applied for funds to construct a greenway and streetscape improvements in the West End/Clingman Avenue neighborhood. The City of Asheville is not responsible for the local match for the applications from outside agencies. The match will be provided by the applying agency. For these applications, the City of Asheville will be responsible for maintenance of any improvements that fall within public right of way, and may provide staff support for project implementation.

Listed below are summaries of the three grant applications presented for consideration.

1. New Haw Creek Road/Avon Road Sidewalk Improvements
   City of Asheville Match: $195,000
   Enhancement Funds Requested: 312,044
   Total Project Cost: $507,044

   Project Description: The proposed project entails construction of sidewalk, curb, gutter and storm drainage along the east side of Avon Road from the entrance of the East Asheville Library and Community Center to the entrance of Haw Creek Park; along the west side of Avon Road from the entrance of Haw Creek Park to the intersection with Beverly Road; and along the south side of New Haw Creek Road from the intersection with Arco Road to the intersection with Beverly Road. The project will require the acquisition of twenty-one (21) right-of-way easements.

2. Pack Square Streetscape Improvements
   City of Asheville Match: None
   Match by Pack Square Conservancy: $125,000
   Enhancements Funds Requested: $250,000 (street improvements)
   Total Project Cost: $2,500,000 (total project)

   Project Description: Pack Square Renaissance is a significant civic improvement project in the historic center of downtown Asheville, N.C. The project will "knit" together more than six acres of fragmented public property into a major new public park and revitalized historic square. A primary focus of the project is to provide more balance to the accommodation of both pedestrians and vehicles. The project includes the reorganization of multiple small green spaces into an important new " town green" as well as enhanced pedestrian amenities such as: new plazas, terraces, and sidewalks. Streetscape features such as street trees, benches and lighting will accompany public art, performance stages and water features. This application is to assist in the pedestrian enhancement/streetscape portion of the Year One improvements – the reorganization of the existing City-County Plaza into the major portion of the new "green" as well as two "forecourts" directly adjacent to both the Buncombe County Courthouse and the Asheville City Hall. Redesign and enhancement of pedestrian and vehicular circulation will be key components of this portion of the overall project.

3. Clingman Avenue Streetscape and Greenway
City of Asheville Match: None
Match by Mountain Housing Opportunities (and other sources): $243,150
Enhancement Funds Requested: $266,550
Total Project Cost: $509,700 (phase I and II)

Project Description: This project proposes multi-modal transportation enhancements to Clingman Avenue and its adjacent greenway, a gateway corridor that connects downtown Asheville to its riverfront and West Asheville. The project area, approximately 25 acres, encompasses approximately 2000' of frontage on Clingman Avenue and Haywood Road and the adjacent right of way, extending from its intersection with Hilliard Street to the north and down to the West Asheville Bridge. This corridor includes Clingman Forest, an approximately 10 acre urban riparian forest parallel to Clingman Avenue to the east and extending to Aston Park to the north, the YWCA and Asheville Middle School to the East, and river warehouse district immediately to the south. Funding would provide for streetscape enhancements to Clingman Avenue, the historic heart of the racially and economically diverse West End/Clingman Avenue neighborhood that is currently undergoing dramatic revitalization. It would also support the development of a greenway parallel to Clingman Avenue through Clingman Forest, including innovative watershed-based stormwater management currently being developed. This project would build on existing broad based partnerships and community support to implement recommendations in the *City of Asheville 2010 Plan*, the *Asheville Greenways Master Plan*, and the award-winning *2001 West End/Clingman Avenue Neighborhood Citizens Master Plan*.

The TEA-21 Enhancements Grant Applications will be reviewed and awarded in the Fall of 2002.

City staff recommends City Council (1) approve a resolution authorizing the City Manager to apply to the State of North Carolina for a grant for New Haw Creek Road and Avon Road Sidewalk Improvements; and (2) approve a resolution designating the City of Asheville as the local government sponsor for grant applications for Pack Square Streetscape Improvements and Clingman Avenue Streetscape and Greenway.

RESOLUTION BOOK NO. 27 – PAGE 209

D. RESOLUTION AUTHORIZING THE CITY SPONSORSHIP OF GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY AND MOUNTAIN HOUSING OPPORTUNITIES THROUGH THE TRANSPORTATION ENHANCEMENT PROGRAMS

This item was removed from the Consent Agenda due to Vice-Mayor Bellamy's conflict of interest.

E. RESOLUTION NO. 02-121 - RESOLUTION ACCEPTING THE STREET NAME OF "APPLEWOOD DRIVE" OFF OF NEW HAW CREEK ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Applewood Drive."

GPD of NC Inc., owner of lots in Applewood Subdivision, has petitioned the City of Asheville to accept the street name " Applewood Drive." The new street will begin at New Haw Creek Road and end at cul-de-sac on Applewood Drive.

City staff recommends adoption of the resolution accepting the new proposed street name "Applewood Drive."

RESOLUTION BOOK NO. 27 – PAGE 211

F. RESOLUTION NO. 02-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF DURHAM, N.C., TO PURCHASE BUSES

Summary: The consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the City of Durham for the procurement of buses and bus equipment.

It is the plan of the Transit Services Department to replace several of the existing fleet each year with more modern low floor buses, pending state and federal funding. The Transit Services Department has therefore participated in a statewide effort to standardize transit bus purchases over the next two years. This is intended to radically diminish the lead time necessary to purchase buses, and to use the prospect of bulk purchases to intensify competition and obtain a lower bid from the bus manufacturers.

The lead agency, for the purpose of bidding the bus purchase, is the City of Durham. In order for Asheville to participate in this bid, there must be an Interlocal agreement signed between the City of Asheville and the City of Durham. This agreement will not commit the City of Asheville to purchase any buses, but it allows the City to purchase buses off of the Durham bid if so desired. The City may also conduct its own bid process and purchase it's own buses if it wants to.

City staff recommends City Council authorize the City Manager to sign an Interlocal Agreement with the City of Durham, North Carolina.

RESOLUTION BOOK NO. 27 – PAGE 212

G. RESOLUTION NO. 02-123 - RESOLUTION AMENDING THE CITY COUNCIL MEETING SCHEDULE FOR THE FOLLOWING REASONS (1) SPECIAL MEETING ON THURSDAY, AUGUST 29, 2002, TO CONSIDER THE ADOPTION OF THE FINAL FISCAL YEAR 2002-03 ANNUAL OPERATING BUDGET; AND (2) CANCEL TUESDAY, SEPTEMBER 17, 2002, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 27 – PAGE 213

H. RESOLUTION NO. 02-124 - RESOLUTION CONFIRMING MEMBERS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the reappointment of three members to the Minority Business Commission.

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On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members, 10 of whom are nominated by various groups and three of who are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Commission.

The following MB Commission members whose term expires August, 2002, have requested reappointment:

Ms. Clara Jeter	Asheville-Buncombe Community Relations Council
Mr. Marvin Vierra	Asheville Business Development Center
Ms. Claudia Thomas	Minority Business Owner (CAT Network Systems)

City staff recommends City Council adopt the resolution confirming the reappointment of three members of the Minority Business Commission.

RESOLUTION BOOK NO. 27 – PAGE 214

I. RESOLUTION NO. 02-125 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS & FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: The consideration of appointing members to the Police Officers' & Firefighters Disability Review Board.

The terms of Stephanie Cooper, Alexander Maitland and James Lewis, as members on the Police Officers' & Firefighters Disability Review Board, expired on July 19, 2002.

On July 16, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Ms. Cooper, Mr. Lewis and Dr. Maitland to each serve an additional two year term respectively, terms to expire July 19, 2004, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 215

J. MOTION SETTING A PUBLIC HEARING ON AUGUST 13, 2002, TO AMEND THE 2002 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT & HOME ACTION PLAN

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 02-120 - RESOLUTION AUTHORIZING THE CITY SPONSORSHIP OF GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY AND MOUNTAIN HOUSING OPPORTUNITIES THROUGH THE TRANSPORTATION ENHANCEMENT PROGRAMS

See Consent Agenda item "C" above for descriptive information.

Councilman Peterson moved to excuse Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Peterson moved to adopt Resolution No. 02-120. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 210

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2939 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR CONSTRUCTION OF 379,000 SQUARE FEET OF RETAIL SPACE FOR PHASE 1 OF THE DEVELOPMENT LOCATED AT 437 SWANNANOA RIVER ROAD, FORMERLY SAYLES BILTMORE BLEACHERIES

ORDINANCE NO. 2940 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 437 SWANNANOA RIVER ROAD, FORMERLY SAYLES BILTMORE BLEACHIERS, FROM COMMERCIAL INDUSTRIAL DISTRICT TO URBAN VILLAGE DISTRICT FOR PHASE 2 OF THE DEVELOPMENT

Planning & Development Director Scott Shuford submitted into the record the following Staff Report Addendum with Exhibits A, B & C (City Exhibit 13). "The report is intended to (1) provide analysis of comments made by both the developer and members of the public at the public hearing; and (2) provide guidance and recommendations for conditions to address concerns raised at the public hearing.

The process concerns raised by Dr. Guttman and others speaking at the public hearing can generally be characterized as resulting from a basic misunderstanding of the UDO submittal requirements. The applicant has submitted for the following reviews: Level III (conditional use permit) for Phase I; rezoning for Phase II; and River District design review for Phase I. At the time of formal review, all necessary application requirements were met. Code sections cited under Dr. Guttman's list include formal site plan review, conditional use rezoning review, formal flood ordinance review, formal erosion control review, etc. These code requirements will be imposed on the applicant IF the concept plan required for the conditional use permit and the rezoning are approved by City Council AND if the applicant submits applications for these reviews. It should be noted that no building permit would be issued until these additional reviews occur. Finally, as to the contention that the code requires that the most stringent review requirements be met for any application and therefore the concept plan has to comply with formal site plan submittal requirements, etc. Dr. Guttman's contentions appear to indicate a misunderstanding of the UDO and the Conditional Use Permit process.

Traffic Capacity Options

At the outset of this discussion, it should be noted that of the four proposed traffic capacity mitigation options, the applicant suggested the first three. The only mitigation option unilaterally proposed by staff was the widening of Swannanoa River Road. Staff received the suggestion from the applicant about the transit option just prior to the development of our staff report for the public hearing.

Next, given the direction of Council for staff to work with the applicant to pursue any feasible option for addressing the traffic impact of the development, staff met with the applicant on July 16, 2002 to discuss what measure(s) would be proposed to accommodate the traffic impact mitigation. Since staff had provided extensive information to the applicant's transit consultant, including information about transit ridership, financial information about trolley costs, route and "headway" (time between trolley stops to pickup passengers) data, and similar information, we felt confident that our discussion would center on transit. However, the applicant indicated that the option they would prefer to pursue at the current time is to reduce the scale of the project in order to meet the 10% capacity retention standard proposed at the City Council meeting. Included in this option is the provision of an expanded connection, via a public street to be constructed by the applicant, to the River Ridge Shopping Center. In other words, they propose to delete some land uses from this request and to change others to such an extent that the total projected traffic on Swannanoa River Road falls below 12,600 vehicles per day.

This reduction of land use intensity is described in the following table, which the applicant provided at the July 16 meeting. Preliminary staff analysis indicates that the proposed land use intensity reductions would result in the stated trip reductions on Swannanoa River Road.

DEVELOPMENT PLAN FOR SAYLES SITE

ORIGINAL PLAN		**REVISED PLAN**	
Land Use	**Size**	**Land Use**	**Size**
Discount Superstore	219,622 sq. ft.	Discount Superstore	219,622 sq. ft.
Shopping Center	148,254 sq. ft.	Shopping Center	148,254 sq. ft.
High-Turnover Sit-Down Restaurant	5,000 sq. ft.	High-Turnover Sit-Down Restaurant	5,000 sq. ft.
High-Turnover Sit-Down Restaurant	5,000 sq. ft.	Removed from plan	
Specialty Retail	50,000 sq. ft.	General Office	54,000 sq. ft.
Hotel	75 rooms	Removed from plan	
Residential Condo/Townhouse	100 dwelling units	Residential Condo/Townhouse	125 dwelling units

In discussing this mitigation method with the applicant, we learned that the other options under consideration were rejected for the time being due to either their speculative nature or cost of implementation. As part of the discussion, the applicant provided considerable information about how a transit option would perform. The applicant did indicate a willingness to continue to pursue the interchange and the extension of Wood Avenue options unilaterally, as well as to work with staff and surrounding property owners to develop a transit option. In the event one or more of these options are implemented, Swannanoa River Road is widened or traffic does not increase as much as projected, the applicant may choose to go back through the review process to modify the plans to restore the lost land use intensity. This would require a new application and new public hearings.

There are a number of good reasons to continue to pursue enhanced transit service to the site. First, transit makes better use of existing infrastructure and preserves capacity on Swannanoa River Road. (It should be noted that Swannanoa River Road will play an extremely important role in the future transportation network of the City as it is the only continuous east-west corridor in the City between I-40 and I-240.) Second, if a trolley system proves popular, it will build general public support for transit. Third, the use of a transit system helps resolve a wider transportation issue involving getting shoppers to a number of major retail establishments and two multifamily projects. Fourth, transit seems to have the potential for reducing the "noon-time rush hour peak" as people from the surrounding area travel to the many restaurants or choose to spend their lunch hour shopping.

The two biggest potential problems with enhanced transit service are its cost and whether it will attract sufficient ridership. Trolley purchase is a major capital expense and operation costs are extensive. If there is success in obtaining federal assistance in overcoming the bulk of these costs, staff feels the remaining costs might be funded through a special taxing district of the properties served by the system or some other as yet undetermined financing method.

Suggested language for a condition reflecting the above discussion is provided below:

No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic mitigation measures are implemented. In addition, the applicant shall support a general transit service hub at the site and participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than $50,000 to be used for improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.

In addition, a small adjustment to the condition regarding the urban village is necessary and this change is noted in the list of conditions provided at the conclusion of this report.

Easement Condition

At the public hearing, the applicant contended that this condition might not be legally enforceable. A letter from the owner of the property that this easement crosses was also submitted making the same point. To address this matter, staff recommends this condition be modified as follows:

Unless legally precluded by the wording of the easement, the access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.

Lease or Ownership Transfer Condition

This condition essentially requires that the Wal-Mart Corporation do everything in its power to ensure that the existing properties on Tunnel Road not remain vacant after it moves to the Sayles location. The Wal-Mart Corporation has some history of keeping vacated stores vacant in an effort to minimize competition. Staff believes the City of Asheville has a clear public interest in discouraging this business practice. First, there is strong commercial demand for properties similarly situated to the existing Wal-Mart store. Additionally, there is no reason why the City tax base should be eroded in such a manner. While the applicant has previously

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contended that he has no control over the actions of a tenant regarding other property owned by the tenant, at the July 16 meeting it was indicated that the applicant would obtain a letter from the Wal-Mart Corporation accepting this condition in principle. Consequently, staff recommends the City Council retain this condition.

Contamination Concerns

At the public hearing, there were a number of concerns expressed regarding environmental contamination of the site. This contamination is under the purview and regulation of the NC Department of Environment and Natural Resources (DENR). Staff has been in contact with DENR regarding environmental concerns about the Sayles site. Based on this contact, in order to ensure that this concern is addressed as part of the conditional use permit for this project, we suggest you add the following condition.

The applicant shall enter into an Administrative Agreement for State Directed Remedial Action with the Department of Environment and Natural Resources (NCDENR). The applicant shall submit and implement, after NCDENR approval, a remedial action plan for addressing on-site contamination consistent with the agreement and NCDENR policies and procedures. In addition development plans shall be designed and/or revised to accommodate future remedial action at the site.

Urban Village Timing Concerns

Several members of the public commented that the urban village (Phase II) might not be constructed. As indicated at the public hearing, the applicant has committed to what effectively amounts to a simultaneous construction schedule for Phase I and Phase II. While this is part of the applicant's submittal package and could be enforced as such, staff suggests that City Council add the following condition to clarify the intent:

The construction schedule for Phase I and Phase II shall be in general compliance with the schedule submitted by the applicant and included herein as Exhibit C.

Natural Features Alteration

A number of public comments were received regarding the extent to which the site would be modified, thereby affecting the natural features on the property. The applicable standard for approval reads as follows: **That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant**. The chief alterations of the site are: creation of some fairly extensive floodway expansion areas in the front of the site outside the river resource yard, the installation of fill material to raise the elevation of the parking areas and building pads outside the 100 year floodplain, and significant grading of a hill located on the east and south sides of the site. Staff feels the retention of some 13 acres of riverfront area for a park, along with the interior landscaping and other project design features represent "reasonable compatibility" in terms of meeting this condition. However, the appearance of the floodway expansion areas may require additional mitigation that could be addressed in the following condition:

Fencing of the floodway expansion areas and stormwater retention ponds shall be accomplished by using wrought iron or other similar decorative fencing. The applicant shall install landscaping consistent with a plan to be developed by working with staff in order to address the appearance issues associated with such extensive fencing.

Final recommended conditions for Council consideration (NOTE: Revised or added conditions are italicized).

1. All conditions identified by the Technical Review Committee shall be met.
2. *No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic mitigation measures are implemented. In addition, the applicant agrees to support a general transit service hub at the site and to participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than $50,000 to be used for improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.*
3. The applicant shall install or fund the recommended improvements indicated in the TIA, except those specifically not desired by the City Engineering Department. In addition, the applicant shall be responsible for the full cost of linking the new signal at Stevens Street with the other signals in the immediate vicinity in such manner as required by City staff. The applicant shall escrow not less than $65,000 for a traffic calming study and its implementation, with any unused funds to be returned to the applicant upon completion of the traffic-calming project.
4. The applicant shall work with the Asheville Transit Services Director to locate and construct a transit center on the site to serve as a transit node. The transit center shall be constructed at the developer's expense and shall be architecturally compatible with the development design.
5. The applicant shall work with the City Parks and Recreation Department to convey the park area and greenway to the City of Asheville; such conveyance may require the applicant to create and fund a maintenance plan for this property.
6. A signage package that complies with the City's sign code shall be submitted for review and approval prior to formal approval of this project.
7. *The design of the urban village shall be modified in accordance with the standards for such developments as enumerated in the Urban Village zoning district; the applicant shall be able to construct the proposed number of residential units and the proposed square footage of the office ~~and retail~~ space; additionally, the design of the urban village shall include a public street connection to River Ridge Shopping Center.*
8. Within 90 days of the issuance of a certificate of occupancy for the Wal-Mart building, the Wal-Mart Corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall terminate any leasehold of the existing Tunnel Road Wal-Mart building and property or, in the event the building and/or property is owned by the Wal-Mart Corporation, said corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall place the building and/or property for sale or lease for commercial or other purposes allowed under the applicable zoning at fair market prices. The purpose of this condition is to ensure that the Tunnel Road building and/or property is not kept in a vacant state for an extended period of time.
9. *Unless legally precluded by the wording of the easement, the access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.*

10. *The applicant shall enter into an Administrative Agreement for State Directed Remedial Action with the Department of Environment and Natural Resources (NCDENR). The applicant shall submit and implement, after NCDENR approval, a remedial action plan for addressing on-site contamination consistent with the agreement and NCDENR policies and procedures. In addition development plans shall be designed and/or revised to accommodate future remedial action at the site.*
11. *The construction schedule for Phase I and Phase II shall be in general compliance with the schedule submitted by the applicant and included herein as Exhibit C.*
12. *Fencing of the floodway expansion areas and stormwater retention ponds shall be accomplished by using wrought iron or other similar decorative fencing. The applicant shall install landscaping consistent with a plan to be developed by working with staff in order to address the appearance issues associated with such extensive fencing.*

In addition to the above conditions, should City Council choose to approve this request, staff recommends that Council direct staff to undertake the following tasks:

1. Perform a zoning study for the River District to ascertain the geographical extent of future large-scale retail structures in the district.
2. Work toward making the Riverside Parkway the City's top priority on the Metropolitan Planning Organization Transportation Improvement Program.
3. Work with the applicant and a team of property owners from the surrounding area to determine the feasibility and desirability of developing a specialized transit system for the development site and surrounding area."

Mr. Shuford said that at the last meeting on this matter, there was a direction by Council to have staff meet with the developer and see if there were possible ways of reducing the traffic impact on Swannanoa River Road. A target was set at that meeting of reducing the impact so that not less than 10% of the capacity of that road (a Level D capacity) would still be available for future development. City staff provided extensive information to the developer, primarily in the area of transit. When City staff met with the developer, they were expecting a lot of information and discussion about transit, but they proposed a different tact. What the developer is now proposing is to retain the Wal-Mart Supercenter at its original proposal, as well as the shopping center portion. They will also keep one of the out-parcels as a high turnover sit-down restaurant. Changes include removing one of the out-parcels that was scheduled to be a high turnover sit-down restaurant and removing the hotel (which was included in the Traffic Impact Analysis "TIA"). Specialty retail has now been revised to general office use. In addition they originally proposed 100 dwelling units for the residential condo/townhouse and now they are proposing 125 dwelling units (City Exhibit 14).

Mr. Gaye Sprague, the City's traffic consultant, said that the developer's consultant did go through the calculations necessary to come up with the projected 24-hour volume on Swannanoa River Road that relate to the reductions in use. We have reviewed those calculations and the assumptions made and concur that they can get down to the 10% below Level D that we requested.

Mayor Worley said that the public hearing on this matter was held on June 25, 2002, and continued until June 26, 2002, at which time said public hearing closed. At this time, he re-opened the public hearing for the purpose of receiving new information and having any comments on the new information. Mayor Worley then reviewed the order of the hearing itself and the standard time limitations.

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

After hearing no questions about the procedure, Mayor Worley re-opened the public hearing at 5:15 p.m.

Ms. Becky White, Transportation Planner for Sain Resources, said that the development team was charged with producing a traffic mitigation plan that would satisfy the City's requirement that 10% of the capacity on Swannanoa River Road be left for other area development. Three alternatives were suggested for further study – a transit system, widening of Swannanoa River Road, and an interchange at I-240. Since that time, Sain Resources retained an independent consultant to prepare a transit feasibility study. The result of that study indicates that the 10% capacity reservation could not be met with transit, as it does not save enough vehicle trips. The estimate was a savings of approximately 170 vehicle trips and in order to meet the 10% capacity reservation, they needed to save approximately 1,000 trips on the most heavily affected segment on Swannanoa River Road. A concept plan for widening Swannanoa River Road was prepared and it was confirmed from that concept plan that the right-of-way acquisition would not be feasible for the developers as private landowners. An interchange at I-240 was determined to be too uncertain to allow the developers to proceed with construction of the shopping center. The most straightforward method for meeting the capacity reservation requirement was to reduce the intensity of the development. By making the changes outlined by Mr. Shuford, the developer was able to reduce the trip generating characteristics of the shopping center to a level that met the 10% capacity reservation. In addition to the reduction in intensity of the development, a commitment was made to move construction of a connector roadway to the River Ridge Shopping Center to the first Phase of the project and a portion of the development's trips were assigned to this connector road. These modifications to the plan were sufficient to meet the City's capacity requirement and the details of the calculations were documented in a memo dated July 16, 2002 (Exhibit A which is attached to City Exhibit 13).

Ms. Betty Lawrence, attorney representing the Beverly Hills Neighborhood Association, the Oakley Community Association and Community Supported Development, said that her clients are confused over the specifics of this plan at this point. While many changes are noted in City Exhibit 13, no changes have been made in the site plan, the grading plan and the cross sections. They were told that the developers changed the cross sections and grading on this project, but they don't know how much. The only plat in front of Council is the one that was submitted with the application. It is not the same thing that Council is supposed to approve, according to the staff report. It is crucial that what Council is approving is clear. It is not and therefore this calls for either denial of the application based on insufficient information or on the continuance of this proceeding. We make that preliminary request. She said that there are violations of the ordinance and that those violations be considered. One new violation is that there is a requirement that the plans that were submitted to the Technical Review Committee (TRC) need to be revised in a way that the TRC asked for within 60 days or they are deemed denied. Sixty days have passed and they haven't been revised. She also called Council's attention to provisions in the Urban Village District regulations. A master plan is required for an urban village zoning application. She said that urban village district projects are required to submit a master plan with the zoning application for the entire parcel that indicates the general street network, the land use configuration within that network, the ultimate proposed development density and the proposed structure heights for the urban village. In addition, for initiation of this zoning classification, properties may fall under more than one ownership so long as there exists covenants or other legally binding agreements that address cross access, cross parking and other similar issues affecting joint operation of the project. It is true that the land being requested to be rezoned is all under one ownership at this time; however, the access to the land is under different ownership at this time. There are at least three different owners involved. As she understands the new traffic mitigation plan, it would put more of an emphasis on the access road coming from the River Ridge Shopping Center that is not owned by the applicant and there is no agreement for that access through that private land. The Stevens Street entrance has the I-240 underpass and the Southern Railway overpass to deal with. None of these have legally binding agreements that address cross access. This emphasizes one of our major points which is that staff is saying that what comes before Council for a conditional use review only has to do with use and that conceptual plans are all that is needed. That is not all that is needed. Conceptual plans are not part of the Unified Development Ordinance (UDO). The UDO has very specific requirements for what the plans for a conditional use permit must contain. One Court case that has dealt with this in detail has said that cities can provide by ordinance for a preliminary conditional use permit and if they do, then you can just get by with a sketch of the project. But if you provide for a conditional use permit that needs final plans and that needs the conditions that have been detailed for Council, then Council cannot go against their own rule to permit them to go forward and approve an application, which does not meet the City's requirements. We believe that is what has happened here. Regarding the urban village, the developer should have the final plans so Council and the public has the right to know what is being proposed. A provision of the UDO says "revisions to the approved urban village district master plans may be approved by the City Council or by the Planning and Development Director depending on the type of revisions being requested. City Council shall review any revisions to a master plan that changes the proposed mix of uses by increasing or reducing any use category by 25% or more." As Council can clearly see, the urban village request has gone from 100 residential units to 125 residential units. This may be read to say this is only after a master plan has been approved that it has to have these changes in order to include new information and trigger new review, but we say that that same logic means that that is a significant change in the urban village request and that today we should be able to comment on those changes in the proposed urban village as well as the changes in the traffic mitigation. In the urban village requirement, it reads, "in reviewing master plan revisions, the City Council shall follow the same public hearing process used to approve the initial master plan." She feels this means that there should be a public hearing today on the urban village changes as well. She asked that Council either deny or delay for further information. (Neighborhood Exhibit 9).

The following individuals spoke against the issuance of the conditional use permit based on the new information presented at this meeting. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: developer is not adhering to Urban Village District regulations in that a Wal-Mart Supercenter was not the intent of safe and convenient access to shopping and other essential services; it is not possible to build a road under the existing I-240 bridges to meet the City's minimum design guidelines; traffic counts were averaged and do not represent true traffic patterns; how can the City enforce traffic laws and regulations on the private road that is to be built; the developer has met the 10% below Level of Service D by only 25 vehicular trips per day; the TRC imposed numerous conditions and those conditions along with environmental issues associated with groundwater contamination must be publicly addressed but this information has not been shared with the public; there will still be a lot of cut-through traffic even with the access road being built; traffic will be 24 hours since the Wal-Mart store stays open for 24 hours; area is too concentrated for another large development; need sustainable development; can't ride a bike on Swannanoa River Road due to traffic; there is no margin for safety since 10% below Level of Service D is only an assumption; and due process as well as state and local ordinances require notice of the public hearing and none was given:

Mr. Jeff Kelley (Audience Exhibit 23)
Mr. Ned Guttman, Asheville resident (Audience Exhibit 24)
Mr. Mike Moody, East Asheville resident
Mr. Andrew Brown
Ms. Corinne Kurzmann, Sayles Road resident
Ms. Hazel Fobes, North Asheville resident

Mr. William Butcher
Ms. Jane Blodgett, Fairview Road resident
Mr. Grant Millin, East Asheville resident
Ms. Sharon Martin, Asheville resident
Ms. Lola LaFey
Professor David Clark
Mr. Joe Adams, Asheville resident
Ms. Beth Jezek, East Asheville resident

The following individuals spoke in favor of the issuance of the conditional use permit based on the new information presented at this meeting. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: development of the area will bring income to the City, and the developers will clean up the environment and City taxpayers will not have that burden:

Ms. Helen Morrison
Mr. Fred English, Haw Creek resident

Mayor Worley noted that the project must be built in accordance with City standards, and that includes construction of the roads.

Ms. Lawrence said Council has heard how tiny the margin of error is and that we don't really have good counts on Swannanoa River Road. One aspect is the average daily counts. If you look at what would be more than average in Asheville, at least 1/3 of the year traffic would be too high to meet the 90% of that standard. City staff has previously said that the road through River Ridge Shopping Center would be 2% of the traffic and now it's 5% of the traffic. We don't know what caused that change. She pointed out that the way the proposal is to issue the permit leaves too much to the delegation of City staff. Five of the 12 staff conditions have changed and they were permitted to comment on only one of those five. She said if Council doesn't either turn this down or continue it, that they add the following three conditions. (1) "All federal, state, utility and private permits, easements and approvals be obtained or guaranteed to be obtained prior to the issuance of any City permit." Not simply a building permit, but any of the permits that would involve moving the ground around. (2) "That remediation of the toxic plume shall be completed to the satisfaction of the Dept. of Environment and Natural Resources prior to disturbing any soil within 400 feet of the predicted dispersion of any toxic substance that does not meet DENR Hazardous Substance Concentration Standards." And, since we see this project being scaled back and we have reason to believe that it will be scaled back up in stages and that may happen in ways that don't require public notice, they ask that (3) "Public notice be given for any permit application and requests for modifying the conditional use permit."

Mr. David Matney, attorney representing the developer, said that when the meeting ended in June, Council said there was too much traffic and they needed to do something about it. There was no way to do anything around it, so we did something to the project. We removed one building (restaurant) and will grade it flat. That means no cars. No new buildings are proposed in the Urban Village. We have taken the existing buildings – converting the ones that were retail on the first floor to office and the ones that were retail on the second floor of the building to residential. The access road through River Ridge Shopping Center has been there since the beginning. Regarding that access road and its traffic count, we showed zero to start with because we weren't going to build it until the end. Now we will build it at the beginning. The hotel has been removed since before the first public hearing, but the numbers for the hotel were included in the TIA. We have now deleted those numbers. We have a 10% capacity reduction on a Level of Service D road. A road is not full until it is a Level of Service F and therefore we have a margin of safety. He respectfully asked that City Council approve the conditional use permit.

Prior to Mayor Worley closing the public hearing, Ms. Lawrence cautioned Council that there is a case that states that once the public hearing is closed, anything that happens after that in terms of questions that are asked of either staff, the applicant or the traffic engineers are not competent evidence.

City Attorney Oast was familiar with the case cited by Ms. Lawrence and felt it may be appropriate to close the public comment period and proceed with Council deliberations.

Mr. Matney felt that Council would be within its rights to ask any questions for clarification, particularly since there have been volumes of paper submitted.

Mayor Worley closed the public comment period at 8:18 p.m.

With regard to Condition No. 5, Councilman Dunn asked how the City could require the developer to buy land, convey it to the City and then fund maintenance of it. Mr. Shuford explained that the applicant offered to give the property along the river to the City for a park. Initially the City did not feel they wanted it because of some concerns about a variety of issues. The Director of Parks and Recreation then decided it would work and the conveyance and maintenance issues are there to cover issues. Some issues include precisely what land is given and whether it involves some feature that is necessary for the developer to have this site function, such as a stormwater pond or the floodway expansion area. We certainly would not want to take those on unless the applicant was willing to maintain it.

Mr. Shuford said the additional approvals required for the Sayles Project (City Exhibit 15) include formal site plan review and approval, zoning permit approval, erosion control permit, grading permit, stormwater management permit, Federal Emergency Management Agency (FEMA) review and approval, NC Dept. of Environment and Natural Resources (DENR) review and approval, Army Corps of Engineers permit, building permits, driveway permits, life/safety code review and approval, encroachment permits, permits and approvals associated with the new roads, and certificates of compliance. He said that many steps are still appealable if the public or the developer wants to appeal them. This is basically the first step to move forward into this range of other reviews. He said that basically the developer is committed to meet the TRC conditions and will have to go back with a formal site plan that shows that he does that. If there is a desire on the part of the applicant to come back with some additional development intensity, it will have to come back to City Council. This is a project that has been reviewed in it's entirety with a TIA and if there are changes that are going to affect that in terms of development intensity, we are required to go through this process again. That includes notice and public hearing. This is certainly not the end of public input nor the end of the review of the technical aspects of this project.

Councilman Mumpower asked if the City is procedurally violating any of our floodplain ordinances through this process. City Engineer Cathy Ball responded that there are some things, such as the Asheville Standard Specifications and Details Manual, that the City Engineer has the right to waive certain requirements. The floodplain ordinance is different. It is a part of the UDO and we are delegated by FEMA to carry out the requirements and permit projects within the floodplain area. We do not have the ability to waive those requirements. Therefore, the project must comply with those requirements in order for it to move forward. There is a no-rise certificate and that says the water level will not rise. That has to be provided by and stamped by a Professional Engineer in North Carolina in order for us to issue a permit for them to be able to do the work. We are not violating any requirement of the floodplain ordinance.

CORRECTION

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Mr. William Butcher
Ms. Jane Blodgett, Fairview Road resident
Mr. Grant Millin, East Asheville resident
Ms. Sharon Martin, Asheville resident
Ms. Lola LaFey
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The following individuals spoke in favor of the issuance of the conditional use permit based on the new information presented at this meeting. If concerns were expressed by prior speakers or if the comments are not relevant to the decision before Council, they will not be repeated or included. Other comments/concerns include, but are not limited to: development of the area will bring income to the City, and the developers will clean up the environment and City taxpayers will not have that burden:

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Upon inquiry of Councilman Mumpower, Mr. Matney said that when the plant closed, this became a Superfund site to remove the drums of chemicals that were left. When the drums were removed, it was no longer a Superfund site. There is a groundwater plume (under the restaurant that has now been removed) that will be dealt with by a remedial plan to meet state requirements. If the groundwater plume is not taken care of, the property can't be developed.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford said that as a result of public comment at the TRC Committee, the River District Design Review Committee and the Planning & Zoning Commission, changes have been made to the architectural design, site layout, etc.

Councilman Peterson said that our ordinance requires that a master plan be submitted for the urban village rezoning. Mr. Shuford explained the master plan and said that there are some conditions regarding technical adjustments that need to be made in terms of how that urban village design occurs, in order to comply with our Urban Village District. If those result in some sort of substantial change, we will bring that back to Council. There is a fair likelihood that Council will see the Urban Village back with regard to its master plan because of its need to emphasize that connection through to the River Ridge Shopping Center. The fact that this is a project that is considered in unity and its traffic impacts are cumulative, that any change to the development intensity, whether it be in the urban village part or the Phase I part, is going to trigger a need for it to come back to City Council.

Councilman Peterson asked if the property where the hotel was going to be built can be developed since our ordinance requires that any plan that is going to be developed in phases that something be shown of what is going to go in each phase. Mr. Shuford said that in order for them to develop that property, they would have to come back to City Council because that would be outside of the two phases they have submitted.

Regarding the access road through River Ridge Shopping Center, Councilman Peterson said that it looks like our ordinance requires that before an urban village district is approved, there has to be a binding agreement for development of that access road. Mr. Shuford said that they don't have anything formal in terms of that commitment, but their TIA and plans show that they will have that connection. City Attorney Oast said that the requirement for the legally binding agreement addresses issues of cross access, cross parking and other issues for the joint operation of the projects within the boundary of the rezoning. Under the conditions suggested by staff, Phase I has to be developed in conjunction with Phase II. Phase I can't be built at all if the access through the River Ridge Shopping Center doesn't exist. Even though the owner's permission for the access through River Ridge is not part of the urban village rezoning, it is part of the conditional use permit. The project cannot be built unless the access exists.

Councilman Peterson was concerned that the developer would start grading and building and then determine that they can't build the Stevens Street extension. He questioned at what time in the process would they actually have to have an agreement. Mr. Shuford reviewed the general timing schedule submitted by the applicant prior to the public hearing in June for Phase 2 (City Exhibit 16) and said that road assurances have to be in place before anything starts to happen.

Mayor Worley said that before a spade of dirt is turned, the engineering has to be done to show that the streets can be built to City standards and that any agreements that are required in order to eventually construct the streets have to be obtained and finalized. Any approvals by NC DOT for signalization, design, etc. have to be in place. In other words, everything that they would have to construct would have to be permitted or an agreement signed so that there are no legal impediments to their eventual construction before we would allow them to turn a single spade of dirt for any aspect of the project. Mr. Shuford qualified the Mayor's statement in that there is going to be some pollution remediation that clearly can be permitted in advance of the other

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aspects. They will have to have a fully engineered and have an approved plan before they get any building permits.

Upon inquiry of Councilman Peterson, Ms. Sprague said that the developer took a current count of the traffic and she feels confident that the count that was done on the average day in average conditions is a good count to base the study on.

Vice-Mayor Bellamy said that the residents of Beechwood Road asked that their road be closed at its intersection with Swannanoa River Road and one of staff's recommendations was to widen Beechwood Road as you approach Swannanoa River Road to provide a separate right-turn lane onto Swannanoa River Road. Ms. Sprague said that the recommendation by staff at the TRC was deleted because they did not want to do anything that would have the perception of increasing the traffic. She said that Beechwood Road would be a part of the traffic calming study in the neighborhood, working with the neighborhood.

Regarding timing of the traffic calming study, City Engineer Ball said that once the plan has received approval for the conditional use permit, staff would begin working with the neighborhood to develop a plan in order to make the project successful. Before they would be able to get a Certificate of Occupancy, City staff would have had to either spend the money on the traffic calming or get a bond so that the City could spend it whenever we got ready. If for some reason the process was delayed because of working with the neighborhood in trying to get consensus on what kinds of traffic calming measures to put in, it is possible we would require the developer to put up a bond in the amount of 150% of the cost so that it can be done. Ms. Ball said that the City would not require the 40% initial signatures, however, before there was a plan that was ready to be put on the ground, we would want to get 60% of the signatures. If the neighborhood doesn't agree that is the right thing to do, then it probably won't be successful. If we didn't get the 60%, we would continue to refine the plan until we could get buy-in from the group as a whole.

Councilman Peterson asked if City staff has looked at how feasible the Stevens Street extension is, especially with regard the I-240 road span. Ms. Ball said that the plans the City received were conceptual in nature. It has come to her attention that the concern is over the span being enough to accommodate the City's requirements. She stated that the road must meet the City's requirements, or the project stops. The developer has to show City staff plans that it will meet those requirements before they issue a grading permit for any part of the project. (City Exhibit 17)

Upon inquiry of Councilman Mumpower, City Attorney Oast said that the master plan is not required to be as detailed as the site plan and it's within the contemplation of the ordinance that it will change. It would be unusual for it not to change.

At 7:07 p.m., Mayor Worley announced a short break.

Upon inquiry of Vice-Mayor Bellamy, Mr. Matney explained that the plume is under about ¾ of an acre (area where the restaurant was planned but now removed). If you look at the parts per billion they sampled, it is equivalent to about 8 teaspoons. This has a concentration of 25 parts per billion, and the OSHA permitted amount of this substance in the air in a dry cleaner is 25 parts per million. It is a very small amount. Since it is in an area where the restaurant will not be built, remediation will be on-going. Our engineers say that we may move it slightly (due to the bridge construction), but the amount of movement will stay in that general area. We will be monitoring and working out a plan that DENR has to approve. The plume is in an area that they will not be building on at the present time, and maybe never.

Vice-Mayor Bellamy asked what type of fencing would there be around the floodway expansion area and the stormwater retention ponds. Mr. Matney said that the can only put fencing where FEMA allows them to put fencing. Fencing in a lot of these areas will be a flood barrier. We would hope the condition would require the developer to put fencing in where it is permitted or required by FEMA and that if it's visible from the surrounding roads or shopping center, that it would be decorative fencing. Mr. Shuford also responded that whenever you have a stormwater area that is 4 feet or deeper, it is required to be fenced.

Vice-Mayor Bellamy asked if some of the parking spaces could be eliminated to leave more green space. Ms. Shuford said that the developers are not at the minimum number of parking spaces, so from the standpoint of reducing the amount of parking spaces, that is certainly something staff would support. However he didn't know whether the developers would be able to do that because of their contractual requirements with different tenants.

Upon inquiry of Vice-Mayor Bellamy, City Engineer Ball said that how the bridge will come down is one of the details that has not been provided to City staff. She did say the City is delegated by the State to provide a permit to them. In order for us to issue that permit, they have to show that they are not going to cause erosion problems to the stream. That ordinance is pretty strict. They have to mitigate any sediment or run-off that goes into the stream. At this time, the actual details of how that is going to happen are not known.

Upon inquiry of Vice-Mayor Bellamy, Ms. Sprague explained three items City staff asked the developer to eliminate from their recommendations in their TIA to mitigate traffic: the widening of Beechwood Road, a modification to South Tunnel Road signal, and the dual left coming out of the property.

When Vice-Mayor Bellamy asked why there was no recommendation for a bike lane on the new road, Ms. Sprague said that bike lanes have not been addressed and she was not prepared to make a recommendation at this time.

Councilwoman Jones expressed her concern over the remedial action plan for addressing on-site contamination. She questioned whether the implementation of that plan should be complete or if it was enough to just have a plan in place.

Mayor Worley said that this is new information and therefore, re-opened the public hearing at 7:45 p.m.

Mr. John Childress, Vice-President of Horne Environmental, said that "implement" in this case means to start the process of remediation. They are evaluating several remediation strategies and they will have to be approved by the DENR. To implement the plan with an aggressive strategy would require approximately 6-18 months to clean up the groundwater plume to DENR standards. Following that, they are required to monitor for approximately two years to make sure that the standards are met and continue to be met. From start to finish would take approximately 2 to 3-1/2 years.

Upon inquiry of Councilman Ellis, Mr. Childress said that he has been involved in this type of remediation several times and at this level, it would be considered minor dry-cleaning contamination cleanup. In fact, it probably wouldn't even require clean-up under the standards. It would require monitoring only in most cases with concentrations at this level. Federal drinking water standards are 5 parts per billion and this site has an average range of 15-20 parts per billion, with the highest concentration at 31 parts per billion. The state standards are .7 parts per billion, which is about 10 times less than drinking water standards. This site would more than qualify as drinking water once it is cleaned up.

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Councilman Mumpower stressed that they have to meet state and federal guidelines with regard to the groundwater plume and that the City is not equipped to make those decisions at the local level.

Councilwoman Jones wanted more assurance that the plan is moving forward and that the remediation would be complete, given the unknowns in state government.

Mayor Worley asked what assurances are given by either the developer or the state that the process would in fact be completed. Mr. Childress said that once they enter into an agreement with the State, they are required to complete the process and meet those standards.

Vice-Mayor Bellamy suggested adding the words "and completed" to Condition No. 10 in terms of the remedial action plan being implemented.

Councilman Ellis asked what would be the damage to public health if the groundwater plume could not be remediated. Mr. Childress said there is no danger to the public health at this time. To have exposure you have to be in contact with that material and since it is underground, there is no reasonable expectation that anyone is going to be exposed. Even if it were left alone to naturally drop off in concentration until it was undetectable, which would happen, there would be no real public threat that he could see.

Councilman Peterson questioned Mr. Childress' comment that with this level of concentration, an approved remedial action plan could just require containment and monitoring and not that the contaminates be removed. Mr. Childress explained that that was an option and DENR may approve that, but that is not what the developer is proposing. It was his understanding that the developer is proposing an active treatment system to remove the contaminates and monitor the site until it is determined that to be true.

Councilman Peterson felt that if it's the developer's intent to have a remedial action plan to remove the contaminates and monitor the site, then the Condition No. 10 should be amended to state that and not just to approve a remedial action plan.

When Councilwoman Jones asked for vehicle trip comparisons, Ms. White presented her with the addendum to the TIA (Applicant's Exhibit 12).

The following individuals spoke in favor of the issuance of the conditional use permit based on the new information presented at this meeting. Other comments/concerns include, but are not limited to: there is a need to clean up this area; and technology to detect parts per million, billion, and trillion is moving ahead much faster than the ability to deal with and remove these products from our environment:

Mr. Fred English, resident in Haw Creek
Mr. Jim Jenkins, former Gerber Products Plant Manager

The following individuals spoke against the issuance of the conditional use permit based on the new information presented at this meeting. Other comments/concerns include, but are not limited to: we need to set ourselves about state standards, would like to see the environmental status of the entire area, there is contact between the water that contains the chemicals, the water surrounding the stream and the stream; if the Sayles building is removed, the area will be exposed to the rain and the chemicals will be flushed into the stream; Clean Water Fund of NC's experience in dealing with state and federal contaminated sites is that only implementation of a DENR approved remediation plan will not be sufficient to meet with City's goals of a safe and exemplary development project; it is necessary to have the groundwater remediation well underway before construction begins anywhere in the vicinity of the contaminated area and demonstrated to be completely capturing the plume of contamination; the site plans for any development in this area should include a clear overlay of the characterized plume before consideration of any final approval; oversight of construction and post-construction stormwater management will put a significant new burden on the City's local sedimentation program; fee structure for permitting should be adequate to fully recover the additional costs to the City and there must be a clear stipulation that local program's should be fully accountable for enforcing the City's stormwater and sediment and erosion regulations rather than providing compliance assistance or working with a developer who is in violation; increased risk is willing to be taken by discounting the amount of pollution we already have; standards need to be set that go beyond the state and federal requirements; we need to look at the pollutants from the parking lots; and two Planning & Zoning Commission members voted against the project regarding the traffic and the groundwater plume:

Ms. Corinne Kurzmann, resident on Sayles Road
Mr. Grant Millin, resident in Oteen
Mr. John Sticpewich
Mr. David Herbert, speaking on behalf of representing the Clean Water Fund of North Carolina
Ms. Elizabeth Allen (Note by City Clerk: This witness was not sworn in.)
Mr. Jeff Kelley
Ms. Hazel Fobes, resident in North Asheville

Ms. Lawrence suggested the following condition: "Complete diagrams overlaying the characterized plume showing depth of monitoring wells with planned construction of all buildings, parking lots, ditches and any other features that could interfere with the hydrology of the site or prevent an exposure risk to the public." Regarding the remediation plan, she said a letter received on June 24, 2002, from the Dept. of Environment and Natural Resources said that they are going to require a remediation plan "to be received by their office within 30 days of receipt of this letter." She asked if Council would allow testimony over what is going to be submitted since June 24 is one day away.

Mr. Matney responded to Ms. Lawrence by saying that DENR has revised the date for the remediation plan until August 30 and not June 25. Mr. Matney said that if this project is not developed, all the pollution will be moving slowly toward the river. If you have a commitment and agreement by the developer that they are going to what the state approves then we will be better off than we are now. He stressed that the developer is committed to doing a plan that the state approves and as soon as it gets started every step beyond that is a help to the environment and to the public. He felt Condition No. 10 as proposed by staff was sufficient.

Councilman Peterson wanted to make sure that the developer's plan that they submit to DENR is to remove the contaminates and not just contain them, cover them up and monitor the site. Mr. Matney said that he understands the word "remediation" is that you are doing something about it to make it less of an impact on the environment. He explained that Mr. Childress said that the state would approve a containment plan due to the level of what is there, but that is not what the developer is proposing. The developer is not asking for a containment plan, but asking for a remediation plan. It is the developer's intent to remediate the site by lessening the concentration to state standards. It is their desire to start the remediation before construction on the building but considering that monitoring may take two years they don't want to have to wait until the monitoring is over to be able to start. Councilman Peterson asked that that language be incorporated into Condition No. 10 so that the public is assured that there is going to be a clean-up and not just containment and a cap.

At 8:33 p.m., Mayor Worley closed the public comment period.

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Upon inquiry of Councilman Dunn regarding Condition No. 8, Mr. Shuford presented Council with City Exhibit 18 which was a copy of an e-mail from Chris Gregory, Real Estate Manager from Wal-Mart Stores Inc., to Michael Patterson which stated "This email is to inform you that Wal-Mart has every intention to market our store on Tunnel Road and to either sell or lease it as quickly as possible. We have had considerable interest and look forward to marketing it. Please let me know if you have any other questions."

With regard to Condition No. 9, City Attorney Oast said that representatives of the developer suggested a slight change in wording to delete the words in the first sentence "by the wording of the easement".

Upon inquiry of Councilman Dunn regarding Condition No. 12, Mr. Matney said that they have to do fences in certain places but they cannot in other places due to impeding the river. If the fences are visible in places that they are required, they will be decorative.

Upon inquiry of Councilwoman Jones regarding Condition No. 10, Mr. Matney suggested Condition No. 10 be amended to include the following at the end of the first sentence "which requires reduction of the pollutant concentration to state groundwater remediation standards." He said that he had a problem with the word "completion" because it's really not completed until after the two year monitor period. He didn't think it was fair for the rest of the property to sit still for the 18 month period to remediate while they work on ¾ of an acre. He said they would like to be building at the same time on the other areas (like building the road) at the same time the remediation is occurring. Again, they are committing to a remediation plan, not just cap it and let it sit.

Councilman Peterson was concerned that once the current building is removed, water could leak into the groundwater and then further spread that site.

Mayor Worley asked if the developers would be willing to commit to a bond to assure completion of the remedial action. Mr. Matney said the problem would be establishing the amount of the bond but that his clients would want an agreement and not a bond.

Councilman Mumpower asked what the City's recourse would be if the developer said they would remediate the site (not just contain it) and then didn't do it. City Attorney Oast said that they would be in violation of the conditional use permit and the City would initiate revocation proceedings to revoke the permit, which could close the whole project down. Also, any one of the remedies under our Code are things we could implement – fines, seek an injunction, etc.

Councilman Mumpower moved to adopt Ordinance No. 2939 to issue the conditional use permit to allow for construction of 379,000 square feet of retail space for Phase 1 of the development, subject to the following conditions (which had input from all of Council):

1. All conditions identified by the Technical Review Committee shall be met.
2. No changes shall be made in the level of development intensity (Exhibit A) that will or may increase traffic on Swannanoa River Road unless further traffic mitigation measures are implemented. In addition, the applicant agrees to support a general transit service hub at the site and to participate in an effort to develop a specialized transit system for the site and surrounding area, including developer provision of a transit stop on the site, designing the interior of the site to accommodate transit vehicles, allowing transit vehicles to traverse the site, developer participation in a plan to create a specialized transit program, and developer commitment to any agreed upon funding mechanism, such as a special taxing district, necessary to maintain this system that may be implemented in the future. Finally, in order to ensure the viability of the River Ridge Shopping Center connection, the applicant shall escrow not less than $50,000 to be used for

improvements on the River Ridge site to upgrade the interior access "road" that will connect to the public street being constructed by the developer as part of the Phase II urban village project; the implementation of this upgrade project will require approval by the River Ridge Shopping Center owner and by the City of Asheville.

3. The applicant shall install or fund the recommended improvements indicated in the TIA, except those specifically not desired by the City Engineering Department. In addition, the applicant shall be responsible for the full cost of linking the new signal at Stevens Street with the other signals in the immediate vicinity in such manner as required by City staff. The applicant shall escrow not less than $65,000 for a traffic calming study and its implementation, with any unused funds to be returned to the applicant upon completion of the traffic-calming project.
4. The applicant shall work with the Asheville Transit Services Director to locate and construct a transit center on the site to serve as a transit node. The transit center shall be constructed at the developer's expense and shall be architecturally compatible with the development design.
5. The applicant shall work with the City Parks and Recreation Department to develop a plan acceptable to the City to convey the park area and greenway to the City of Asheville.
6. A signage package that complies with the City's sign code shall be submitted for review and approval prior to formal approval of this project.
7. The design of the urban village shall be modified in accordance with the standards for such developments as enumerated in the Urban Village zoning district; the applicant shall be able to construct the proposed number of residential units and the proposed square footage of the office space; additionally, the design of the urban village shall include a public street connection to River Ridge Shopping Center.
8. Within 90 days of the issuance of a certificate of occupancy for the Wal-Mart building, the Wal-Mart Corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall terminate any leasehold of the existing Tunnel Road Wal-Mart building and property or, in the event the building and/or property is owned by the Wal-Mart Corporation, said corporation (or any individual, partnership or corporate entity acting on behalf of the Wal-Mart Corporation) shall place the building and/or property for sale or lease for commercial or other purposes allowed under the applicable zoning at fair market prices. The purpose of this condition is to ensure that the Tunnel Road building and/or property is not kept in a vacant state for an extended period of time.
9. Unless legally precluded, the access easement on the south side of the Swannanoa River running from the developer's property to Fairview Road shall be transferred to the City of Asheville for the purpose(s) of extending the Swannanoa River greenway and/or construction of the Riverside Parkway. The City shall have the ability to transfer this easement to the State of North Carolina or some other entity or entities for one or both of these purposes.
10. The applicant shall enter into an Administrative Agreement for State Directed Remedial Action with the Department of Environment and Natural Resources (NCDENR) which requires that the contaminant concentration will be reduced to State Groundwater Remediation Standards, and which shall require that there be no disturbance of the area over or near the plume as shall be required by NCDENR in the Administrative Agreement. The applicant shall submit and implement, after NCDENR approval, a remedial action plan for addressing on-site contamination consistent with the agreement and NCDENR policies and procedures. In addition development plans shall be designed and/or revised to accommodate future remedial action at the site.
11. The construction schedule for Phase I and Phase II shall be in general compliance with the schedule submitted by the applicant and included herein as Exhibit C.
12. All fencing visible from off the site or from parking or other public areas on the site shall be accomplished by using wrought iron or other similar decorative fencing. The applicant shall install landscaping consistent with a plan to be developed by working with staff in order to address the appearance issues associated with any extensive areas of fencing.

13. The public roads constructed as part of this project shall be designed and constructed to meet the applicable City of Asheville standards for such roads. At a minimum, each road cross sections shall contain two travel lanes and sidewalk. Road rights-of-way shall be appropriate for the road type based upon anticipated traffic volumes and shall be subject to approval by the City Engineer. Road designs shall be approved by the City Engineer prior to the issuance of any grading or building permits for any phase of the project, except as may be necessary for pollution remediation, and road construction shall be completed pursuant to those plans prior to the issuance of a Certificate of Occupancy for any building.

City Attorney Oast said that he understood Council's desire to have all necessary agreements, easements and permits in place for the road construction and he would incorporate that wording of Condition No. 13.

Vice-Mayor Bellamy asked City staff and the developer to look at the possibility of minimizing the 1839 parking spaces. Mr. Shuford explained that the developer is close to the maximum number of spaces, but he didn't know how many spaces would be reduced from removing the restaurant. Vice-Mayor Bellamy felt the developer might save money by not having to pour so much asphalt if they added more open and green space, which will also help with stormwater run-off. Councilwoman Jones agreed not only for helping with stormwater run-off but also with issues of air quality as a result of the number of cars.

Mr. Matney said that the parking spaces would be reduced because the restaurant is removed. However, he said that they have to have that number of parking spaces for their tenants. Currently, there is 21 acres of impervious acreage. When the project is complete, there will be approximately 29 acres of impervious acreage. Even though they are adding approximately eight more acres of impervious acreage, they are spreading it out over a much larger area.

Upon inquiry of Mayor Worley, Mr. Shuford said the developer is exceeding our stormwater requirements. He also pointed out that the developer is doing water quality treatment that is not required to be done at the current time.

With regard to reducing the number of parking spaces, Mr. Shuford said we are trying to get a transit component at this site and if you are going to be a participant in the shoppers loop you will probably park at the Wal-Mart site because that is where the grocery store is. It may make more sense to save the parking spaces at that location and look for ways to reduce in other areas.

As a result of the discussion to try to reduce parking spaces, it was the consensus of City Council to direct staff to undertake the following tasks: (1) Perform a zoning study for the River District to ascertain the geographical extent of future large-scale retail structures in the district; (2) Work toward making the Riverside Parkway the City's top priority on the Metropolitan Planning Organization Transportation Improvement Program; (3) Work with the applicant and a team of property owners from the surrounding area to determine the feasibility and desirability of developing a specialized transit system for the development site and surrounding area; and (4) Explore the option of reducing the amount of parking.

The motion made by Councilman Mumpower to adopt Ordinance No. 2939 to issue the conditional use permit to allow for construction of 379,000 square feet of retail space for Phase 1 of the development, subject to the above 13 conditions, was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Peterson voting "no."

City Attorney Oast said that he would bring the language of the Order back to Council on August 13, 2002, noting that no permits will be issued until Council adopts the Order.

ORDINANCE BOOK NO. 20 – PAGE 8

Councilman Mumpower moved to adopt Ordinance No. 2939 to rezone a portion of property located at 437 Swannanoa River Road, formerly Sayles Biltmore Bleacheries, from Commercial Industrial District to Urban Village District for Phase 2 of the development. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE 20

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of July 4-11, 2002: Annette Hammond (Police), BellSouth (Water), BellSouth (Water) and Martha Rice (Sanitation).

The following claims were received during July 12-18, 2002: Lance Mulvihill (Water), Susan Russell (Sanitation) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City filed a lawsuit on July 12, 2002, against David N. Wright. The nature of the procedure is a complaint, injunction, order of abatement and collection of debt for removal of storage trailers located on Waynesville Avenue in the City of Asheville. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

COMMENTS REGARDING THE CONDITIONAL USE PERMIT FOR A WAL-MART SUPERCENTER

Ms. Corinne Kurzmann, Mr. Roger Gold and Ms. Hazel Fobes were dissatisfied with Council's decision regarding the Super Wal-Mart.

Mr. Fred English and Mr. Scott Osborne were pleased with Council's decision regarding the Super Wal-Mart.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:03 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – July 30, 2002
East Asheville Community Center
906 Tunnel Road

7:05 p.m. – Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: Councilwoman Diana Hollis Jones

The following topics were raised by residents and addressed by City Council and City staff: trees along Crockett Avenue need trimming as they block visibility for drivers; the grounds of the apartment complex on Melton Drive need to be maintained, including picking up trash and debris; emptying more frequently the large dumpster near the Willow Creek complex; to improve traffic flow in the Haw Creek area, a new entrance into the area was recommended via the Chunns Cove Road area; East Hawthorne and Marlboro Drive need repaving; traffic concerns on Crockett Avenue in light of the recently approved Riverbend Marketplace development; synchronize traffic lights on South Tunnel Road; ongoing problems on Avon and Arco Roads with heavy traffic that includes tractor-trailers, motorcycles and speeding; litter problems and the need for "no littering" signs on Avon and Arco Road; missed collection of household trash and tossed trash cans on Beverly Road; Chris Pelly, President of the Haw Creek Community Association reviewed recent accomplishments and projects in the community including the newly created park, the Haw Creek Village development, and plans for improved pedestrian safety via sidewalks; requested support for future opportunities to preserve open spaces in Haw Creek; need for sidewalks and improved safety on Wood Avenue, including keeping cars at 40 Wood Avenue from parking on the street; need to bring more family-oriented entertainment to the area; encouraged development of the water front area; questions regarding annexation, the frequency of annexation and criteria used; concerns about adequate public comment being taken by Council during the Wal-Mart public hearings; need for affordable housing in the region and efforts made by the Chamber of Commerce and the City; questions were asked about the progress of the Water Authority contract renegotiations and non-betterment costs; additional concerns were expressed about pedestrian safety in the Haw Creek community and plans for sidewalks; a question was asked concerning the viability of opening the Bee Tree watershed area for recreation purposes; area water sources were discussed, as well as the long-range possibility of utilizing the French Broad River as a drinking water source; and the future of the Civic Center and potential revenue sources was discussed.

Mayor Worley adjourned the meeting at 8:15 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – August 6, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Worley proclaimed Sunday, August 11, 2002, as "Women's Equality Day" in the City of Asheville.

CONSENT:

Contract and Budget Amendment with the NC Dept. of Transportation for Reimbursement of a Technology Grant

Summary: The consideration of (1) a budget amendment incorporating N. C. Dept. of Transportation (NCDOT) funding for purchase of two computers with associated equipment and one telephone system compatible with the City system to be purchased by the Transit Services Department and (2) and accompanying resolution authorizing the Mayor to enter into an agreement with NCDOT.

The NCDOT requires an agreement between the City and the NCDOT for reimbursement of up to $37,800.00 for the purchase of two (2) computers and one (1) telephone system. The state will reimburse the City up to 90% ($37,800) of the total expended amount of $42,000. The local matching funds have been programmed in the Transit Services Departmental budget. Additionally, execution of this agreement will require an amendment to the City budget.

City staff recommends adoption of the resolution and the proposed budget amendment.

Contract for Traffic Calming

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with APAC, Inc., for installation of traffic calming measures on City of Asheville streets in the amount of $87,680.76.

In the 2000-01 budget, City Council appropriated $100,000 for traffic calming projects throughout the City. Of this $100,000 approximately $97,000 remains for the purpose of installing traffic calming and all the signs and marking associated with the traffic calming measures. The following projects were selected:

1. Florida Avenue/Dorchester Avenue (West Asheville)
2. Caribou Road/ Booker Avenue (South Asheville)
3. Gracelyn Road and Ottari Road (North Asheville)
4. South French Broad Avenue (Central Asheville)
5. Wyoming Road (Central Asheville)
6. Wood Avenue (East Asheville)

Staff was unable to get the needed signatures for Wood Avenue. Staff worked with the residents extensively to obtain these signatures but was unsuccessful.

Over the past year and a half we have worked with the residents of the other streets to develop traffic calming plans. Given that the project was estimated to cost less than $100,000, the City solicited bids from four contractors, which included, APAC, Inc , Asphalt Unlimited, Tarheel Paving, and Lonesome Mountain Paving for the work. Two bids were received with the lowest bidder being APAC at $87,680.76. The estimate performed by the Engineering staff was $66,203.94.

City staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with APAC, Inc., for traffic calming in the amount of $87,680.76.

City Engineer Cathy Ball answered various questions from Council, some being, but are not limited to: are there other traffic calming projects being undertaken; is there any kind of breakdown on how much it costs the City to perform a traffic calming study; and, if there is a safety problem, does the City go through the traffic calming study or just take action.

Budget Amendment to Water 29 Fund (Water Bond Capital Improvements Fund)

Summary: This consideration of a budget amendment to the 29 Fund (Water Bond Capital Improvements Fund) to reflect reprogramming of funds to provide for an increase in NCDOT projects, an increase in Master Plan Improvements, and an increase in Annexation Projects.

Funds will be reprogrammed to increase funding for NCDOT Betterment, increase funding for new Annexation projects, and increase Master Plan Improvements. Most of these changes were approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program. Staff is proposing an $874,847 increase in NCDOT Non-Betterment projects. This is needed to provide additional funding for under budgeted projects and to set up funding for the first of three annual payments for Pisgah Highway Phase II and Sweeten Creek Phase II. Staff is also proposing a $13,030 increase in NCDOT Betterment (Brevard Road I-240 to I-40) and an increase of $275,000 for the Sand Hill Road Master Plan Project. These increases are needed because of under budgeting. Finally, an increase of $175,000 is needed for the new 2002 and 2003 Annexation Projects. All of the increases summarized above will be offset by deleting $832,370 in Building Safety Improvements and decreasing Critical Needs Improvements Phase II by $505,507.

Staff recommends approval of the amendment to the 29 Fund to reflect the changes identified above.

Budget Amendment to Water 35 Fund – Water Major Capital Improvements

Summary: The consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) (1) to establish funding for a $115,000 Environmental Protection Agency (EPA) Grant for a Water Security Assessment; (2) to reduce Contributions From Other Funds – Future by $718,511 to reflect that the funding for Pisgah Highway Phase II and Sweeten Creek NCDOT projects will be provided in the 29 Fund; and (3) to reprogram funds to increase funding for FY 02/03 Distribution System Improvements, provide for a Contingency to fund FY 03/04 Distribution System Improvements, and to increase funding in several other projects that were under budgeted.

The Capital Project Ordinance will be amended as follows:

- It will be increased to reflect a $115,000 grant awarded to the Regional Water Authority (RWA) by the EPA on July 1, 2002. This grant will provide the funding necessary to provide a vulnerability assessment and related security improvements at the water treatment plants and distribution system facilities. The objective of this grant program is to reduce the vulnerabilities that large drinking water utilities present to a terrorist attack.

- Future NCDOT projects will be decreased by $718,511 because these projects will be funded with 2001 revenue bond proceeds in the 29 Fund. This includes the Pisgah Highway Phase II and Sweeten Creek Phase II NCDOT projects approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program.
- Funds will be reprogrammed to increase funding for FY 02/03 Distribution System Improvements, to provide for a Contingency to fund FY 03/04 Distribution System Improvements, and to increase funding in several other projects that were under-budgeted. These changes were approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program. Staff is proposing a reduction of $116,811 for Critical Needs Contracts Phase I, a reduction of $55,011 for FY 99/00 Distribution System Improvements, a reduction of $9,660 for Bee Tree Dam Renovations, a reduction of $14,252 for Annexation Blackberry Lane, a deletion of $83,863 for FY 98/99 Distribution System Improvements, a deletion of $1,150,000 for FY 01/02 Distribution System Improvements, an increase of $1,000,000 for FY 02/03 Distribution System Improvements, and an increase of $429,597 for Contingency for FY 03/04 Distribution System Improvements.

Staff recommends approval of the amendment to the 35 Fund to reflect the changes identified above.

School Crossing Guards Contract

Summary: The consideration of a resolution authorizing the City Manager to renew a contract with Bentley Security for school crossing guards.

The City of Asheville currently contracts with Bentley Retirements Inc., d/b/a Bentley Security to provide school crossing guards for students who attend Asheville City Schools. The total contract price is $80,233.20 and has not increased from the previous contract period.

Asheville City Schools require the services of school crossing guards at 23 locations to insure the safety of students who must cross the street on their way to school. The work performed requires the presence of the crossing guards for approximately 2 hours each school day (180 days per year). The proposed contract period of (2) years remains unchanged. The minority business office has reviewed the list of available service providers and recommends the City of Asheville renew the contract with the current service provider.

City staff recommends City Council authorize the City Manager to renew a contract with Bentley Security in the amount of $80,233.20.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ASHEVILLE-BUNCOMBE VISION DIALOGUES

Mr. Joe McGuire invited City Council to participate in the 2002 VISION Community Dialogues and explained that the goal of Asheville-Buncombe VISION Inc. is (1) to encourage discussion among diverse residents in order to promote understanding of how local issues affect different segments of our community and (2) to encourage citizens to collaborate on efforts that benefit the whole community. This year's topic, "For Community Health", will focus on how we can respond to the health needs of our county.

REPORT FROM CITIZEN STUDY COMMITTEE ON CAMPAIGN FINANCE REFORM

Ms. Wanda Adams, Chair of the Citizen Study Committee on Campaign Finance Reform, introduced present Committee members Lou Bissette, Rod Whiteside, Max Haner and Marie Colton. She said that unfortunately this subject was very complicated and it took them four meetings to arrive at this point. Regardless of the reasons, their meetings were not fully attended by all of the committee members. This is not a unanimous recommendation, however, it was approved by a majority of the seven-committee members that were appointed by the City Council. She then presented City Council with the final report containing recommendations by the Campaign Finance Changes Study Committee. She also submitted to Council all of the relevant research material.

Perceived Campaign Problems in Municipal Elections:

The amount of money needed to run a winning campaign is beyond the reach of the average citizen. It is very difficult to raise $20,000 to $100,000 without personal wealth, well-connected friends or incurring a debt that is almost impossible to retire.

The amount of money spent on winning campaigns has exceeded what appears to be reasonable. It appears unnerving that individuals have to spend upwards of $50,000 to get elected to a position that pays less than $15,000 a year.

The number of less-than-serious candidates crowds the field and makes it more difficult for committed candidates (who don't have access to tens of thousands of dollars) to rise to the top.

The amount of money candidates spend isn't always disclosed prior to the election.

The City should make an attempt to provide incentives and/or expense reimbursements in an effort to reduce campaign costs. It is the recommendation of the Committee that the City establish a non-profit corporation to facilitate the election process. The corporation should focus on establishing policies/guidelines, locating funding sources and pursuing legislation, if necessary.

Possible campaign finance changes for the non-profit corporation's consideration or for City Council's consideration include, but are not limited to, the following:

(1) The City should make its print facilities available to candidates.

(2) The City should partially finance local campaigns with a public fund.

(3) Residents who are concerned about the escalating costs of local campaigns could contribute to a public fund to be accessed by candidates. The contributions would be made through a voluntary or mandatory donation included in monthly water bill.

(4) Send mailings with information submitted by all candidates.

(The recommendations listed above are designed to help lessen the financial burden of campaigning.)

(5) The City should increase the filing fee to $100 for candidates.

(The fifth recommendation is designed to help weed-out the less-than-serious candidates who may not find it appealing to pay a $100 filing fee if they aren't planning to actively campaign for office.)

(6) The City should establish spending limits for candidates. The limit should be in the range of $15,000 to $30,00 for council candidates and $25,000 to $40,000 for mayoral candidates.

(The sixth recommendation is designed to set a more realistic goal for campaign spending.)

(7) Use of the Public Access Channel for candidate forums.

(8) Allow a non-profit group to sponsor a candidate forum on the Government Channel.

(9) Work with local media, especially television news, to give more and better coverage of forums, etc.

(The three previous recommendations are designed to give all candidates equal exposure to the electorate.)

(10) Petition the State legislature to correct the loophole in the law that is clearly a drafting error with the legislation requiring campaign reports for municipal elections. The law should read that campaigns are required to file a report a week or 10 days before the Primary election and a second report a week or 10 days before the General election. By mistake, the law says file a report before the Primary – or – before the General.

(11) Obtain a local act authorizing any ordinance that affects elections or campaigns.

Councilman Mumpower asked if the Committee had enough time to develop their final report since Council only allotted them 120 days. Ms. Adams felt that they did have enough time in that the issue is so complex they could work on it for two years and still have disagreements, other avenues to search, etc. and chances are they would still come up with the basic recommendation which is to establish a non-profit corporation to facilitate the election process.

Mr. Lou Bissette said that the Committee dealt with some very difficult issues and that government has to be very careful on the restrictions and the amount of tampering they do regarding the election process. He wanted to express the following minority view comments on behalf of himself and Kent Wolff (also member of the Committee): (1) he felt there number of constitutional issues that relate to report that need to be considered; (2) agreed with recommendations 5, 7, 8, 9 and 10; (3) unsure about the purpose of the non-profit corporation since we have a State Board of Elections to oversee the election process; (4) concern about using public funds to finance campaigns; (5) concern over using City print shop facilities available to candidates; (6) concern about mandatory donations in the monthly water bills; and (7) concern over spending limits. He felt that when you start limiting what candidates can do to get elected, you actually protect the incumbents. He explained that incumbents have name recognition and someone trying to get elected has to spend more money to get their name out and to get elected.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that City Council instructed him to give minimal assistance to the Committee. He did not spend a lot of time investigating the constitutionality of some of the recommendations. He said that one purpose of the report is to seek Council direction on where to go from here. Depending on that direction,

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then his involvement would be more significant. He would be happy to do whatever research City Council directed him to do.

Councilman Dunn did not want to use public funds in anyway and felt that some of the recommendations were a little unrealistic.

Councilwoman Jones felt that some of the recommendations were good first steps to start restoring public trust. She was concerned about the people who aren't going to the polls because they feel the system is tainted and they just don't want to participate. She felt the recommendations by the Committee are good places to begin.

Councilman Mumpower suggested that instead of wrestling over specific content of the report, that a healthy way in which to move forward might be to refer the report back to the City Council Subcommittee on Campaign Finance Changes (Councilman Peterson, Vice-Mayor Bellamy and Councilman Mumpower) to review the recommendations and report back to City Council with their recommendations. Or, he suggested the City Attorney review the report for constitutional issues first.

Mr. Rod Whiteside reiterated Ms. Adams comments in that the recommendations are a product of the committee members who were at the meeting. He asked Council to review the recommendations and if necessary, give them further direction.

Upon inquiry of Councilman Mumpower, Ms. Adams said that if Council chooses to give the Committee more direction, with a timeframe in mind, she felt the Committee would be amenable to continue their work on this issue.

Mr. Max Haner concurred in the Committee's recommendation in that the City should establish a non-profit corporation.

When Councilman Dunn asked if the Committee researched other issues regarding the election process, Councilman Peterson said that the Council's consensus was that this Committee only be asked to work on campaign finance reform.

Councilman Peterson said that the report contains a lot of good ideas and gives Council some good direction. He felt now was the time for City Council to decide what direction they wish to take. If there is support of Council, then Council can ask the Committee if they will continue to serve and develop details on how some of the recommendations can be achieved. If there is not Council support, then we don't need to ask the Committee to waste time. He felt it might be appropriate for the Council Subcommittee to review this report and give their recommendation to Council at a worksession in about 2-4 weeks. He felt the goals are (1) to restore confidence in the system; and (2) help inform the voters.

Ms. Marie Colton felt that this is a very difficult subject, which contains varying opinions. She agreed with the basic recommendation to establish a non-profit corporation.

Mayor Worley felt the root for the high cost of spending was the cost of media. As things progress with technology, there may be innovative ways to get the message out without spending money on media.

It was the consensus of City Council to refer the report to the City Council Subcommittee to review and report back to Council with their recommendations in 2-4 weeks. Once City Council has the Subcommittee's report, then direction, if appropriate, can be given to the Citizen Study Committee to assist Council and/or ask the City Attorney to research specific items.

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All of Council thanked the Committee members for their diligent and hard work on this very difficult issue.

AMENDMENT TO 2002 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT & HOME ACTION PLAN

Community Development Director Charlotte Caplan said that this is the consideration of amendments to the 2002 Consolidated Community Development Block Grant (CDBG) and HOME Action Plan.

Council originally approved the 2002 Action Plan for CDBG and HOME funding on April 23, 2002. Since then, some additional CDBG funds have become available from program income or programs completed under budget, and a request has been received for a significant change to a HOME-assisted program. The following changes are now recommended:

A. CDBG AMENDMENTS

Unallocated CDBG funds currently total $249,018 as follows:

Funds returned from NHS Montford Gateway Loan Guarantee (project completed)	$ 44,045
Additional program income anticipated from sale of Biltmore Avenue property	70,000
Contingency	86,575
Program income recd. in 2001-02 and not yet allocated	48,398
Total available	$249,018

The recommended allocations are:

1. Woodfin Apartments **New CDBG allocation: $89,250**
The Housing Authority of the City of Asheville has re-submitted its request for CDBG assistance for acquisition and renovation of the 19-unit Woodfin Apartment, located in downtown Asheville, reducing the amount requested from $250,932 to $89,250. The Housing & Community Development (HCD) Committee recommends this grant on the grounds that the need for the project remains very high and that the amount requested is now within the funds available.

2. Code Enforcement Demolitions **New CDBG allocation: $41,370**
The general fund appropriation for demolitions was eliminated from the 2003 City Budget. The removal of certain vacant, dilapidated structures that are a blight on surrounding property is both CDBG-eligible and desirable for the achievement of Consolidated Plan goals. The HCD Committee recommends an allocation of $41,370, which is sufficient to demolish about eight structures.

3. Hillcrest Enrichment Program **Increase CDBG allocation by: $5,000**
Funding constraints led to a reduction in the grant allocated for this Housing Authority youth program from $50,000 in 2001-02 to $45,000 in 2002-03. The HCD Committee now recommends restoring the grant to its former level.

4. CDBG Administration **Increase CDBG allocation by: $29,065**
As part of the 2003 interim City Budget, Council has approved the transfer of one filled position within the Planning & Development Department from general funding to CDBG/HOME funding. The transferred staff person will work exclusively on CDBG- and HOME-eligible administrative and planning work. Staff estimates that the cost will be $48,441 this year, to be funded 60% from CDBG and 40% from HOME (see below).

5. Contingency $84,333

Funds will be retained for urgent needs, unforeseen cost overruns, or shortfalls in anticipated program income during the year. If not needed, these funds will be available for the 2003-04 funding cycle.

B. HOME AMENDMENTS

1. HOME Administration

The cost to the HOME program of the transferred staff position will be $19,376. The Asheville Regional Housing Consortium Board recommends that this be covered by reducing Member Government Administration and increasing City of Asheville HOME Program Administration by the same amount. The total amount allocated for HOME administration will remain unchanged at 10% of the HOME budget.

2. Change of Location for Henderson County Habitat Affordable Housing Project

Henderson County Habitat for Humanity was awarded $50,000 in 2002 HOME funds, through Henderson County, to purchase land for 10 new single-family homes at the Village of King Creek on Spartanburg Highway in Hendersonville. The agency has now asked to use these funds instead to purchase land on Stepp Road in the Clear Creek district of Henderson County. Habitat will go ahead with the Village at King Creek project using a different source of funds. A separate public hearing on this item was held in Hendersonville on July 24, 2002, and both the Henderson County Board of Commissioners and the Asheville Regional Housing Consortium Board recommend approval.

Staff recommends approval of the amended Action Plan.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda for a public hearing.

MISCELLANEOUS

Upon inquiry of Councilwoman Jones, City Manager Westbrook said that he is working on a mentoring policy of how the City can be actively involved in an educational initiative of City employees being mentors to our school children.

Upon inquiry of Councilwoman Jones, City Manager Westbrook said that he is in the process of preparing information for City Council approval on orientating potential city council candidates.

CLOSED SESSION

At 4:47 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations – G.S. 154-381.11 (a) (4); and (2) to establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price of other material terms of a contract for the acquisition of real property – G.S. 143-318.11 (a) (5). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 5:23 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:23 p.m.

Magdalena Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 13, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James E. Ellis

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 17, 2002, AS "TOGETHER WE READ ... THE FRENCH BROAD DAY"

Mayor Worley read the proclamation proclaiming August 17, 2002, as "Together We Read ... The French Broad Day" in the City of Asheville. He presented the proclamation to Mr. Rob Neufeld who briefed City Council on some activities taking place during the day.

B. PRESENTATION BY ASHEVILLE VELODROME GROUP

Mr. Chris Kamm thanked City Council for the beautiful French Broad River Park. The diverse facilities are a real asset to not only cyclists, but the community as a whole.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 23, 2002; COMMUNITY MEETING HELD ON JULY 30, 2002; AND THE WORKSESSION HELD ON AUGUST 6, 2002

B. ORDINANCE NO. 2941 - BUDGET AMENDMENT FOR REIMBURSEMENT BY THE N.C. DEPT. OF TRANSPORTATION OF A TECHNOLOGY GRANT

Summary: The consideration of (1) a budget amendment incorporating N. C. Dept. of Transportation (NCDOT) funding for purchase of two computers with associated equipment and one telephone system compatible with the City system to be purchased by the Transit Services Department and (2) and accompanying resolution authorizing the Mayor to enter into an agreement with NCDOT.

The NCDOT requires an agreement between the City and the NCDOT for reimbursement of up to $37,800.00 for the purchase of two (2) computers and one (1) telephone system. The state will reimburse the City up to 90% ($37,800) of the total expended amount of $42,000. The local matching funds have been programmed in the Transit Services Departmental budget. Additionally, execution of this agreement will require an amendment to the City budget.

City staff recommends adoption of the resolution and the proposed budget amendment.

ORDINANCE BOOK NO. 20 – PAGE 22

C. **RESOLUTION NO. 02-126 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF A TECHNOLOGY GRANT**

See Consent Agenda Item "C" above.

RESOLUTION BOOK NO. 27 – PAGE 216

D. **RESOLUTION NO. 02-127 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH APAC INC. TO INSTALL TRAFFIC CALMING DEVICES ON VARIOUS CITY STREETS**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with APAC, Inc., for installation of traffic calming measures on City of Asheville streets in the amount of $87,680.76.

In the 2000-01 budget, City Council appropriated $100,000 for traffic calming projects throughout the City. Of this $100,000 approximately $97,000 remains for the purpose of installing traffic calming and all the signs and marking associated with the traffic calming measures. The following projects were selected:

1. Florida Avenue/Dorchester Avenue (West Asheville)
2. Caribou Road/ Booker Avenue (South Asheville)
3. Gracelyn Road and Ottari Road (North Asheville)
4. South French Broad Avenue (Central Asheville)
5. Wyoming Road (Central Asheville)
6. Wood Avenue (East Asheville)

Staff was unable to get the needed signatures for Wood Avenue. Staff worked with the residents extensively to obtain these signatures but was unsuccessful.

Over the past year and a half we have worked with the residents of the other streets to develop traffic calming plans. Given that the project was estimated to cost less than $100,000, the City solicited bids from four contractors, which included, APAC, Inc., Asphalt Unlimited, Tarheel Paving, and Lonesome Mountain Paving for the work. Two bids were received with the lowest bidder being APAC at $87,680.76. The estimate performed by the Engineering staff was $66,203.94.

City staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with APAC, Inc., for traffic calming in the amount of $87,680.76.

City Engineer Cathy Ball answered various questions from Council, some being, but are not limited to: are there other traffic calming projects being undertaken; is there any kind of breakdown on how much it costs the City to perform a traffic calming study; and, if there is a safety problem, does the City go through the traffic calming study or just take action.

RESOLUTION BOOK NO. 27 – PAGE 217

E. **ORDINANCE NO. 2942 - ORDINANCE AMENDING THE WATER BOND CAPITAL IMPROVEMENTS FUND (29 FUND)**

Summary: This consideration of a budget amendment to the 29 Fund (Water Bond Capital Improvements Fund) to reflect reprogramming of funds to provide for an increase in

NCDOT projects, an increase in Master Plan Improvements, and an increase in Annexation Projects.

Funds will be reprogrammed to increase funding for NCDOT Betterment, increase funding for new Annexation projects, and increase Master Plan Improvements. Most of these changes were approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program. Staff is proposing an $874,847 increase in NCDOT Non-Betterment projects. This is needed to provide additional funding for under budgeted projects and to set up funding for the first of three annual payments for Pisgah Highway Phase II and Sweeten Creek Phase II. Staff is also proposing a $13,030 increase in NCDOT Betterment (Brevard Road I-240 to I-40) and an increase of $275,000 for the Sand Hill Road Master Plan Project. These increases are needed because of under budgeting. Finally, an increase of $175,000 is needed for the new 2002 and 2003 Annexation Projects. All of the increases summarized above will be offset by deleting $832,370 in Building Safety Improvements and decreasing Critical Needs Improvements Phase II by $505,507.

Staff recommends approval of the amendment to the 29 Fund to reflect the changes identified above.

ORDINANCE BOOK NO. 20 – PAGE 24

F. RESOLUTION NO. 02-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BENTLEY SECURITY INC. FOR SCHOOL CROSSING GUARDS

Summary: The consideration of a resolution authorizing the City Manager to renew a contract with Bentley Security for school crossing guards.

The City of Asheville currently contracts with Bentley Retirements Inc., d/b/a Bentley Security to provide school crossing guards for students who attend Asheville City Schools. The total contract price is $80,233.20 and has not increased from the previous contract period.

Asheville City Schools require the services of school crossing guards at 23 locations to insure the safety of students who must cross the street on their way to school. The work performed requires the presence of the crossing guards for approximately 2 hours each school day (180 days per year). The proposed contract period of (2) years remains unchanged. The minority business office has reviewed the list of available service providers and recommends the City of Asheville renew the contract with the current service provider.

City staff recommends City Council authorize the City Manager to renew a contract with Bentley Security in the amount of $80,233.20.

RESOLUTION BOOK NO. 27 – PAGE 222

G. ORDINANCE NO. 2943 - ORDINANCE AMENDING THE WATER MAJOR CAPITAL IMPROVEMENTS FUND (35 FUND)

Summary: The consideration of a budget amendment to the 35 Fund (Water Major Capital Improvements Fund) (1) to establish funding for a $115,000 Environmental Protection Agency (EPA) Grant for a Water Security Assessment; (2) to reduce Contributions From Other Funds – Future by $718,511 to reflect that the funding for Pisgah Highway Phase II and Sweeten Creek NCDOT projects will be provided in the 29 Fund; and (3) to reprogram funds to increase funding for FY 02/03 Distribution System Improvements, provide for a Contingency to fund FY

03/04 Distribution System Improvements, and to increase funding in several other projects that were under budgeted.

The Capital Project Ordinance will be amended as follows:

- It will be increased to reflect a $115,000 grant awarded to the Regional Water Authority (RWA) by the EPA on July 1, 2002. This grant will provide the funding necessary to provide a vulnerability assessment and related security improvements at the water treatment plants and distribution system facilities. The objective of this grant program is to reduce the vulnerabilities that large drinking water utilities present to a terrorist attack.
- Future NCDOT projects will be decreased by $718,511 because these projects will be funded with 2001 revenue bond proceeds in the 29 Fund. This includes the Pisgah Highway Phase II and Sweeten Creek Phase II NCDOT projects approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program.
- Funds will be reprogrammed to increase funding for FY 02/03 Distribution System Improvements, to provide for a Contingency to fund FY 03/04 Distribution System Improvements, and to increase funding in several other projects that were under-budgeted. These changes were approved as part of the FY 2002-2003 Water Fund Budget's Capital Improvements Program. Staff is proposing a reduction of $116,811 for Critical Needs Contracts Phase I, a reduction of $55,011 for FY 99/00 Distribution System Improvements, a reduction of $9,660 for Bee Tree Dam Renovations, a reduction of $14,252 for Annexation Blackberry Lane, a deletion of $83,863 for FY 98/99 Distribution System Improvements, a deletion of $1,150,000 for FY 01/02 Distribution System Improvements, an increase of $1,000,000 for FY 02/03 Distribution System Improvements, and an increase of $429,597 for Contingency for FY 03/04 Distribution System Improvements.

Staff recommends approval of the amendment to the 35 Fund to reflect the changes identified above.

ORDINANCE BOOK NO. 20 - PAGE 28

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Peterson moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF 200 BROOKLYN ROAD/APPLEDORN CONDOMINIUMS FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A PROPOSED 168 UNIT CONDOMINIUM

ORDINANCE NO. 2944 - ORDINANCE TO CONSIDER THE CONDITIONAL USE ZONING OF 200 BROOKLYN ROAD/APPLEDORN CONDOMINIUMS FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2945 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR A PROPOSED 168 UNIT CONDOMINIUM AT 200 BROOKLYN ROAD/APPLEDORN CONDOMINIUMS

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Direct Scott Shuford said that this is a very significant project. It will essentially double the density of the underlying zoning. It's important to realize that in-fill projects like this require that type of higher density, generally, to make them affordable. That is probably the very reason why this applicant can make this project an affordable project without the infusion of any public money. It's also equally important to understand that the impacts of this project need to be addressed. In this particular case, staff feels that traffic impacts are the primary concerns. The Shiloh neighborhood is in need of traffic calming and intersection improvements. We are proposing a condition that will enable the traffic impacts of the development to be mitigated and that mitigation will occur through a plan that will be developed in concert with the neighborhood with the developer funding. These improvements will eventually benefit both the residents of the neighborhood and the residents of the Appledorn Condominiums. We have a strong record of support for the Shiloh neighborhood and in the past we have (1) made recommendations to Council for denial of a commercial parking lot on Shiloh Road; (2) we opposed an adaptive re-use office project on Caribou Road; (3) we have worked with the neighborhood to resolve a concern about some zoning along Sweeten Creek Road that involved a commercial industrial site; and (4) we're going to be recommending that a small area plan be developed for the neighborhood in the near future. Our support needs to be taken in that context. A valid protest petition has been filed. He showed (City Exhibit 1) how the protest petition was valid due to the signature of residents in Wilson Creek Subdivision. He then noted that Wilson Creek Subdivision, which is also an affordable housing development, received opposition when it was approved. Council will hear specific concerns about traffic, water and sewer, infrastructure, electric utility service, stormwater management and similar issues, but we believe these technical concerns are addressed either in our underlying code requirements or in the specific conditions staff is proposing as part of the recommendation. City staff is recommending approval of this project because (1) they feel the negative impacts can be mitigated; (2) neighborhood traffic conditions will actually be improved; and (3) this project provides significant and substantial promotion of our goal of providing affordable housing in the city.

City Attorney Oast explained that a valid protest petition has been filed with respect to the rezoning portion of this request. The law requires that in the case of a valid protest petition, the rezoning can only pass by favorable vote of ¾ of the entire Council. Since Councilman Ellis is absent does not affect the number of votes required to pass. Therefore, in this case, it will require all six Council members to vote in favor of the rezoning in order for it to pass.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 2 (Affidavit of Publication), City Exhibit 3 (Certification of Mailing of Notice to Property Owners); and City Exhibit 4 (Staff Report).

Mr. Glines said that this is the consideration of a request to rezone property located on 200 Brooklyn Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use and of a motion to issue a Conditional Use Permit for a proposed 168 unit condominium.

Mr. Glines said that on May 31, 2002, Rod Hubbard submitted an application for conditional use zoning from RS-8 to RM-16 for an 11.43 acre tract in the Shiloh neighborhood (City Exhibit 5). The property is addressed as 200 Brooklyn Road and is north of West Chapel Road. The plan includes constructing 168 residential condominiums, which will be priced within City affordable housing guidelines.

The surrounding area is zoned RS-8 including this parcel. The RS-8 single-family residential district allows up to 8 single-family units an acre. Under the current zoning, up to 91 single-family units could be constructed on the site given the acreage. Likely though, some number less than that could be built since some of the land would be given over for infrastructure improvements like roads, utility easements etc. With the current rezoning request the applicant is seeking approval of 168 units with a density yield of 14.7 units per acre.

The development consists of seven, three story buildings each housing 24 condominiums (168 units total). Currently the site is undeveloped except for a few small structures that supported the nursery business that operated on the property. The site (City Exhibit 6) also contains an internal parcel that is home to the Faith Tabernacle Christian Church. Under the proposed plan, the church will share an entrance driveway with the development on Brooklyn Road.

A traffic impact analysis was required of the applicant. Under the proposed plan, 984 vehicle trips are estimated to be generated per day with the peak hour generating 91 trips in the evening. The Technical Review Committee (TRC) of the City requested a traffic impact analysis (TIA) be completed even though the peak hour does not meet our threshold of 100 trips. The issues of the narrow roads in the area and additional traffic needed to be reviewed and may be mitigated by incorporating traffic calming measures and intersection improvements. Staff is proposing that the developer contribute some funds toward neighborhood traffic improvements to mitigate the anticipated impact of this amount of new traffic.

The project will be required to provide almost 2 acres of open space. On the plans submitted, ample open space is reserved for use by residents. Staff feels that, in addition, a children's playground should be provided as part of the development to meet the recreational needs of the condominium residents.

The TRC reviewed this project at their June 17, 2002, meeting and recommended that the project be forwarded to the Planning and Zoning Commission and City Council with a recommendation of approval with conditions.

At its July 10, 2002, meeting, the Planning and Zoning Commission recommended approval of the request by a 7-0 vote, subject to the following conditions. Planning and Development staff concurs with this recommendation.

1. Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings and parking lot plantings included), which should include existing plant material that will be credited towards the planting requirements.
2. Setback dimensions for the buildings for side and rear property lines need to be a minimum of 40 feet. In addition, a "C" buffer which (25' wide as per Article 11 of the Code) is needed on all property lines except the property line with Brooklyn Road.
3. The existing vegetative buffers along the perimeter of the parcel should also be preserved and will help to minimize the impact of the development on adjoining properties; there shall be no grading in any setback areas, except at vehicle access points.
4. The developer shall provide an internal sidewalk system and connections to Brooklyn Road and Caribou Road; this system shall include crosswalk striping where it crosses internal driveways.
5. To mitigate negative traffic impacts from the development, the developer shall provide up to $500 per unit for neighborhood traffic calming and intersection improvements to implement plans to be developed by the City in working with the neighborhood; these monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first.
6. The plans must be revised to provide a detail of the intersection of the condominium project with Brooklyn Road, including a 20-foot turning radii.
7. The developer shall provide street lighting.
8. The developer shall work with staff to determine in a reduced number of parking spaces can be accommodated.
9. Open spaces need to be suitable for recreation - particularly for children. Recreation and play areas shall be expanded to include a playground for children.
10. Each unit shall be occupied by the owner or owners thereof, and may not be rented or leased by the owner except as necessary to accommodate transitory situations. "Transitory situations" means a set of circumstances or conditions that are temporary in duration, usually for 18 months or less. By way of illustration and not limitation, such transitory situations may include temporary work assignments, divorce or separation, sickness, or extended travel. This condition shall not be construed to prohibit interfamilial rental arrangements, or a tenancy resulting from court order in a domestic matter. In the case of units acquired through foreclosure or other involuntary or distress-induced conveyance, the period of occupancy by a non-owner shall not exceed 18 months.
11. All units in this project shall have an initial purchase price that meets the City of Asheville housing affordability guidelines.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met provided certain impacts are mitigated through site design modifications and off site road improvements.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The development is within standards of development practice set forth by the City of Asheville.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The 11.43 acre site is gently rolling from Brooklyn Road to the back of the property. The site has significant existing natural vegetation. The buildings have been sited to preserve many of the significant trees. Preserving the existing vegetation around the periphery, along with the natural topography of the site, will serve to buffer neighboring properties.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The properties are proposed to be condominium units offered for sale. These residential units represent homeownership opportunities for members of the community and are not expected to injure property values of adjoining or abutting properties. The developer has indicated a willingness to accept an ownership condition that will preclude this development from becoming a rental project.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The surrounding properties are made up of single-family units occupying one-quarter acre and larger lots. This development, which places 24 condominium units per building in seven buildings, appears to have greater scale, bulk and coverage than the surrounding neighborhood. However, by preserving and adding to the natural vegetation along the edges of the property the developer will mitigate any adverse impacts on surrounding properties, making this development be in harmony with the surrounding neighborhood.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

This proposed development supports the smart growth policies of affordable in-fill housing and adaptive reuse of a former commercial property. The developer has indicated a willingness to accept a condition limiting the initial purchase price for the units within the development.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is located near transportation facilities and other utilities appear adequate. The project area is centrally located near major road facilities, interstate connections and near the bus transit line that serves Shiloh. In addition, the Asheville Transit System may be able to modify the Route 8 bus service to go by this property. Preliminary review by other utility providers has not revealed any problems for serving the development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed development will substantially increase the number of cars operating on Brooklyn Road. While the road is not above its ability to handle the additional traffic, the roads in Shiloh are typically quite narrow in width with limited sight distances. Traffic calming measures and intersection improvements are necessary to mitigate the impact of this development from a traffic standpoint. Staff recommends a condition be placed on the development that provides up to $500 per unit for making those improvements that are determined by the City, in working with the neighborhood, to mitigate traffic safety and operational impacts of the development.

Upon inquiry of Councilman Peterson, Mr. Glines explained the setback requirements along the property and the landscape buffering that will be required. He noted that the site was formerly a nursery and there is a lot of significant plant material that will be stored and reused as part of this buffering.

Councilman Peterson asked if City staff has already identified the particular intersections for improvements. Mr. Shuford said that staff is planning to work with the neighborhood to determine exactly what are the most problematic intersections, as well as where traffic calming problems already exist.

Mr. Rod Hubbard, representing C&R Project Development, LLC, explained how the property has been in his wife's family for a number of years and how he restored the Kress Building in downtown Asheville. He showed pictures of the property (Applicant Exhibits 1, 2 and 3), which showed the height of the trees being 80-120 feet high. His intention is not to remove any of the trees because the property has a natural buffer. When he purchased the land, he promised the Appledorns that he would not cut down any major trees and if he was to develop it, was to leave all of the boundary trees and all of the major vegetation. He said they have had a tree survey done on the entire property and he guaranteed City Council that not one major tree will be removed from the property unless it was diseased. Since the community is important, especially with a development of this size, he met with Mrs. Baynes and a delegation of Shiloh residents at the Shiloh Community Center to explain his development. He also invited Mrs. Baynes and others to join him on the property so he could show them how the buildings would be set. Unfortunately, due to vacations and scheduling conflicts, that was not possible. Using City Exhibit 6, he showed how the Faith Tabernacle Church is in the middle of the development. He met with the Church on numerous occasions and explained his development. He responded to their concerns. He said this is an affordable housing development – not a low-income project. He plans to be able to produce one, two and three bedroom condominiums, starting off at $69,900. All 168 units will be priced under $100,000. The one bedrooms will be approximately 800 square feet and each unit will have its own independent balcony. There are 3.5 acres of open space. There will be walkways, trails and two designated play areas for the children. It will be a safe community. The buildings will be located in a way that doesn't affect the tree line buffer and doesn't affect the vegetation and trees. He is guaranteeing to City Council the specimen trees will remain on the property. He guaranteed that there would be no plastic sidings on the buildings. The dressed exterior will be rock, brick or stone with iron for the balconies and that the exterior will be aesthetically pleasing. The TRC said that everything could accommodate the additional 168 units. The Planning and Zoning Commission voted unanimously to approve the project. Since traffic was an issue, they had a TIA performed. Even though the study says we need to bring in some traffic calming issues, there were no major significant problems in the area. He explained how he tried to answer the concerns of the neighborhood. He said that the density is needed to be able to sell affordable housing units. One reason he is proposing this development is to help the community with affordable housing. All of the units will be owner-occupied. He will have condominium documents drawn that says people cannot purchase the units to rent. He had a market research study performed which stated, "Asheville has by some measures the least affordable housing in North Carolina. Asheville ranks lowest in the state and 144th out of 184 cities nationwide for home ownership affordability ...." He believed his development is the right thing for the community. Using Applicant Exhibit 4, he showed a map showing where the people who signed the protest petition lived. Most of the signatures were from residents of Wilson Creek Subdivision, which is a Habitat for Humanity affordable housing development. Those people were given an opportunity to purchase their own home and he felt the same chance should be given to 168 other families. He urged Council to vote in favor of his development.

Upon inquiry of Councilman Mumpower, Mr. Hubbard said that he did have a concern about the $84,000 ($500 per unit) required for traffic calming. He explained that he trying to keep the units affordable starting at $69,900 and he doesn't want to have to sell it for $71,400. He did agree though that he did needs to contribute in some way to traffic calming, but he felt $84,000 might be a little too much.

The following individuals spoke in favor of rezoning the property for various reasons, some being, but are not limited to: area residents are afraid of change; development of the property into condominiums will allow young people to be able to purchase a home; City needs affordable housing; home ownership is needed in the City; the Faith Tabernacle Christian Center and the surrounding area will benefit from this development; playground will allow the children in the area to not have to play in the street; this upscale development will enhance property values of the area; if people on Brooklyn Road parked in their driveways and not on the street there would be enough room for two school buses to pass; and this development is a real step forward to meeting the affordable housing needs of the community:

Mr. Tracy Jefferson, resident on West Chapel Circle
Mr. William Wynn, member of Faith Tabernacle Christian Center
Mr. Maurice Baumgardner, speaking on behalf of the Board of Elders for the Faith
  Tabernacle Christian Center
Rev. William Robertson, Pastor of Faith Tabernacle Christian Center
Mr. Ulysses Mills, resident on West Chapel Road
Ms. Georgia Jefferson
Mr. Walter Plaue, speaking on behalf of the Carolina Real Estate Investors Association
Mr. Jesse Goode, Asheville resident
Ms. Judy Chaet, representing the Affordable Housing Coalition
Ms. Pat Appledorn
Ms. Christopher Appledorn
Mr. Christopher George Smith, Shiloh resident

The following individuals spoke in opposition of rezoning the property for various reasons, some being, but are not limited to: intersection at Wyatt Street and Brooklyn Road is currently a problem; there is too much traffic in the area; density is too high for the area; development will increase drug activity; crime rate will increase; buildings will not be compatible to the surrounding properties; current problem of exiting onto Brooklyn Road; need for an additional entrance and/or exit not on Brooklyn Road; project drastically change from the initial proposal; condominiums will have a negative impact on the single-family homes in the neighborhood; current infrastructure will not support additional families; no plans for water run-off; no one will want to pay $69,900 for a bedroom the size of a matchbox; owner will come to Council in the future and ask that they be allowed to not have the condos owner-occupied; single-family homes need to be built in the area; streets are too narrow in Shiloh to allow additional traffic; if Brooklyn Road is widened due to this development, then land will be taken and property values will not decrease; blind spot at the intersection of West Chapel and Brooklyn Road; no sidewalks for the children to walk on in Shiloh; a lot of times Habitat for Humanity doesn't have the families to put in the houses they want to build; buffer is sparse on the Wilson Creek Subdivision side; development will be noisy; and children will use Wilson Creek Subdivision as a cut-through:

Ms. Anita White Carter, resident on Wyatt Street
Ms. Johnnie Walker, President of the Shiloh Community Association
Ms. Sophie Dixon, Shiloh resident
Ms. Norma Baynes, speaking on behalf of the Shiloh Community Association (Neighborhood Exhibit 1)
Ms. Georgia Allen, Taft Avenue resident
Mr. Charles Williams, Shiloh resident
Mr. Frederick Payne, Brooklyn Road resident
Ms. Freida Nash, Shiloh resident
Ms. Jean Brown, Wilson Creek Subdivision resident
Ms. Martha Gardenheight, Wyatt Street resident

Mr. Chris Eller, Project Engineer at Civil Design Concepts, said that a tree survey was performed and they have preserved most of the large trees on the site. There will be a 40-foot buffer minimum, but currently there is a 100-foot buffer on the front of the property. The intent is to make this development an affordable for-sale type residential housing restricted to owner-occupied units and in order to do this larger buildings had to be designed. We were still able to provide walking trails and amenity areas surrounding the buildings for all of the neighborhoring community as well as this development to enjoy. Utility allocations have been obtained. A TIA was performed which was not required by City standards. The conclusions read "The existing street system can adequately accommodate the traffic projected to be generated by the new subdivision without making any physical improvements to the roadways. However, it is recommended that development of the proposed subdivision be able to proceed as planned. Consideration should be given to surrounding street networks to improve existing clearance and site distance deficiencies. Such considerations could include pavement markings, restricted street-side parking, and the removal of vegetation and other visual obstacles." We feel those can easily be accommodated with much less than $500 per unit. We feel confident this will be a benefit to the community and we hope to work with the City's Transit Department to provide multi-modes of transportation to the development.

When Vice-Mayor Bellamy asked about stormwater control, Mr. Eller said that currently all stormwater flows to the rear into a ravine. The ravine carries the water into Wilson Creek. We will be providing stormwater detention with an impoundment of sorts, either above or underground, controlling and regulating the release of all stormwater to pre-development conditions.

Upon inquiry of Vice-Mayor Bellamy, Mr. Eller said sidewalks will be running along the front of the property on Brooklyn Road and there is a series of sidewalks inter-connecting all of the buildings internally in the development. He said that they will need to work with the City to try to preserve as much of the vegetation as possible, so if there are large trees that have to be accommodated, they may have to ask for a fee in lieu of.

Upon inquiry of Vice-Mayor Bellamy, City Engineer Cathy Ball said that the TIA performed by a professional traffic engineer concluded that the roadway could handle the traffic. Handling the traffic means handling the volume of traffic that would be generated by the development. Basically the capacity of the roads would not be exceeded with the new development. When City staff looked at the project they felt there could be some improvements made by making improvements to the intersections, not particularly to the road width but to the intersections. That is the point where they requested additional funding. Specific intersections have not been identified yet. In the TIA, four different intersections were studied, including the one into the site, and they did not find they reduced from Level of Service A. All of the intersections after the development would remain a Level of Service A, except for one and it went to a Level of Service B. The average width of the roads are about 18-20 feet and if we were to build them today, we would build them wider if they were going to be collector streets. However, the streets will allow a bus and a car to pass but they have to slow down. The other request staff made was funding to be used for traffic calming. A bid was just approved to do traffic calming on Caribou Road which runs parallel with Brooklyn Road. We would like to do some additional traffic calming on Brooklyn Road, as well as on Shiloh and West Chapel with the money we have requested from the developer.

Vice-Mayor Bellamy questioned the one entrance on Brooklyn Road. Mr. Eller said that Brooklyn Road is 24 feet wide in front of the site. He said they did look at other access points and they did have a right-of-way through another section. However, in order to not impact more surrounding property owners and in order to not impact other driveways or remove trees, they settled on the one entrance on Brooklyn Road.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:36 p.m.

Councilman Dunn felt that with a strict condominium association documents, they will be able to make sure that the condominiums remain owner-occupied.

Councilman Mumpower said that as he weighed out the facts and the testimony, he felt that the developer has met the seven criteria established by the UDO. His experience to date with the UDO is that it has been a helpful tool for balancing good development and taking care of neighborhoods at the same time. He would support a motion in favor of approving the proposal, however, he felt that $500 per unit for the developer to pay for traffic calming was excessive.

Vice-Mayor Bellamy said that it was never easy to face people that you know in the community to make a decision that affects not only today but tomorrow. City Council can only take into consideration the seven conditions that need to be met, noting that we all have ideas on what our community needs. The TRC is a committee comprised of people who are paid to make technical decisions. The Planning & Zoning Commission is comprised of people that City Council appoint to represent Council's ideas. Based on seven conditions, she would have to support the development. She feels this is the best development for this piece of property. Even though the TIA keeps the intersections at Level of Service A, City staff has requested funding for additional traffic calming measures to meet the needs of the community. Public input continues with traffic calming measures. She feels confident that the TRC has addressed the infrastructure requirements. City staff will work with the developers on the sidewalks and the additional playground will only benefit the community.

Councilwoman Jones believed that this development would enhance Shiloh. She felt the good benefits far outweigh the negative effects. There are people out there that do not have a voice and we need to remember those people as well. She did have some concerns but she feels they have been taken care of. Affordable housing is our number one concern. The City cannot stamp out affordable housing by itself, but needs private development like this to work on the problem.

Upon inquiry of Councilman Dunn, Mr. Hubbard said that there would be a condominium association formed after the project is built.

Councilman Peterson felt the traffic mitigation fee of $84,000 is fairly reasonable. If the City was just looking at speed humps, that would be too much. But, if the City is going to realign or make some improvements to the intersections, then we start getting into substantial costs. He too felt this was a hard decision for Council. If single-family houses were to be built, the maximum density would likely be larger houses, 3-4 bedrooms, probably upscale, probably have 2-3 car families and would probably generate as much traffic as a lower income multi-family. Compared to what the developer could do without the rezoning with what he could do with the

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rezoning, the impact will not be that substantially different. With the funds the developer will escrow for traffic mitigation, it will go a long way of mitigating traffic. The development on this property will not have the kind of harm that other types of development might have and they meet the seven standards. Therefore, he would vote in favor of the project.

Mayor Worley agreed with Vice-Mayor Bellamy and Councilwoman Jones. He felt that change in inevitable and since we can't stop growth, this is a desirable way to accommodate that change.

Councilman Mumpower moved to adopt Ordinance No. 2944 to rezone property located on 200 Brooklyn Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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Discussion surrounded the amount to have the developer escrow for traffic mitigation.

Mr. Shuford said that City staff doesn't know what the actual numbers will be for traffic mitigation until we find out from the neighborhood what they feel is appropriate and the City does some engineering studies of our own to find out which intersections need improvements. Ms. Ball also stated that intersection improvements are quite expensive, especially if additional right-of-way is required.

Councilman Mumpower suggested a compromise of $200 per unit, which would total $33,600. He felt the traffic could be mitigated at a lower cost. He felt we may be doing some overkill in traffic mitigation compared to some of our previous efforts. He felt that $85,000 is a lot of traffic mitigation compared to what we have done in other places.

Mr. Shuford said that City Council will ultimately approve a bid for this and perhaps a better way to satisfy both issues is to bring back the plan showing the intersection improvements and the traffic calming improvements and ultimately the amount of money the developer would have to escrow.

Councilwoman Jones felt the compromise is that if the City doesn't use the entire $84,000, they will refund it back.

Councilman Dunn felt that we are asking developers to pay for something that property tax should be used for.

Vice-Mayor Bellamy felt Mr. Shuford's idea for staff to bring back the plan showing the improvements was a good idea with no set dollar amount.

Mayor Worley felt that the developer should have to share in some of the expense to mitigate traffic in the area and suggested $250 per unit, totaling $42,000.

Councilman Mumpower moved to adopt Ordinance No. 2945 to issue the conditional use permit for a proposed 168 unit condominium, subject to the following conditions:

1. Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings and parking lot plantings included), which should include existing plant material that will be credited towards the planting requirements.

2. Setback dimensions for the buildings for side and rear property lines need to be a minimum of 40 feet. In addition, a "C" buffer which (25' wide as per Article 11 of the Code) is needed on all property lines except the property line with Brooklyn Road.
3. The existing vegetative buffers along the perimeter of the parcel should also be preserved and will help to minimize the impact of the development on adjoining properties; there shall be no grading in any buffer areas, except at vehicle access points.
4. The developer shall provide an internal sidewalk system and connections to Brooklyn Road and Caribou Road; this system shall include crosswalk striping where it crosses internal driveways.
5. To mitigate negative traffic impacts from the development, the developer shall provide up to $250 per unit for neighborhood traffic calming and intersection improvements to implement plans to be developed by the City in working with the neighborhood; these monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first.
6. The plans must be revised to provide a detail of the intersection of the condominium project with Brooklyn Road, including a 20-foot turning radii.
7. The developer shall provide street lighting.
8. The developer shall work with staff to determine in a reduced number of parking spaces can be accommodated.
9. Open spaces need to be suitable for recreation - particularly for children. Recreation and play areas shall be expanded to include a playground for children.
10. Each unit shall be occupied by the owner or owners thereof, and may not be rented or leased by the owner except as necessary to accommodate transitory situations. "Transitory situations" means a set of circumstances or conditions that are temporary in duration, usually for 18 months or less. By way of illustration and not limitation, such transitory situations may include temporary work assignments, divorce or separation, sickness, or extended travel. This condition shall not be construed to prohibit interfamilial rental arrangements, or a tenancy resulting from court order in a domestic matter. In the case of units acquired through foreclosure or other involuntary or distress-induced conveyance, the period of occupancy by a non-owner shall not exceed 18 months.
11. All units in this project shall have an initial purchase price that meets the City of Asheville housing affordability guidelines.

This motion was seconded by Councilman Dunn.

Councilman Peterson felt that if there was some significant change that needs to be made to one of the intersections, it might not get done because the developer will only be required to pay half the amount City staff has suggested. The City taxpayers shouldn't have to pay for improvements that will result from this development.

Vice-Mayor Bellamy wanted to allow City staff to come back with a plan with specifics in it and then Council will have a better direction of what it wants to do to mitigate the traffic and how much money will be needed for those improvements.

Mr. Shuford suggested Condition No. 12 be reworded to something like "To mitigate negative traffic impacts from the development, the developer shall fund neighborhood traffic calming intersection improvements to implement plans to be developed by the City in working with the neighborhood. These plans shall be approved by City Council after reviewing the proposed mitigation measure and determining whether they are appropriate for addressing the issue. These monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the

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developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first."

Councilman Mumpower said that he would amend his motion as suggested by Mr. Shuford, with the understanding that the plan will come back to City Council. In the meantime, City Council can discuss the issue amongst themselves.

Mayor Worley said that if the $500 per unit stays as the condition, which is escrowed. If Council makes it clear that the plans and estimates for cost, etc. are to be presented back to and approved by City Council then Council has the ability to deal with total costs and to accept or reject parts of the plans. He felt that City staff clearly has Councils intent to do this in the safest and best manner for the neighborhood, but also the most economical. That still leaves Council with control over those amounts and the ultimate cost per unit.

At Councilman Mumpower's request, City Attorney suggested the following Condition No. 5: "To mitigate negative traffic impacts from the development, the developer shall provide up to $500 per unit for neighborhood traffic calming intersection improvements to implement plans to be developed by the City and approved by City Council in working with the neighborhood. These monies shall be escrowed by the developer prior to the issuance of the initial building permit for any of the condominium buildings and any remainder shall be refunded to the developer at either the completion of the traffic calming and intersection improvement project or three years from the date of escrow, whichever occurs first."

Councilman Mumpower moved to amend his original motion to approve the conditional use permit with the eleven conditions outlined above and with Condition No. 5 being revised as read by City Attorney Oast. Councilman Dunn did not accept the amendment. Therefore, the original motion made by Councilman Mumpower died for a lack of a second.

Vice-Mayor Bellamy moved to amend the motion to approve the conditional use permit with the eleven conditions outlined above and with Condition No. 5 being revised as read by City Attorney Oast. This motion was seconded by Councilman Peterson and carried unanimously.

The original motion, as amended, carried unanimously.

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At 8:31 p.m., Mayor Worley announced a short break.

B. PUBLIC HEARING TO REZONE TWO LOTS ON ARDMION PARK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

City Attorney Oast said that a valid protest has been filed which will require a ¾ majority vote by Council to approve the project. The petitioner has requested that the public hearing be continued until September 10, 2002, in order to allow him additional time within which to prepare for the City Council meeting.

Vice-Mayor Bellamy moved to continue this public hearing until September 10, 2002. This motion was seconded by Councilwoman Jones and carried unanimously.

C. PUBLIC HEARING TO REZONE TWO LOTS AT 1896 HENDERSONVILLE ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2946 - ORDINANCE TO REZONE TWO LOTS AT 1896 HENDERSONVILLE ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 8:58 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone two lots at 1896 Hendersonville Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on August 2 and 9, 2002.

At their July 10, 2002, meeting the Asheville Planning and Zoning Commission recommended rezoning from Commercial Industrial District to Highway Business District property located at 1896 Hendersonville Road (PIN No. 9655.13-24-2854 and 4984). The 2.77-acre parcel is located near the intersection of Hendersonville Road and Mills Gap Road. Currently the site is undeveloped. Surrounding zoning is Highway Business and Commercial Industrial. This property is one of the last parcels fronting on Hendersonville Road zoned Commercial Industrial. Changing land use patterns along the Hendersonville Road corridor have resulted in commercial development and office uses dominating along the corridor. The requested rezoning would permit the property to be developed in a pattern similar to that of the other properties along the corridor. Highway Business zoning would permit more efficient development of the property by permitting parking and related uses in the setback. Adequate infrastructure is in place to serve development permitted in the Highway Business district.

The Planning and Zoning Commission unanimously recommended approval of the request to rezone two lots at 1896 Hendersonville Road from Commercial Industrial District to Highway Business District. Staff concurs with this recommendation.

Mayor Worley closed the public hearing at 9:00 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 2946. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 40

D. PUBLIC HEARING TO CONSIDER A REQUEST TO APPROVE A MODIFICATION FROM THE SUBDIVISION STANDARD THAT ALL RESIDENTIAL LOTS ABUT A PUBLICLY MAINTAINED STREET ON PROPERTY AT 24 HAW CREEK CIRCLE, ASHEVILLE NC

Mayor Worley opened the public hearing at 9:01 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a request to grant a modification of the Subdivision Regulations of the Unified Development Ordinance (UDO) to allow the creation of a lot that does not front upon a public street. This public hearing was advertised on August 2 and 9, 2002.

The City has received a request from Karl Lail and Donald Sheppard to subdivide a parcel (PIN No. 9659.08-87-9831) located at 24 Haw Creek Circle into two lots. The parcel is 1.2-acres in size, zoned RS-4 Residential Single Family Medium Density District and currently has two homes located on it. The property owner occupies the home located farther from the street and rents out the other. The property has approximately 20 feet of frontage on Haw Creek

Circle and contains one driveway that provides access to both homes. Since it is not possible to obtain the minimum frontage for each lot as specified in the Subdivision Ordinance, a modification is required in order to subdivide the property with one lot not having street frontage.

The petitioners wish to subdivide the lot in order for each home to have its own lot and for the property owner (Sheppard) to sell the front lot and home to the other applicant (Lail). No additional homes are proposed and each resulting lot would be able to meet the UDO requirements of the RS-4 District for minimum lot size and setbacks.

Since one of the resulting lots would not have street frontage, access to the rear lot would need to be maintained through the creation of an access easement across the front lot. The establishment of this easement was a condition placed on the recommendations of staff, the Technical Review Committee (TRC) and the Planning and Zoning Commission.

The TRC and Planning and Zoning Commission each voted unanimously to recommend approval with the above-mentioned condition. The Planning and Development staff also recommends approval of the subdivision modification with the condition.

Mayor Worley closed the public hearing at 9:04 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved to approve a modification from the subdivision standard that all residential lots abut a publicly maintained street on property at 24 Haw Creek Circle in Asheville, N.C., subject to an access easement across the front lot. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

E. PUBLIC HEARING TO REZONE A PARKING LOT LOCATED BEHIND 818 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

ORDINANCE NO. 2947 - ORDINANCE TO REZONE A PARKING LOT LOCATED BEHIND 818 HAYWOOD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 9:06 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone 818 Haywood Road from RM-8 Residential Multi-Family Medium Density District to Community Business II District. This public hearing was advertised on August 2 and 9, 2002.

The applicants, Raife and Steve Davis, have requested the rezoning of a 0.13-acre parcel (PIN No. 9638.13-04-9818) located at 818 Haywood Road to allow for the reuse of an existing commercial building on the site. The purpose of the CB II District is to provide areas for medium-to-high-density business and service uses serving several residential neighborhoods.

The existing land uses in the area include single-family residences to the south and west, multi-family residences to the east and offices and parking to the north. The site is located behind a lot that has frontage on Haywood Road, which is a major thoroughfare with sufficient capacity to handle uses allowed in the CB II District.

The building on the site is a former single-family home that was converted to an office and moved back from its original location closer to Haywood Road in 1992. At the time of this change, the property was zoned Commercial Service (CS), which allowed offices and other commercial uses. The property owners, who also own the property in front of the one in question, developed the properties in accordance to the CS standards, but placed the building in a location that straddled the properties' common line. At the time of the City-wide zoning change in 1997, the dividing line between CB II and RM-8 was drawn essentially one property deep along Haywood Road. The building and its parking were located on two lots, but only the lot adjacent to Haywood Road was zoned CB II. This resulted in the zoning line actually running through the building. It is the Planning staff's opinion that both lots should have been zoned CB II at that time.

In consideration of the above, the adjoining zoning and land uses in the area to the north and east of the site, and the project site's proximity to the Haywood Road thoroughfare, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance. The proposed rezoning is also in keeping with the intent of the Haywood Road Corridor Plan, which was approved in 1999 and serves as a guide for future development along Haywood Road in the West Asheville neighborhood. This parcel is one of the properties included in the Haywood Road Corridor Study Area and rezoning it to CB II would help accomplish the Plan's goal of enhancing the existing balanced mix of uses on Haywood Road through commercial, institutional, open space, and small parks.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located at the 818 Haywood Road from RS-8 to CB II. The Planning and Development staff also recommends approval.

Pastor Alton Scott was curious about what the long-term plans are for that particular piece of property.

Mayor Worley closed the public hearing at 9:13 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2947. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 42

F. PUBLIC HEARING TO AMEND THE 2002 CONSOLIDATED COMMUNITY DEVLEOPMENT BLOCK GRANT & HOME ACTION PLAN

RESOLUTION NO. 02-129 - RESOLUTION AMENDING THE 2002 CONSOLIDATED COMMUNITY DEVLEOPMENT BLOCK GRANT & HOME ACTION PLAN

ORDINANCE NO. 2948 - BUDGET AMENDMENT TO GIVE EFFECT TO AMENDMENTS TO THE CITY'S CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN FOR 2002-03

At Vice-Mayor Bellamy's request, Councilwoman Jones moved to excuse Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Dunn and carried unanimously.

Mayor Worley opened the public hearing at 9:14 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of amendments to the 2002 Consolidated Community Development Block Grant (CDBG) and HOME Action Plan. This public hearing was advertised on August 2 and August 9, 2002.

Council originally approved the 2002 Action Plan for CDBG and HOME funding on April 23, 2002. Since then, some additional CDBG funds have become available from program income or programs completed under budget, and a request has been received for a significant change to a HOME-assisted program. The following changes are now recommended:

A. CDBG AMENDMENTS

Unallocated CDBG funds currently total $249,018 as follows:

Funds returned from NHS Montford Gateway Loan Guarantee (project completed)	$ 44,045
Additional program income anticipated from sale of Biltmore Avenue property	70,000
Contingency	86,575
Program income recd. in 2001-02 and not yet allocated	48,398
Total available	**$249,018**

The recommended allocations are:

1. Woodfin Apartments **New CDBG allocation: $89,250**
The Housing Authority of the City of Asheville has re-submitted its request for CDBG assistance for acquisition and renovation of the 19-unit Woodfin Apartment, located in downtown Asheville, reducing the amount requested from $250,932 to $89,250. The Housing & Community Development (HCD) Committee recommends this grant on the grounds that the need for the project remains very high and that the amount requested is now within the funds available.

2. Code Enforcement Demolitions **New CDBG allocation: $41,370**
The general fund appropriation for demolitions was eliminated from the 2003 City Budget. The removal of certain vacant, dilapidated structures that are a blight on surrounding property is both CDBG-eligible and desirable for the achievement of Consolidated Plan goals. The HCD Committee recommends an allocation of $41,370, which is sufficient to demolish about eight structures.

3. Hillcrest Enrichment Program **Increase CDBG allocation by: $5,000**
Funding constraints led to a reduction in the grant allocated for this Housing Authority youth program from $50,000 in 2001-02 to $45,000 in 2002-03. The HCD Committee now recommends restoring the grant to its former level.

4. CDBG Administration **Increase CDBG allocation by: $29,065**
As part of the 2003 interim City Budget, Council has approved the transfer of one filled position within the Planning & Development Department from general funding to CDBG/HOME funding. The transferred staff person will work exclusively on CDBG- and HOME-eligible administrative and planning work. Staff estimates that the cost will be $48,441 this year, to be funded 60% from CDBG and 40% from HOME (see below).

5. Contingency **$84,333**
Funds will be retained for urgent needs, unforeseen cost overruns, or shortfalls in anticipated program income during the year. If not needed, these funds will be available for the 2003-04 funding cycle.

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B. HOME AMENDMENTS

1. HOME Administration

The cost to the HOME program of the transferred staff position will be $19,376. The Asheville Regional Housing Consortium Board recommends that this be covered by reducing Member Government Administration and increasing City of Asheville HOME Program Administration by the same amount. The total amount allocated for HOME administration will remain unchanged at 10% of the HOME budget.

2. Change of Location for Henderson County Habitat Affordable Housing Project

Henderson County Habitat for Humanity was awarded $50,000 in 2002 HOME funds, through Henderson County, to purchase land for 10 new single-family homes at the Village of King Creek on Spartanburg Highway in Hendersonville. The agency has now asked to use these funds instead to purchase land on Stepp Road in the Clear Creek district of Henderson County. Habitat will go ahead with the Village at King Creek project using a different source of funds. A separate public hearing on this item was held in Hendersonville on July 24, 2002, and both the Henderson County Board of Commissioners and the Asheville Regional Housing Consortium Board recommend approval.

Staff recommends approval of the amended Action Plan.

Mayor Worley closed the public hearing at 9:18 p.m.

Mayor Worley said that members of Council have previously received copies of the resolution and budget amendment and they would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 02-129. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 223

Councilwoman Jones moved for the adoption of Ordinance No. 2948. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 44

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2939 – ORDER GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF A LEVEL III PROJECT AT 437 SWANNANOA RIVER ROAD

City Attorney Oast said that this is the consideration of an ordinance granting a conditional use permit to Horne Properties, Inc. for the Riverbend Marketplace Project.

The ordinance is granting a conditional use permit to Horne Properties, Inc. for the Riverbend Marketplace Project to be located on Swannanoa River Road, formerly known as the Sayles Biltmore Bleacheries site. Public hearings were held on June 25 and 26, and July 23, 2002, to hear the proposal of the developer and receive public comment on the Project. Council voted to grant the permit, and directed staff to prepare an order with findings and conclusions.

If City Council approves the order granting a conditional use permit to Horne Properties, Inc. for the Riverbend Marketplace Project, adoption of the ordinance is recommended.

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City Attorney Oast said that he has submitted to City Council a memo with changes to the draft conditional use permit. In addition, he outlined other minor changes. He said that the only condition he drafted without City Council voting on the actual wording was Condition No. 14. Said condition reads "All necessary agreements, easements and permits shall be in place prior to the construction of any development phase or part thereof, including those necessary for the construction of the roads and other infrastructure serving the Project."

Regarding Condition No. 14, Councilman Peterson recalled that at the public hearing, one person said that the contamination plume wasn't moving because the existing building and parking lot was there preventing water from coming into the ground and washing it away. It seems that if the site is cleared then you would have that water seeping into the ground and possibly spreading that contamination. He asked if that has that been taken into account.

City Attorney Oast said that the way Condition 14 was worded, it does not preclude demolition from taking place before all these permits are in place.

Councilman Peterson felt there was a bit of potential contradiction in Condition No. 10, about having the applicant enter into an agreement with the N.C. Dept. of Environment and Natural Resources (DENR) before work is done, and then Condition No. 14 saying that they could do that work without entering into that agreement.

City Attorney Oast said that before any ground disturbing activity could take place on the site, including demolition, they would have to have entered into the agreement that is provided for in Condition No. 10. What Condition No. 14 is referring to are things like the agreements for constructing the road through River Ridge Shopping Center, the approval from Norfolk Southern Railway, etc. He felt the environmental aspect provided for in Condition No. 10 would require that any demolition activity be approved by the State before it could occur.

City Engineer Cathy Ball said that she felt it may be possible to change it so that we state that they can't do demolition unless it's necessary in order to alleviate some of the environmental problems that are going on. She understood Councilman Peterson's concern that doing anything could potentially cause some problems, unless they provided the City with an engineer's report specifically stating that the demolition would not harm the plume at all.

Mayor Worley suggested amending Condition No. 14 to add at the very end "and any activity on the site, including demolition, shall be consistent with the Administrative Agreement entered into under Condition No. 10 above."

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2939 as amended by the memo with changes, the additional changes outlined by City Attorney Oast, and the addition to Condition No. 14. This motion was seconded by Councilman Dunn and carried on a 5-1 vote with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE 8

V. NEW BUSINESS:

A. RESOLUTION NO. 02-130 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Public Art Board.

Mr. Tucker Cooke has resigned as a member on the Public Art Board, thus leaving an unexpired vacancy until December 31, 2003.

On August 13, 2002, City Council interviewed Lois Mills, Barbara Cary, Louise Glickman and Joel Helms.

Barbara Cary received five votes; Lois Mills received one vote, and Joel Helms received no votes. Therefore, Barbara Cary was appointed as a member to the Public Art Board to fill the unexpired term of Mr. Cooke, term to expire December 31, 2003, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 224

VI. OTHER BUSINESS:

A. CLAIMS

The City received the following claims during the period of July 19, 2002, through August 1, 2002: Patricia Glazener (Transit Services), Annette Pulley (Parks and Recreation) and Joyce Facemyer (Transit Services).

The City received the following claims during the period of August 2-8, 2002: Harold Littlejohn (Transit Services), Mike O'Conner (Streets), Police Tow (Police) and Bele Chere '02 (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City was served with the following lawsuit on July 23, 2002: James Edward Imes v. City of Asheville, CCL Management, Inc. and Asheville City Coach Lines Inc. The nature of the proceeding is a Complaint for wrongful discharge in violation of public policy – jury demanded. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Bellamy recognized Dr. Nilous Avery who has retired. She invited the public to one of the several events honoring Dr. Avery. He and his wife Christine have worked hard for our community.

Councilwoman Jones stressed the need for mentors and tutors for our school children.

Vice-Mayor Bellamy welcomed the new Executive Director of the YMI Cultural Center Rita Martin.

Councilman Dunn praised the Henderson County All-Stars for proceeding to the Babe Ruth World Series.

Vice-Mayor Bellamy congratulated City Manager Westbrook in receiving the ICMA Accredited Manager Award.

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Mr. Fred English felt the City was contributing too much to the Chamber of Commerce because they are not bringing in industry to our area.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 20, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Jams E. Ellis

CONSENT:

Agreement with UNC-A for Limited Law Enforcement Jurisdiction on Property Owned by UNC-A

Summary: This consideration of a resolution authorizing the City Manager to enter into an agreement with UNC-Asheville in order to allow it's Public Safety Department the ability to enforce the law at certain locations within the City of Asheville, pursuant to N.C. Gen. Stat. sec. 15A-401.

The UNC-Asheville's Public Safety Department has requested that the City enter into a joint agreement with the UNC-A in order to allow the UNC-A public safety officers the ability enforce the law on property owned by UNC-A but located within the City of Asheville. Currently, the UNC-A public safety officers do not have law enforcement powers on these UNC-A properties.

> The properties are: Hyannis Drive, Corporative Campus Ministry House; 62 Macon Avenue, the Chancellor's Residence; Sevier Street Apartments #35 (Units A through J), #40 and #44 which are part of the University Housing; 95 Vivian Avenue -- Pegasus Press Printing; The W.T. Weaver Boulevard Greenway Walking Path and surrounding area that constitutes the Greenway located near UNCA; and 138 Sevier Street - The Baptist Student Union.

By entering into this joint agreement, the Asheville Police Department will not be the primary agency for calls at these locations within the City but still maintain jurisdiction over the properties. Furthermore, this agreement does not effect the mutual aid agreement between the two agencies. In addition, by executing this agreement, the W.T. Weaver Boulevard Greenway Walking Path will get extra police coverage from the UNCA public safety officers.

City staff recommends approval of the resolution authorizing the City Manager to enter into a joint agreement with UNC-Asheville.

Budget Amendment re: Fair Housing Assistance Program Grant

Summary: The consideration of a budget amendment, in the amount of $63,000, to recognize a Fair Housing grant.

The City of Asheville has been awarded a grant of $63,000 from the U.S. Department of HUD for the City's Fair Housing Assistance Program (FHAP) for the year ending September 30, 2002.

The City has received an annual FHAP grant for several years and subgrants the entire amount to the Asheville-Buncombe Community Relations Council, which undertakes fair housing education and enforcement in Asheville and Buncombe County.

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Staff recommends approval of budget amendment.

Authority to Advertise Notice to Exchange City-owned at corner of Mountain and Clemmons Streets for Property at Tuskeegee Street

Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of Disposal Parcel 173 located on Mountain Street for real property located on Tuskeegee Street.

The City and Groundstar Development, Inc. have negotiated an exchange of Disposal Parcel 173 on Mountain Street for Groundstar's property on Tuskeegee Street. Disposal Parcel 173 (PIN No. 9649.19-60-8939) is a residential lot owned by the City on Mountain Street comprising 8,276 square feet and designated to be sold for redevelopment as part of the East End/Valley Street Community Improvement Program. About half the lot is steeply sloped and about half is gently sloped. There is a concrete ditch across the middle of the property centered in a 20' drainage easement. According to the Public Works Director, the 20' drainage easement on the City's property on Mountain Street is unnecessary and can be abandoned.

The City's property is located one block from property on Tuskeegee Street, owned by Groundstar (PIN No. 9649.19-60-4246). Groundstar purchased the lot on Tuskeegee Street to build a single-family affordable house for sale. After purchasing the lot, purchasing zoning and building permits and incurring site preparation expenses, Groundstar discovered that the lot is not buildable because of a drainage structure on the property on Tuskeegee. The City's Public Works Director recommends acquiring Groundstar's property because the drainage structure is essential to providing storm drainage on Tuskeegee Street. An exchange of property has been negotiated which will satisfy Groundstar's need for a buildable lot and the City's need to continue to provide storm drainage on Tuskeegee Street.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff recommends adoption of the resolution.

Authority to Advertise Offer to Purchase City-Owned Property on Oteen Church Road

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 1.58 acres of land off Oteen Church Road.

A bid from James R. and Irma S. Lewis, in the amount of $24,000.00, has been received for the purchase of land adjacent to their property at 1150 Oteen Church Road. The bid is not less than the appraised value of $24,000.00.

The property is zoned RS-2 and comprises of approximately 1.58 acre of land. The property has a triangular shape and is level at the street and gently sloping to about 6' above street level. The bid proposal includes a life estate in the driveway to Oteen Church Road with the City retaining an easement for ingress and egress. When the life estate expires, the City will own the driveway, and an easement for ingress and egress will accrue to the property at 1150 Oteen Church

Road. There is no current or contemplated use for the property by the City. The Lewis' plan to assemble the property with the property they own at 1150 Oteen Church Road as a buffer to the park.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

Acceptance of Streets for City Maintenance

Summary: The consideration of a resolution accepting Royal Pines Drive (SR 3162), Blake Drive (SR 3176), Sycamore Drive (SR 3171), Sycamore Drive (SR 3165), Peachtree Street (SR 3174), Cedar Lane (SR 3159), Sycamore Terrace (SR 3175), Linden Street (SR 3172), Linden Street (SR 3205), and Upper Sondley Drive for public maintenance.

As part of the annexation process, staff identifies streets in proposed annexation areas that should be maintained by the City after annexation. As part of the 2002 annexation process, ten streets were identified to be maintained by the City following annexation.

- Upper Sondley Drive is currently a private road. The length of the road is approximately 0.7 miles. Upper Sondley Drive begins and ends at Sondley Drive. The right-of-way for this street has previously been dedicated.

- Royal Pines Drive is currently a N. C. Dept. of Transportation (NCDOT) maintained roadway approximately .34 miles in length and is also known as State Route 3162. It begins at Hendersonville Rd and ends at the Sweeten Creek Rd.

- Blake Drive is currently an NCDOT maintained roadway approximately 0 25 miles in length and is also known as State Route 3176. The section proposed for acceptance begins at Royal Pines Drive and ends at the Sycamore Drive Only a portion of this road was in the City prior to this annexation. Following annexation, all of the roadway will be in the city limits. Staff is requesting that the City maintain the entire length of Blake Drive.

- Sycamore Drive is currently an NCDOT maintained roadway approximately 33 miles in length and is also known as State Route 3171. It begins at Hendersonville Road and ends at Royal Pines Drive.

- Sycamore Drive is .12 miles in length and is currently an NCDOT maintained roadway. It is also known as State Route 3165. Sycamore Drive (SR 3165) veers off Sycamore Drive (SR 3171) and ends at Sweeten Creek Road.

- Peachtree Street is currently an NCDOT maintained roadway approximately .19 miles in length known as State Route 3174. It begins at Sycamore Drive and ends at Cedar Lane.

- Cedar Lane is currently an NCDOT maintained roadway approximately .19 miles in length and is also known as State Route 3159. It begins at Linden Street and ends at Sweeten Creek Road.

- Sycamore Terrace is currently an NCDOT maintained roadway approximately .14 miles in length known as State Route 3175. It begins at Sycamore Drive and ends at Peachtree Street.

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- Linden Street is currently a NCDOT maintained roadway approximately .15 miles in length and is also know as State Route 3205. It begins at Royal Pines Drive and ends at Sycamore Terrace.

- Another segment of Linden Street is also a NCDOT maintained roadway approximately .07 miles in length and is known as State Route 3172. It begins at Sycamore Terrace and Dead Ends at the southern section of the roadway.

Staff recommends that City Council adopt a resolution accepting Royal Pines Drive (SR 3162), Blake Drive (SR 3176), Sycamore Drive (SR 3171), Sycamore Drive (SR 3165), Peachtree Street (SR 3174), Cedar Lane (SR 3159), Sycamore Terrace (SR 3175), Linden Street (SR 3172), Linden Street (SR 3205), and Upper Sondley Drive.

Provisions for Possession and Consumption of Malt Beverages and/or Unfortified Wine at Lexington Avenue Arts and Fun Festival, 6th Annual Brewgrass Festival and Asheville Area Arts Council's Walk into History Event

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts and Fun Festival, the Asheville Area Arts Council's Walk into History and the Annual Brewgrass Festival.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- The Lexington Avenue Arts and Fun Festival is a first year event. Its goal is to develop greater awareness for non-traditional art forms and to encourage people to shop and visit the stores opening on North Lexington.

- The Asheville Area Arts Council's Walk into History is an event designed to showcase the Urban Trail and to bring Asheville's history alive with characters and performances at many of the stations.

- For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. The 6th Annual Brewgrass Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department is submitting these resolutions on behalf of the Asheville Area Arts Council, Brewgrass, and the Lexington Avenue Arts and Fun Festival.

Agreement with NC DOT for Improvements related to Construction Widening of Brevard Road

Summary: The consideration of a resolution authorizing the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for improvements related to the construction widening of Brevard Road (NC-191), from just north of the Blue Ridge Parkway to Sardis Road (NC-112), in Buncombe County.

The NCDOT has prepared plans depicting the construction widening of Brevard Road from a two lane to a 4/5 lane road, within the limits outlined above. This proposed work is located almost in its entirety outside the City limits of Asheville and it is scheduled to be let this fall. As a result of this construction, an existing 6-inch water line will be replaced with a new 24-inch water line that will be installed within a utility easement adjacent to the edge of the road. Funds to cover the cost of water line replacement will be appropriated from the Water Enterprise Fund. No other municipal infrastructure is proposed to be constructed.

NCDOT has requested the City to execute this agreement as the first step for the final preparation of a utility agreement between NCDOT and the Regional Water Authority of Asheville, Buncombe and Henderson, for the costs associated with the replacement and upgrade of the existing water line.

This project is also identified as NCDOT No. U-3403 C in Buncombe County.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for Improvements related to the construction widening of Brevard Road (NC-191), from just north of the Blue Ridge Parkway to Sardis Road (NC-112), in Buncombe County.

Economic Development Incentive

Summary: The consideration of a motion setting a public hearing on September 10, 2002, authorizing the City to enter into an agreement with Electrolux Home Products for an economic development incentive in the form of an easement onto city-owned property for construction of a retention pond.

Electrolux Home Products operates a regional distribution hub in a facility it leases located at 1310 Fanning Bridge Road in Asheville. The company is proposing an expansion of their distribution capacity by improving the efficiency of their site for increased truck & trailer movements. To accomplish this, an existing stormwater retention pond must be relocated.

The location and size of the new pond requires that a portion of it be located on city-owned property adjacent to the Electrolux site. To assist the company, the city is offering an easement onto its land for the location of the new retention pond. All other costs and liabilities associated with the construction and maintenance of the pond are the responsibility of the company. The pond is being designed to accommodate any future development on the remaining portion of the city property.

With the ability to increase the efficiency of this site, Electrolux has decided to keep the Asheville facility operational. The Asheville operation occupies a 500,000 square foot building and employs 128 people at an average hourly wage of $12.28.

City staff recommends City Council set the public hearing on September 10, 2002.

Critical Needs Phase III Water Distribution System Improvements, Contract 3

Summary: This is a review of the Regional Water Authority's bid award for Contract 3 of the Critical Needs Phase III Water Distribution System Improvements.

Sealed bids were received and opened on Wednesday, May 21, 2002 for the Authority's Critical Needs Phase III Contract 3. Two (2) bids were received for Contract 3 with Precision Contracting, Inc., submitting the low bid of $764,834.00. Contract 3 includes the installation of approximately 12,600 linear feet of 8-inch, 6-inch and 4-inch ductile iron waterlines with all related appurtenances. A complete list of bidders follows.

Critical Needs Phase III – Contract 3
Engineer's Estimate: $794,845.00

COMPANY	BID
Precision Contracting, Inc., Asheville, N.C.	$ 764,834.00
Buckeye Construction Company, Canton, N.C.	$ 777,409.75

This Contract is the first of three (3) that will comprise the Authority's Critical Needs Phase III program and are funded by the $ 3 million high unit cost grant. These projects are focused at locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

These bids were reviewed by the Office of Minority Affairs and were considered responsive to the Minority Business requirements. W.K. Dickson, the project engineers for Contract 3 have recommended award of this contract to the low bidder, Precision Contracting, Inc.

Contract 3 has a liquidated damages clause of $ 250.00 per day for failure to complete the project in the time allocated.

The Regional Water Authority awarded this contract to the low bidder shown above at their June 18, 2002, meeting.

This report is provided to City Council for information only.

Sand Hill Road Water System Improvements

Summary: This is a review of the Regional Water Authority's bid award for Sand Hill Road Water System Improvement Project.

Bids were received for the Sand Hill Road Water System Improvements project on May 9, 2002. Only (2) bids were received and the project was re-advertised for bid opening on May 22, 2002. Two (2) bids were received on May 22nd with Steppe Construction Company submitting a low bid of $298,750.00. Buckeye Construction Company was the other bidder submitting a bid of $452,146.00. The project includes the installation of approximately 2,700 linear feet of 18-inch, 16-inch and 12-inch waterline. The project also includes (2) major creek crossings and (1) railroad bore.

Sand Hill Road Water System Improvements
Engineer's Estimate: $398,295.00

COMPANY	BID
Steppe Construction Company, Mill Spring, N.C.	$ 298,750.00
Buckeye Construction Company, Canton, N.C.	$ 452,146.00

The water system improvements resulting from this project are crucial to the daily operation of our water system. These improvements will bolster our water supply in the west and southwest sections of our water system and will provide a back-up supply for the entire Brevard Road / Biltmore Square Mall area.

Following the bid opening on May 23, 2002, the engineer received a letter from Steppe Construction requesting that he be allowed to withdraw his bid. In the letter, Mr. Steppe indicates that he made several errors totaling $90,000 in his bid and because of these errors wanted to withdraw his bid.

Brenda Mills, the Director of the Office of Minority Affairs, attended the bid opening. Ms. Mills obtained copies of sections of the bid that pertain to Minority Business. During her review of Steppe's bid, Ms Mills discovered that Steppe Construction had not included a Minority Business form 1A in their bid package. Other documentation regarding the solicitation of minority businesses was included but this form was missing. Ms. Mills contacted Steppe Construction on May 22nd and asked that they submit the missing form by Friday May 24th. Steppe did not follow up with the submission of this form and Ms. Mills deemed Steppe's bid non-responsive in her letter dated May 28, 2002. Staff of the Water Resources Department talked to Mr. Steppe on May 23 and Mr. Steppe indicated that he did not have any intention of submitting the missing form. Buckeye Construction Company's bid was deemed responsive to the requirements of the Minority Business Plan.

The Regional Water Authority approved Mr. Steppe's request to withdraw his bid and awarded this contract to the next low bidder shown above at their July 16, 2002, meeting.

This report is provided to City Council for information only.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

BUNCOMBE COUNTY SOLID WASTE MANAGEMENT PLAN

Mr. Ron Townley, Land-of-Sky Regional Council's Solid Waste Manager, briefed City Council on the draft Buncombe County Solid Waste Management Plan and said that the draft plan is available for public input. The input period will be held open until September 20, 2002, and all comments should be given to City Solid Waste Manager Richard Grant.

COMMUNITY CORRIDORS VISION FOR BROADWAY CORRIDOR

Mayor Worley announced this matter would not be on the agenda at this meeting.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which is scheduled for August 27, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Create Neighborhood Corridor Zoning District

Urban Designer Alan Glines said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to create a new mixed use in-fill corridor zoning classification called Neighborhood Corridor District.

Frequently in community meetings and planning forums and most recently, the forums for the City Plan 2025 comprehensive plan process, citizens have identified the need for:

- access to appropriately scaled mixed use neighborhood services located close to home;
- improved pedestrian facilities, projects that relate to the street and attractive streetscapes;
- more affordable housing throughout the community and a greater variety of housing choices; and
- broader transportation options.

Since much of our economic development potential is wedded to redevelopment of the existing commercial corridors in the City, staff has developed a zoning district that seeks to redevelop and rejuvenate the medium sized corridors and support the neighborhoods surrounding them. The proposed Neighborhood Corridor District is an opportunity to incorporate the City Council adopted Smart Growth and sustainable development goals that have been identified by the community during the last decade.

The Neighborhood Corridor District will encourage pedestrian activity by creating safe and inviting streetscapes with comfortable walking amenities. Traffic flow will be improved by limiting curb-cuts and requiring cross access between parcels. The proposed district will encourage mixed-use in-fill development in locations where the infrastructure services already exist to support it. A benefit of this district will be to encourage neighborhood services in proximity to where people live so they can walk and not have to drive for every errand. The higher density residential allowance proposed in the corridor will support the City's need for a variety of housing options, and price ranges to serve the diverse Asheville community. The Neighborhood Corridor District will also make public transit a viable option by increasing density (i.e., the number of potential riders) on corridors that are or can be served by the bus system. To address the concerns of the residential property owners adjacent to the corridors, developers are required to buffer the neighborhoods with thickly planted landscape buffers between uses in the corridor district and neighboring residential areas.

Some of the long term benefits from developing any corridor in this pattern will be to build a livable community, strengthen the area's tax base, reduce driving trips on roadways, support mass transit, improve air quality and reduce sprawl.

Mr. Glines then went into the different standards for the proposed new district.

The Neighborhood Corridor District, as initially proposed, sets a maximum of 24 residential units per acre. Higher densities can make new residential construction viable at in-fill locations and increase the potential for affordable housing. Recently several developers have requested that City Council consider a maximum of 32 residential units per acre for the Neighborhood Corridor District. This request was received after Planning and Zoning Commission review of the proposed district and has not been considered by the Commission. Staff is supportive of this request and asks for Council's favorable consideration.

The Planning and Zoning Commission supported the creation of the Neighborhood Corridor District 5-0 (two members were absent). Staff also supports the adoption of this district. In addition, City staff recommends City Council set the maximum of 32 residential units per acre for the Neighborhood Corridor District.

Councilman Dunn felt like some of the requirements are too restrictive and he is not in favor of more regulations.

After discussing some of the standards, it was the consensus of City Council for City staff to seek more input from the community, review the comments by Council regarding the standards, and continue the amendment until the October 1, 2002, worksession with the public hearing being continued until October 8, 2002. The matter of applying the district to properties will be tabled.

BOARDS AND COMMISSIONS

It was the consensus of City Council to appoint Tim Flora (North representative), Ann Flynn (Central representative) and John Robinson (East representative) to the Citizens/Police Advisory Committee.

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It was the consensus of City Council to appoint David Tuch and Susan Jackson to the Greenway Commission.

It was the consensus of City Council to have the City Clerk arrange interviews on the Planning & Zoning Commission.

It was the consensus of Council to postpone action on the Public Access Channel Commission vacancies until the first of next year.

It was the consensus of Council to reappoint Chris Cavanaugh to the Buncombe County Tourism Development Authority.

BUDGET WORKSESSION

City Council held a budget worksession to discuss the interim budget. The final budget will be adopted on Thursday, August 29, 2002, at 5:00 p.m. in the Council Chamber, located on the Second Floor of the City Hall Building, Asheville, North Carolina.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:20 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 27, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James E. Ellis

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 27, 2002, AS "BOB PRESSLEY DAY" IN THE CITY OF ASHEVILLE

Mayor Worley announced that Mr. Pressley will not be able to attend this meeting and they would reschedule his proclamation.

B. RECOGNITION OF EMERGENCY ASSISTANCE FROM OUR NEXT GENERATION YOUTH GROUP

On behalf of City Council and the citizens of Asheville, Mayor Worley thanked Eugene Cutshaw, Josh Dalton, David Douglas and Markus Smith who helped the Asheville Fire and Rescue Department recently at a house fire on Carrier Street in West Asheville.

Fire Chief Greg Grayson explained that a group of young gentlemen from our Next Generation Youth Group assisted our firefighters in a very bad situation. Workers were refinishing a basement floor in a home when a lamp dropped onto the floor igniting flammable vapors from chemicals being used. The workers in the house were severely burned when the fire flashed across the entire basement.

Across the street from where the fire occurred, the youth were working to remodel a house. Four gentlemen provided assistance to the victims before our arrival and continued to assist us to the best of their ability until the fire was under control and the patients were treated and transported.

Mayor Worley presented Mr. Cutshaw, Mr. Dalton and Mr. Smith with a certificate and a Fire Rescue lapel pin. Mr. Douglas was not at the meeting, however, his certificate and pin would be delivered to him.

II. CONSENT:

Vice-Mayor Bellamy asked that Consent Agenda Items L, M and N be removed from the Consent Agenda to be voted on separately.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 13, 2002, AND THE WORKSESSION HELD ON AUGUST 20, 2002

B. RESOLUTION NO. 02-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH UNC-A FOR LIMITED LAW ENFORCEMENT ON PROPERTY OWNED BY UNC-ASHEVILLE

Summary: This consideration of a resolution authorizing the City Manager to enter into an agreement with UNC-Asheville in order to allow it's Public Safety Department the ability to enforce the law at certain locations within the City of Asheville, pursuant to N.C. Gen. Stat. sec. 15A-401.

The UNC-Asheville's Public Safety Department has requested that the City enter into a joint agreement with the UNC-A in order to allow the UNC-A public safety officers the ability enforce the law on property owned by UNC-A but located within the City of Asheville. Currently, the UNC-A public safety officers do not have law enforcement powers on these UNC-A properties.

> The properties are: Hyannis Drive, Corporative Campus Ministry House; 62 Macon Avenue, the Chancellor's Residence; Sevier Street Apartments #35 (Units A through J), #40 and #44 which are part of the University Housing; 95 Vivian Avenue – Pegasus Press Printing; The W.T. Weaver Boulevard Greenway Walking Path and surrounding area that constitutes the Greenway located near UNCA; and 138 Sevier Street - The Baptist Student Union.

By entering into this joint agreement, the Asheville Police Department will not be the primary agency for calls at these locations within the City but still maintain jurisdiction over the properties. Furthermore, this agreement does not effect the mutual aid agreement between the two agencies. In addition, by executing this agreement, the W.T. Weaver Boulevard Greenway Walking Path will get extra police coverage from the UNCA public safety officers.

City staff recommends approval of the resolution authorizing the City Manager to enter into a joint agreement with UNC-Asheville.

RESOLUTION BOOK NO. 27 – PAGE 225

C. ORDINANCE NO. 2949 - BUDGET AMENDMENT TO RECEIVE FUNDS FROM THE FAIR HOUSING ASSISTANCE PROGRAM GRANT

Summary: The consideration of a budget amendment, in the amount of $63,000, to recognize a Fair Housing grant.

The City of Asheville has been awarded a grant of $63,000 from the U.S. Department of HUD for the City's Fair Housing Assistance Program (FHAP) for the year ending September 30, 2002.

The City has received an annual FHAP grant for several years and subgrants the entire amount to the Asheville-Buncombe Community Relations Council, which undertakes fair housing education and enforcement in Asheville and Buncombe County.

Staff recommends approval of budget amendment.

ORDINANCE BOOK NO. 20 – PAGE 48

D. RESOLUTION NO. 02-132 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE A NOTICE TO EXCHANCE CITY-OWNED PROPERTY AT THE CORNER OF MOUNTAIN AND CLEMMONS STREET FOR PROPERTY AT TUSKEEGEE STREET

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Summary: The consideration of a resolution authorizing the City Clerk to publish a notice regarding the exchange of Disposal Parcel 173 located on Mountain Street for real property located on Tuskeegee Street.

The City and Groundstar Development, Inc. have negotiated an exchange of Disposal Parcel 173 on Mountain Street for Groundstar's property on Tuskeegee Street. Disposal Parcel 173 (PIN No. 9649.19-60-8939) is a residential lot owned by the City on Mountain Street comprising 8,276 square feet and designated to be sold for redevelopment as part of the East End/Valley Street Community Improvement Program. About half the lot is steeply sloped and about half is gently sloped. There is a concrete ditch across the middle of the property centered in a 20' drainage easement. According to the Public Works Director, the 20' drainage easement on the City's property on Mountain Street is unnecessary and can be abandoned.

The City's property is located one block from property on Tuskeegee Street, owned by Groundstar (PIN No. 9649.19-60-4246). Groundstar purchased the lot on Tuskeegee Street to build a single-family affordable house for sale. After purchasing the lot, purchasing zoning and building permits and incurring site preparation expenses, Groundstar discovered that the lot is not buildable because of a drainage structure on the property on Tuskeegee. The City's Public Works Director recommends acquiring Groundstar's property because the drainage structure is essential to providing storm drainage on Tuskeegee Street. An exchange of property has been negotiated which will satisfy Groundstar's need for a buildable lot and the City's need to continue to provide storm drainage on Tuskeegee Street.

Approval of the resolution will initiate the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Planning & Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 226

E. RESOLUTION NO. 02-133 - RESOLUTION AUTHORIZNG THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE CITY-OWNED PROPERTY ON OTEEN CHURCH ROAD

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 1.58 acres of land off Oteen Church Road.

A bid from James R. and Irma S. Lewis, in the amount of $24,000.00, has been received for the purchase of land adjacent to their property at 1150 Oteen Church Road. The bid is not less than the appraised value of $24,000.00.

The property is zoned RS-2 and comprises of approximately 1.58 acre of land. The property has a triangular shape and is level at the street and gently sloping to about 6' above street level. The bid proposal includes a life estate in the driveway to Oteen Church Road with the City retaining an easement for ingress and egress. When the life estate expires, the City will own the driveway, and an easement for ingress and egress will accrue to the property at 1150 Oteen Church Road. There is no current or contemplated use for the property by the City. The

Lewis' plan to assemble the property with the property they own at 1150 Oteen Church Road as a buffer to the park.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 227

F. RESOLUTION NO. 02-134 - RESOLUTION ACCEPTING ROYAL PINES DRIVE, BLAKE DRIVE, TWO PORTIONS OF SYCAMORE DRIVE, PEACHTREE STREET, CEDAR LANE, SYCAMORE TERRACE, TWO PORTIONS OF LINDEN STREET AND UPPER SONDLEY DRIVE FOR CITY MAINTENANCE

Summary: The consideration of a resolution accepting Royal Pines Drive (SR 3162), Blake Drive (SR 3176), Sycamore Drive (SR 3171), Sycamore Drive (SR 3165), Peachtree Street (SR 3174), Cedar Lane (SR 3159), Sycamore Terrace (SR 3175), Linden Street (SR 3172), Linden Street (SR 3205), and Upper Sondley Drive for public maintenance.

As part of the annexation process, staff identifies streets in proposed annexation areas that should be maintained by the City after annexation. As part of the 2002 annexation process, ten streets were identified to be maintained by the City following annexation.

- Upper Sondley Drive is currently a private road. The length of the road is approximately 0.7 miles. Upper Sondley Drive begins and ends at Sondley Drive. The right-of-way for this street has previously been dedicated.

- Royal Pines Drive is currently a N. C. Dept. of Transportation (NCDOT) maintained roadway approximately .34 miles in length and is also known as State Route 3162. It begins at Hendersonville Rd and ends at the Sweeten Creek Rd.

- Blake Drive is currently an NCDOT maintained roadway approximately 0.25 miles in length and is also known as State Route 3176. The section proposed for acceptance begins at Royal Pines Drive and ends at the Sycamore Drive. Only a portion of this road was in the City prior to this annexation. Following annexation, all of the roadway will be in the city limits. Staff is requesting that the City maintain the entire length of Blake Drive.

- Sycamore Drive is currently an NCDOT maintained roadway approximately .33 miles in length and is also known as State Route 3171. It begins at Hendersonville Road and ends at Royal Pines Drive.

- Sycamore Drive is .12 miles in length and is currently an NCDOT maintained roadway. It is also known as State Route 3165. Sycamore Drive (SR 3165) veers off Sycamore Drive (SR 3171) and ends at Sweeten Creek Road.

- Peachtree Street is currently an NCDOT maintained roadway approximately .19 miles in length known as State Route 3174. It begins at Sycamore Drive and ends at Cedar Lane.

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- Cedar Lane is currently an NCDOT maintained roadway approximately .19 miles in length and is also known as State Route 3159. It begins at Linden Street and ends at Sweeten Creek Road.

- Sycamore Terrace is currently an NCDOT maintained roadway approximately .14 miles in length known as State Route 3175. It begins at Sycamore Drive and ends at Peachtree Street.

- Linden Street is currently a NCDOT maintained roadway approximately .15 miles in length and is also know as State Route 3205. It begins at Royal Pines Drive and ends at Sycamore Terrace.

- Another segment of Linden Street is also a NCDOT maintained roadway approximately .07 miles in length and is known as State Route 3172. It begins at Sycamore Terrace and Dead Ends at the southern section of the roadway.

Staff recommends that City Council adopt a resolution accepting Royal Pines Drive (SR 3162), Blake Drive (SR 3176), Sycamore Drive (SR 3171), Sycamore Drive (SR 3165), Peachtree Street (SR 3174), Cedar Lane (SR 3159), Sycamore Terrace (SR 3175), Linden Street (SR 3172), Linden Street (SR 3205), and Upper Sondley Drive.

RESOLUTION BOOK NO. 27 – PAGE 228

G. RESOLUTION NO. 02-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT OF TRANSPORTATION FOR IMPROVEMENTS RELATED TO THE CONSTRUCTION WIDENING OF BREVARD ROAD FROM NORTH OF THE BLUE RIDGE PARKWAY TO SARDIS ROAD

Summary: The consideration of a resolution authorizing the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for improvements related to the construction widening of Brevard Road (NC-191), from just north of the Blue Ridge Parkway to Sardis Road (NC-112), in Buncombe County.

The NCDOT has prepared plans depicting the construction widening of Brevard Road from a two lane to a 4/5 lane road, within the limits outlined above. This proposed work is located almost in its entirety outside the City limits of Asheville and it is scheduled to be let this fall. As a result of this construction, an existing 6-inch water line will be replaced with a new 24-inch water line that will be installed within a utility easement adjacent to the edge of the road. Funds to cover the cost of water line replacement will be appropriated from the Water Enterprise Fund. No other municipal infrastructure is proposed to be constructed.

NCDOT has requested the City to execute this agreement as the first step for the final preparation of a utility agreement between NCDOT and the Regional Water Authority of Asheville, Buncombe and Henderson, for the costs associated with the replacement and upgrade of the existing water line.

This project is also identified as NCDOT No. U-3403 C in Buncombe County.

Staff recommends that City Council authorize the Mayor to sign the Municipal Agreement for improvements related to the construction widening of Brevard Road (NC-191), from just north of the Blue Ridge Parkway to Sardis Road (NC-112), in Buncombe County.

RESOLUTION BOOK NO. 27 – PAGE 230

H. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 10, 2002, TO CONSIDER AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH ELECTROLUX HOME PRODUCTS FOR AN ECONOMIC DEVELOPMENT INCENTIVE IN THE FORM OF AN EASEMENT ONTO CITY-OWNED PROPERTY FOR CONSTRUCTION OF RETENTION POND

I. RESOLUTION NO. 02-136 - RESOLUTION APPOINTING MEMBERS TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: The terms of John Ingersoll (North representative), Jimmy Hungerford (West representative), Lonnie Blair (East representative) and Betty Budd (South representative), as members on the Citizens/Police Advisory Committee, expired on June 30, 2002. In addition, there currently exists a vacancy for a Central representative.

On June 18, 2002, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Hungerford (West representative) and Ms. Budd (South representative) to each serve an additional three-year term respectively, terms to expire June 30, 2005. Both appointments are until their successors have been appointed.

On August 20, 2002, City Council instructed the City Clerk to prepare the proper paperwork to appoint Tim Flora (North representative), John C. Robinson (East representative) and Ann Flynn (Central representative) to each serve a three-year term respectively, terms to expire June 30, 2005. All appointments are until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 231

J. RESOLUTION NO. 02-137- RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Summary: Mr. Michael Kern and Ms. Elizabeth Budd have resigned as members of the Greenway Commission, thus leaving two unexpired terms – December 31, 2002, and December 31, 2003.

On August 20, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork (1) to appoint Mr. David Tuch to serve the unexpired term of Mr. Kern and then a full three year term, term to expire December 31, 2005; and (2) to appoint Ms. Susan Jackson to serve the unexpired term of Ms. Budd, term to expire December 31, 2003. Both appointments are until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 232

K. RESOLUTION NO. 02-138 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: The term of Chris Cavanaugh, as a member on the Tourism Development Authority, expires on August 30, 2002.

On August 20, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Cavanaugh to serve an additional three year term, term to expire August 30, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 233

L. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS AND FUN FESTIVAL ON SUNDAY, SEPTEMBER 1, 2002

This item was removed from the Consent Agenda to be voted on separately.

M. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND UNFORTIFIED WINE AT THE ANNUAL BREWGRASS FESTIVAL ON SATURDAY, SEPTEMBER 14, 2002

This item was removed from the Consent Agenda to be voted on separately.

N. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND UNFORTIFIED WINE AT THE ASHEVILLE AREA ARTS COUNCIL'S WALK INTO HISTORY EVENT ON SATURDAY, SEPTEMBER 28, 2002

This item was removed from the Consent Agenda to be voted on separately.

RESOLUTION BOOK NO. 27 – PAGE

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Peterson and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 02-139 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS AND FUN FESTIVAL ON SUNDAY, SEPTEMBER 1, 2002

RESOLUTION NO. 02-140 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND UNFORTIFIED WINE AT THE ANNUAL BREWGRASS FESTIVAL ON SATURDAY, SEPTEMBER 14, 2002

RESOLUTION NO. 02-141 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND UNFORTIFIED WINE AT THE ASHEVILLE AREA ARTS COUNCIL'S WALK INTO HISTORY EVENT ON SATURDAY, SEPTEMBER 28, 2002

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Lexington Avenue Arts and Fun Festival, the Asheville Area Arts Council's Walk into History and the Annual Brewgrass Festival.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- The Lexington Avenue Arts and Fun Festival is a first year event. Its goal is to develop greater awareness for non-traditional art forms and to encourage people to shop and visit the stores opening on North Lexington.

- The Asheville Area Arts Council's Walk into History is an event designed to showcase the Urban Trail and to bring Asheville's history alive with characters and performances at many of the stations.

- For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. The 6th Annual Brewgrass Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department is submitting these resolutions on behalf of the Asheville Area Arts Council, Brewgrass, and the Lexington Avenue Arts and Fun Festival.

Councilman Peterson moved for the adoption of Resolution Nos. 02-139, 02-140 and 02-141. This motion was seconded by Councilman Dunn and carried on a 5-1 vote, with Vice-Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 27 – PAGE 234
RESOLUTION BOOK NO. 27 – PAGE 236
RESOLUTION BOOK NO. 27 – PAGE 237

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT

Per the discussion at the August 20, 2002, City Council worksession, Vice-Mayor Bellamy moved to continue the public hearing until October 8, 2002, with this matter coming before City Council at their worksession on October 1, 2002. This motion was seconded by Councilman Dunn and carried unanimously.

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR

Per the discussion at the August 20, 2002, City Council worksession, Vice-Mayor Bellamy moved to table this rezoning request. This motion was seconded by Councilman Dunn and carried unanimously.

C. PUBLIC HEARING TO CONSIDER ADOPTION OF A SMALL AREA PLAN KNOWN AS THE BROADWAY CORRIDOR PLAN AS AN ADDENDUM TO THE ASHEVILLE CITY PLAN 2010

RESOLUTION NO. 02-142 - RESOLUTION ADOPTING A SMALL AREA PLAN KNOWN AS THE BROADWAY CORRIDOR PLAN AS AN ADDENDUM TO THE ASHEVILLE CITY PLAN 2010

Mayor Worley opened the public hearing at 5:17 p.m.

Chief Planner Gerald Green said that this is the consideration of a resolution adopting the Broadway Corridor Plan, which establishes goals and objectives for the redevelopment of the Broadway corridor from Woodfin/Hiawassee Streets to the US 19/23 intersection. This public hearing was advertised on August 16 and 23, 2002.

Following the improvement of Broadway from US 19/23 to Chestnut Street, concern was expressed regarding the type of development that might occur along the corridor. In response to this concern, City Council rezoned most of the properties along the north end of the corridor from R-3 and CS to RS-8 and RM-8 to forestall inappropriate development. As part of the rezoning, Council directed staff to develop a corridor plan for the section of Broadway from Downtown to tne US 19/23 intersection. Due to other priorities and limited staff, the planning effort did not begin until 1999. For the same reasons, the effort took longer than anticipated. The planning process involved the following basic steps:

- Formation of an advisory committee composed of neighborhood representatives, property owners, business owners, institutional representatives, and liaisons from City commissions and boards;
- Formation of a staff advisory committee to assure input from all affected City departments;
- Compilation of background information about Broadway;
- Community meetings to identify goals and objectives;
- Development of the draft corridor plan; and
- Presentation of the draft corridor plan to the public for review and comment.

The Broadway Corridor Plan provides a guide for the future development and redevelopment of the corridor, recognizing the need to protect adjacent neighborhoods and the development limitations imposed by topography and small lot size. Among the principles that guided the preparation of the corridor plan are:

- The need to promote the development of the Broadway (Reed Creek) Greenway;
- The need to improve the link between UNCA and Downtown;
- The need to improve the connections among the neighborhoods abutting Broadway, between the neighborhoods and Downtown, and between the neighborhoods and UNCA;
- The need to provide for multi-modal transportation;
- The promotion of neighborhood-friendly, pedestrian oriented development that serves the adjacent neighborhoods as well as passing motorists by providing a mix of uses including residential; and
- The need to recognize Broadway as an entrance to Downtown.

The draft Broadway Corridor Plan identifies action steps designed to guide the development and redevelopment of properties along the corridor in a manner consistent with the principles listed above. Action steps, identifying the time frame for implementation and the actors involved, address land use, future zoning, traffic circulation, Parks and Recreation activities, and economic development. By taking these steps, we can help assure a development/ redevelopment pattern along Broadway that adheres to the plan's guiding principles, provides opportunities for new and redeveloped businesses, provides opportunities for affordable housing, enhances adjacent neighborhoods, and promotes the Smart Growth principles adopted by City Council.

The Planning and Zoning Commission unanimously (5-0) recommended approval of the Broadway Corridor Plan. Staff also recommends adoption of the corridor plan.

Mr. Green then recognized the Advisory Committee members. The Broadway Corridor Action Plan major issues include transportation, parking, parks/greenway, land use, streetscape, safety/crime and general issues.

Transportation issues consisted of flow of traffic from Broadway to Lexington, impact of Broadway traffic on adjacent neighborhoods (cut-through traffic), intersection if I-240 and Broadway, transition from Lexington Avenue to Broadway at the I-240 interchange, redesign of I-

240 interchanges (need input from the NC Dept. of Transportation), left turns onto Broadway from neighborhood streets are difficult, traffic speed, plan for traffic signals, explore design features to reduce traffic speed, and pedestrian issues. Pedestrian issues include safe pedestrian crossings along Broadway, pedestrian crossing at Weaver Boulevard, sidewalk conditions and connections.

Parking issues include the desire for on-street parking on Broadway from Chestnut south, opportunities for shared off-street parking, and cooperative efforts between City and landowners to address parking.

Parks and Greenway issues include the status of Broadway greenway/funding for greenway construction, review of greenway connection from Chestnut to downtown, potential for small parks and green spaces in corridor and status of connection with Weaver greenway.

Land use issues include land uses which link UNC-Asheville, downtown, businesses, and neighborhoods; compatibility with existing land uses; development should be in harmony with existing development and proposed development; land use review must look at entire corridor; vacant land between downtown and Chestnut Street key to future of corridor; pedestrian scale vs. automobile scale; mixed use development; business opportunities; and identify appropriate zoning of properties on edge of corridor.

Streetscape issues include the reinforcement linkage between areas, create pleasant environment for all users, enhance business environment and entranceway (neighborhood and downtown) corridor.

Safety/crime issues include speeding, vagrants, prostitution, graffiti and trash.

Mr. Green outlined the land use issues: concerns about the quality of new development, both residential and non-residential; need for neighborhood retail services to support the area's residential neighborhoods; concerns about used car lots, small strip retail and commercial franchises; protection and preservation of surrounding neighborhoods, such as Hillside/Mt. Clare and Montford; and reuse of vacant buildings between Chestnut Street and I-240. Land use opportunities include: properties available for new development throughout the corridor, vacant residential and commercial buildings throughout the corridor, mixed use development as a transition between commercial downtown and residential neighborhoods, second-story residences promote security and safety in evening hours, and adjacent residential neighborhoods provide substantial customer base.

Traffic and pedestrian circulation issues include: limited pedestrian amenities (crosswalks, sidewalks, lighting, medians); limited ADA standard sidewalks; poor sidewalk maintenance; poor vehicular traffic flow at Broadway/Merrimon/I-240 and Five Points intersections; width of lanes do not provide for safe U-turn opportunities; lack of transit service; and lack of designated bike lanes. Opportunities include: potential for transit service to link with Broadway, corridor is a major connector between downtown and UNC-Asheville, greenway from downtown to the French Broad River, potential for enhanced pedestrian/bicycle use, and serve as gateway to downtown.

Park and recreation issues include: safety hazards for pedestrians using inadequate sidewalk system, North Asheville residents in need of parks and recreation areas, and City of Asheville in need of a continuous greenway system. Opportunities include: finished greenway will be a model project for other greenways; will be one of the first sections of the "emerald necklace" encircling downtown; and increase adjacent property values, tourist revenues, and cost savings for public services.

Upon inquiry of Councilman Dunn, Mr. Green said that this plan lays out actions and activities as a general guidance tool only. Mr. Green said that there are no plans at this time for any type of development on the City-owned properties.

When Councilman Mumpower asked about the traffic circle at Chestnut Street, Mr. Green said that a great deal of study is still needed and again, this is only a general plan.

Upon inquiry of Councilman Dunn, Mr. Green explained what is meant by a greenway, noting that it is not limited to natural areas. He pointed out that the Urban Trail is a greenway and it's all concrete.

Councilman Mumpower asked if there have been any concerns raised over the Plan. Mr. Green said that greenway development has raised concern. He said that there seems to be the perception that the entire side of the street, and in some cases both sides of Broadway, from Five Points north should remain undeveloped because that is the greenway. That is misconstruing the point of the greenway and also the fact that the decision was made by prior Council's that the east side of the corridor from Five Points north would not be a part of the greenway – but that it would be developed according to the Plan that would be approved at some future date.

Mr. Green responded to concerns from Councilman Peterson regarding existing residential property. Mr. Green said it was made clear during the process that the residential properties back one or two lots off of Broadway should not be mixed uses. He said this is a general plan and staff did not go in and define on the general land use plan at this scale each individual property. The text of the plan and the direction provided to staff by the Advisory Committee was that commercial access onto residential streets should not be permitted and that any future zoning should be limited to those properties that abut Broadway and do not go back into the neighborhood.

Mr. Theo Hartman, resident on Woodrow Avenue, hoped that the wooded area near Highland Park and UNC-Asheville would remain the same.

A resident on Catawba Street proposed two different zonings – one south of Five Points and then one north of Five Points. She felt to make it all mixed use would be micro-sprawl.

Mr. David Hill, representing Community Corridors LLC, said that there have been a series of weekly meetings with neighborhood groups, City staff, and the Concerned Residents of Broadway Neighborhoods to review the three City Council actions proposed regarding Broadway. As their first joint action of working together, Ms. Veronica Gunter, representing Concerned Residents of Broadway Neighborhoods, said that (1) as residents and development interest, they support the adoption of a small area plan for Broadway. Individuals will express opinions on details within the Plan and they support hearing all opinions. They feel that redevelopment of existing commercial areas from Five Points south is needed along the Broadway Corridor, positively shaped by staff work and Council action and the timely input of their group and the public. They support the adopted Greenway Plan for Reed Creek, which runs parallel to Broadway, and the Reed Creek Greenway's possible extension south of Chestnut. They are currently in discussion about the past, present and future character of Broadway north of Five Points; (2) like City staff, they want Broadway's issues addressed in a timely fashion. They have a schedule of weekly meetings with representatives of each group and City staff and Council members – meetings which have already begun and they will work to resolve differences in our visions for Broadway as they relate to pending Council actions; and (3) They encourage active review and participation by all City Council, either through attendance at the meetings or via one-on-one input with City staff or their group.

Mr. Bob Lawrence, business owner on Broadway, said that it concerns him that the Plan includes traffic circles. If felt that if a traffic circle is on East Chestnut and Broadway or Broadway and Monroe, emergency vehicles will not be able to get through. He did not want Broadway to turn into a Merrimon Avenue or a Patton Avenue.

Mr. Tom Byers, Executive Assistant to the Chancellor at UNC-Asheville, spoke in support of the Small Area Plan and said that the Plan is consistent with the hopes of the University.

Ms. Betty Lawrence, representing the Broadway Improvement Project, said that Broadway was a major transportation corridor in the 19th Century but has not been since then. South of Chestnut going into downtown has been a business corridor, but North of Chestnut, the land use has been predominately residential. She felt the zoning needs to be appropriate for each area. They don't believe that there is a traffic problem at Five Points. She felt it the Plan should be more explicit that we want to encourage transit on this Corridor. As far as the greenway, there has been talk about having a medicinal herb garden to show that part of the heritage in Penick Park and there is a lot of potential for an inter-rural trail in that Park. Broadway is not an existing commercial corridor, as can be seen by the Montford neighborhood and the Hillside/Mt. Clare neighborhood. There is a lot of investment in the old buildings in the neighborhoods and wonderful potential for affordable housing. She felt that since there is vacant, retail and office space in downtown that there is no rush into making too much more. We need to concentrate our efforts between I-240 north to Chestnut Street so that we can all work together to get this new and important mixed-use development to work. As far as the lanes between Chestnut Street and I-240, they would prefer one of the travel lanes be deleted.

Mr. Scott Osborne felt that Broadway is a good gateway into the City.

Mr. Jerry Sternberg, partner in Highland Park LLC, said that they have a concern with any effort to narrow any part of Broadway. In addition, they were opposed to forcing property owners to build buildings fronting on Broadway with the parking in back and windows in those buildings. They feel drive-throughs should be allowed to be built in the new zoning district. They also have an issue with a greenway going through Highland Park. He understood that this Plan is a conceptual blueprint of things they would like to do in this Corridor and if that is the case, many things are still on the table. Therefore, he asked that the Plan be amended to permit a grocery store, with a large footprint of approximately 45-50,000 square feet, to serve this area or a hotel with approximately 6-8 stories, in the northernmost section of the Broadway Corridor, which primarily starts at Catawba Street and includes the properties of UNC-Asheville and Highland Park.

Mayor Worley closed the public hearing at 6:29 p.m.

Mr. Green responded to Mr. Sternberg in that UNC-Asheville and Highland Park are zoned Institutional now and there is no proposal to change that zoning. Institutional does permit hotels up to 6-8 stories, but no grocery stores. He has heard comments and there are references in the Plan about the need for a grocery store in that area and that issue can be addressed when the zoning for the Broadway Corridor is discussed.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones, and other members of Council, expressed gratitude to the Concerned Residents of Broadway Neighborhood and Community Corridors LLC. She felt it was exemplary what has been accomplished and it took a lot of openness, time, energy and patience for them to make a commitment to the true community.

Councilman Mumpower moved for the adoption of Resolution No. 02-142. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 238

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of August 9-22, 2002: William Baker (Streets), Robert Carnahan (Water), Karen Harris (Streets), Jerry Perkins (Streets), Kathy Whatley (Streets) and Jay Shelton (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City was served with a Verified Petition for Review and Appeal on June 27, 2002, by Stephen and Michelle Arnold, etc. The nature of the proceeding is to declare the annexation ordinance for the Huntington Chase Annexation Area to be null and void, or, in the alternative, remand the ordinance for amendment of the boundaries. City Attorney Bob Oast will handle this matter, with the involvement of Bill Slawter.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Upon inquiry of Councilman Mumpower about downtown issues, City Manager Westbrook said that some issues would be forthcoming to Council in the near future.

Vice-Mayor Bellamy thanked everyone involved in the successful Goombay Festival.

Ms. Lola LaFey, resident on London Road, thanked City Council for taking the time out to honor Our Next Generation Youth Build.

Mr. Mickey Mahaffey stressed that any proposals regarding the water agreement renegotiations should require full discussion of Council with public comment.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:47 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Thursday – August 29, 2002 - 5:00 p.m.
Council Chamber – 2nd Floor – City Hall

Special Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Worley gave the invocation.

NEW BUSINESS

A. ORDINANCE NO. 2950 - ORDINANCE ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2003-04 FOR THE FOLLOWING FUNDS: GENERAL FUND, GENERAL CAPITAL RESERVE FUND, TRANSIT SERVICES FUND, CIVIC CENTER FUND, STREET & SIDEWALK FUND, PRINT SHOP FUND, CENTRAL STORES FUND, FLEET MANAGEMENT FUND, RISK MANAGEMENT FUND, HOUSING TRUST REVOLVING FUND, CIVIC CENTER CAPITAL FUND, TRANSIT CAPITAL FUND, SEWER CAPITAL PROJECTS FUND, AND GENERAL CAPITAL PROJECTS FUND

Councilman Peterson moved to adopt an ordinance adopting the annual General Fund budget for Fiscal Year 2003-04 at $62,998,431, the total net budget at $87,729,323, and setting the tax rate at $0.53 per $100 valuation with the following service priorities being funded and any additional revenue ($76,692) going into Fund Balance: (1) streets and sidewalks - $600,000; (2) Community Relations Council - $30,000; (3) Enka Fire Department contract - $27,000; (4) Burton Street Recreation Center - $50,000; (5) police overtime for Biker Bash - $26,659; (6) outside agency funding - $58,000; (7) traffic calming - $50,000; (8) Housing Trust Fund (now at $400,000) - $100,000; (9) Walton Street playground - $50,000; (10) building maintenance funding - $50,000; and (11) police vehicles - $41,850. This totals $1,083,509. This motion was seconded by Councilman Ellis.

Vice-Mayor Bellamy said that last week City staff presented City Council the following five service priorities totaling $1,033,659: (1) Community Relations Council - $30,000; (2) Enka Fire Department contract - $27,000; (3) Burton Street Recreation Center - $50,000; (4) police overtime for Biker Bash - $26,659; and (5) streets and sidewalks - $900,000. If the $900,000 for streets and sidewalks were eliminated, City Council would just need to find $133,659 and not have to raise taxes.

City Manager Westbrook said that City staff presented those issues as a result of what they thought the City Council wanted to see funded and what City staff thought needed to be funded, but that they would require additional money. One was $900,000 for streets and sidewalks. It was his understanding that the now 11 service priorities are a result of City Council working amongst themselves.

Vice-Mayor Bellamy asked how many of the 11 items are new services to the community. City Manager Westbrook said that none are new services. He said these were things that were reduced during the Phase I reductions in the budget or where a Council member wanted to place additional emphasis with an existing program above and beyond what staff had initially recommended.

Councilman Peterson said that the current tax rate is $0.56 per $100 valuation. His motion is for the tax rate to be lowered to $0.53 per $100 valuation. For the budget to remain revenue neutral, the tax rate would need to be $0.51 per $100 valuation.

Vice-Mayor Bellamy was concerned that the 11 service priorities are not any new services and based on the four priorities City staff presented last week (minus the $900,000 for streets and sidewalks because they were already deleted in the Phase I reductions), she felt the additional $133,659 could be found in the budget. She pointed out that City Council has already cut $2,625,000.

Councilwoman Jones pointed out that if the City did not raise taxes by 2-cents, an additional $90,000 would need to be added to Vice-Mayor Bellamy's $133,659 because of the sales tax loss due to Buncombe County's tax rate.

Vice-Mayor Bellamy's concern was that the City was finally on track by the audit report showing that our Fund Balance gained revenue. Then the State had budget problems and passed them onto cities. It was difficult for her to support a tax increase and not get anything for it. If the City is going to increase what we are supposed to be doing anyway, she would understand that, but since we are doing the status quo, it is very difficult for our citizens to understand the increase. She pointed out that when we increase our tax rate it just doesn't stop on real estate, but it's applied also to motor vehicles, mobile homes, business assets, etc.

Councilman Peterson disagreed with Vice-Mayor Bellamy when she felt that citizens were not getting anything for the additional 2 cents. He explained how each of the 11 service priorities would help citizens and that they have been priorities discussed by City Council at their annual retreat. He felt that if Council don't take responsible action now and if we lose more State funding, we have the potential of laying off firefighters, police officers, closing community centers, etc.

Councilwoman Jones said that she had heard over and over again the need for streets and sidewalks (the nuts and bolts of public infrastructure) and City Council didn't fund them last year. So, based on last year, this is a new investment and the citizen's number one priority. She felt Council has done a good job in being accountable and Council can be proud. She believed we have to take care of what our parents and grandparents invested in, in terms of our buildings, streets, etc. These 11 service priorities are items that resulted from the City Council annual retreat. We don't know what is coming from the State and that is another part of being responsible, but at least we have prepared for it. It may be that these 11 service priorities may not be funded if the State takes additional monies, but a lot of time has been spent on this budget and she feels it makes good sense for the community.

Councilman Peterson said that City Council needs to invest in infrastructure and take care of what is here so that people want to come to Asheville. Businesses will not want to come to Asheville is the roads are falling apart, or if they can't find affordable housing for their workers, or if our community centers are falling apart. If we look like a dump, they are not coming here. This is an investment. Regarding the building maintenance fund, if we don't spend a little now, we will be spending 5-10 times more in the future. Everyone complains about how bad the water system is – it's because the leaders in the past didn't spend the money to take care of what they had. The only reason he is supporting the additional increase is because we had to cut $3 Million out of last year's budget. If we had spent $600,000, that ended up getting cut, on the streets and sidewalks, then he felt we could manage to tighten our belt. But we tightened our belt last year and had to defer that one year. His concern is that if we go with the minimum tax rate and the State ends up keeping the utility franchise fee, or they take Powell Bill monies, we will end up laying off police officers, firefighters, etc. He personally felt it was likely to happen that the State will make those cuts. Regarding the 11 service priorities, City staff has agreed that they are not

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going to rush out and spend the month. We are hoping that we can do these things, but if the Governor takes more monies, we could potentially lose $1 Million. We are putting some money aside if more hard times come. We had hard times last year and we cut. We're having hard times this year and it's foolish if we don't put something away and be prepared. If we have to, all of the 11 service priorities may be cut, but if we don't have this, we will be in dire straights.

Councilman Dunn said that when he looked at past budgets, prior councils, in some ways, spent a lot of money and he didn't think our problems are all from the State withholding monies. Now that the State has taken monies, they expect us to go to the city taxpayers to make up for some representatives we have in Raleigh. He agrees that we have to fix things because the longer you wait, the worse things get, but he doesn't think it's fair to put this on the Asheville taxpayers. Not only are average residents affected, but developers and people who own hotels and large businesses. Their taxes will go through the ceiling. He doesn't understand why the City has to rush in and raise taxes this year since we don't know what is going to happen with the State's budget.

Councilman Ellis supported the 11 service priorities and stressed that Council has talked about the need to set aside money for streets and sidewalks and how we need to support the Police Department. This budget will do that.

Councilman Mumpower felt there are legitimate arguments on both sides. Some criteria he will use for his vote includes: a focus on basic services, provide a level of service that reflects the community's wishes, focus on providing services to people that they can't provide for themselves, ensure that our government does not outgrow our economy or the economic realities of our citizens, and we should listen to our voters. He doesn't think it's reasonable that we are asking our citizens to compensate for a State budget crisis. We are spending at the level of last year and year before and last year was tight but not as tight as this year. This is not a good year and he is hesitant of us spending at a level similar to a good year. He especially is concerned when he looks ahead to next year. To him we are stepping forward with some expenditures that could be tightened up – there are choices we can make. He personally would like to see us make some of those harder choices and hold the line this year. He has talked to some of our local delegation and they think that we are going to get our revenues or at least a signification portion of them and he was inclined to believe them. He agrees that you have to take care of what you have but he would rather see us hold the line like other people in our community have to do.

Mayor Worley said that he would support the budget motion. He agreed that it is unreasonable to ask our citizens to compensate for the State's budget problems, but we can't stick our heads in the sand and not deal with the issues that has caused us. He deeply regrets the State has had those problems and they have had to take such an impact on cities, but the reality is that that impact has occurred and it has indeed affected us. He felt that if we ever have to have a tax increase, and he has voted against them in the past, now is the time to do it. His reasons include the effect the State budget has had on us and its continuing uncertainty. There is a strong feeling that this budget is so tied up in the legislature, and all of the various interplay and political ramifications, that we may not get our reimbursements. That is a risk he is not willing to take in setting our budget for this year. We were impacted by the State's budget crisis last year and that resulted in some pretty substantial reductions - mostly in capital and streets and sidewalks. It would be foolish for us to continue those kinds of impacts two years in a row. We can weather that storm one year but when you add the same kind of cuts a second year in a row, you are creating longer-term problems that actually increase our overall exposure down the road. He is very concerned about the continuing problems the State budget is having and the potential impact on next year's budget. We are not immune from more money being taken from us in this fiscal year by the State. Even if we got our reimbursements, if the State budget crisis continues, there are other funds that are very susceptible to be pulled from us. We need to take care of ourselves right now. What do we get for the increase? We get $600,000 added back to the streets and sidewalks. That is significant when you look at what we lost last year. Last year we did not do scheduled paving. This is less than what we really need for this year, but it is a pretty substantial add-back to help us continue with street and sidewalk paving. If you don't address these things on a regular, consistent basis, you spend a lot more money for streets and sidewalks as they get worse and worse. I think it's important for us to continue addressing it on a reasonable, consistent basis. We have a strong feeling for affordable housing in the City and we will continue that emphasis. We get maintenance on other City buildings and properties and if you don't do it, you compound the problem. We make sure that the Burton Street Recreational Center stays open and we get a Community Relations Council that will continue to help work to solve the various problems that we have within our community. All of those are important. He felt this is an appropriate amount to increase and he would support the motion.

Councilman Dunn felt that the City should look at some other areas before we take the step to increase taxes. He cited some examples of spending, e.g. festivals coordinating division - $120,000; athlete division in Parks and Recreation - $630,000; and a resource position of $72,000. In addition the Water Authority is spending $116,000 of taxpayer's money for water education.

For those who are concerned with the revenue picture for the coming year and who are inclined to vote for a tax increase, Councilman Mumpower asked if Councilman Peterson would consider a modification to his motion. Said modification would be to put this money in our Fund Balance until we see whether the revenue picture will improve or if we receive additional revenues from the State.

Councilman Peterson didn't think a modification would be necessary because there is an understanding with City staff, given the situation that happened last year and the situation that may happen this year, they are very aware that we may lose additional funds and that these items are not going to be spent right away. If we get more monies withheld from the State, these 11 service priorities would be the list to first go to for cuts. In addition, we are putting $76,692 in our Fund Balance in case we do lose additional funds or in case the economy doesn't do as well.

Councilwoman Jones noted that there is $5,000 in the Contingency Fund committed to the actuarial study for firefighters.

Councilman Dunn felt that the role of City government is to provide basic services – things that people can't do for themselves. We cannot be something for everybody and we are losing the focus on the real important quality, basic government services.

The motion made by Councilman Peterson and seconded by Councilman Ellis carried on a 4-3 vote, with Mayor Worley, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "yes" and Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting "no."

Upon inquiry of Councilman Mumpower, Mayor Worley said that any funds received from the State beyond what is currently anticipated would automatically go to Fund Balance.

ORDINANCE BOOK NO. 20 – PAGE 50

B. ORDINANCE NO. 2951 - ORDINANCE AMENDING ARTICLE II OF CHAPTER 13 (ALARM SYSTEMS) OF THE CITY OF ASHEVILLE

Deputy Police Chief Ross Robinson said that false burglary and robbery alarms in Asheville represent a significant drain on police department resources. The intent of the current ordinance adopted in 1995 was to reduce the number of false alarms through the imposition of penalties for excessive false alarm activations. However, today, the number of false alarms remains high. The incidence of false alarms has not decreased. During the past year the Police Department has responded to over 9,112 false alarm calls. Staff research indicates there are several features of the current ordinance, which stand as barriers to false alarm reduction. The proposed ordinance will address these problems as follows:

1. In the current ordinance, the way in which excessive false alarms are defined is too forgiving. The current ordinance defines excessive false alarms as more than three within one month. The proposed ordinance defines excessive false alarms as three or more in any twelve-month period.

2. The current ordinance provides for a $10 civil penalty for each excessive false alarm. The proposed ordinance provides for a graduated scale; 3-5 at $50 each, 6 and 7 at $100 each, 8 and 9 at $250 each, and 10 and above at $500 each.

3. The proposed ordinance eliminates the previous permit fee of $25.00. If the alarm holder does not secure the proper permit as specified by the ordinance, an increased civil penalty will be assessed beginning at $200 when the second false alarm occurs.

4. To be effective, strict monitoring and vigorous enforcement will be required. It is proposed to outsource alarm monitoring and billing services with costs of the outsource covered by the collectibles.

It is also proposed the effective date of the ordinance be six months after adoption to allow time to arrange for outsourcing and public education on the new provisions of the ordinance.

Councilman Mumpower supported the ordinance, however, we are talking about people who are trying to protect themselves from crime. We are making them criminals; at least to the extent that we are laying a real heavy hand with the amount of fee we are charging people. We went from one extreme to another extreme.

Councilman Peterson moved for the adoption of Ordinance No. 2951, to be effective six months from the date of adoption. This motion was seconded by Councilman Ellis and carried on a 6-1 vote with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 20 – PAGE 55

C. ORDINANCE NO. 2952 - BUDGET AMENDMENT TO RECEIVE GRANT MONEY FROM THE DEPT. OF HOUSING & URBAN DEVELOPMENT AND ALLOCATE IT TO THE HOUSING ASSISTANCE CORPORATION

D. ORDINANCE NO. 2953 - BUDGET AMENDMENT TO CONSOLIDATE ACCOUNTING FOR SECTION 108 LOAN-RELATED ACTIVITY IN A SINGLE FUND

Budget Director Ben Durant said that this is the consideration of two budget amendments, one in the amount of $50,106, to receive grant money from the Department of Housing & Urban Development and allocate it to the Housing Assistance Corporation; and the other to consolidate accounting for Section 108 Loan-related activity in a single fund.

The City's HOME fund recently received an additional $50,106 from the Department of Housing & Urban Development. The Asheville Regional Housing Consortium's Board of Directors voted to allocate the funds to the Housing Assistance Corporation to construct a transitional housing unit for low-income migrant farm workers during farm season. During non-farming season, the house will be used for emergency/transitional housing for non-migrant families.

At the present the City of Asheville accounting for Section 108-Loan-related activity is split between two funds: the Community Development Fund and the Section 108 Rehabilitation Fund. City Accounting staff and the City's independent auditors recommend that all financial activity related to Section 108 Loans be consolidated in a single fund in order to simplify budgeting and accounting and to more clearly present Section 108 Loan-related financial data.

The proposed budget amendment consolidates all revenues and expenditures related to the Section 108 Loans in the Section 108 Rehabilitation Fund, with no net increase or decrease to existing programs.

City staff recommends City Council adopt the budget amendments accepting $50,106 from HUD and allocating the money to the Housing Assistance Corporation; and transferring Section 108 Loan-related revenues and expenditures from the Community Development Fund to the Section 108 Rehabilitation Fund.

Mayor Worley said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2952. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 60

Councilman Peterson moved for the adoption of Ordinance No. 2953. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 62

INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Dunn gave a brief year-end report of the Economic Development Commission.

Mr. Fred English and Mr. Bill Stamey each spoke in opposition of City Council raising taxes.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:12 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 3, 2002 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Public Auction

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction on Saturday, October 5, 2002.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction to be held Saturday, October 5, 2002, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street, Asheville, N.C.

City staff requests City Council approve the resolution authorizing the Purchasing Director to hold a public auction on October 5, 2002, at 10:00 a.m. at the Public Works Complex, 161 S. Charlotte Street, Asheville, N.C.

Upon inquiry of Councilman Dunn, Finance Director Bill Schaefer explained how the Fleet Management Division makes the determination if vehicles are economically feasible to keep.

Renewal of Radio Maintenance Agreement

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at a cost of $9,795.10 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the maintenance cost per unit of equipment has remained fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2002, through August 31, 2003, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly decrease of $1,758.80. This is due to the fact that some radio equipment will include labor only as part of the maintenance agreement. The agreement covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is $9,795.10.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance to the City's radio communication system.

Mountain Mobility of Buncombe County Grant

Summary: The consideration of (1) a budget amendment, in the amount of $50,000, to receive additional funding by Mountain Mobility of Buncombe County to provide two additional bus trips provided by the Asheville Transit to Black Mountain; and (2) a resolution authorizing the City to enter into an agreement with Mountain Mobility of Buncombe County to provide said service.

Mountain Mobility has received federal funds for the provision of additional service for persons seeking to commute to work using public transportation. Mountain Mobility seeks to enter into an agreement with Asheville Transit to use these monies to fund two additional trips to Black Mountain at times conducive to employment commuting. Mountain Mobility will subsequently provide feeder routes with its vans to feed these and currently existing Black Mountain trips run by Asheville Transit.

City staff recommends City Council approve the budget amendment to receive additional funding from Mountain Mobility, and grant City Manager authority to enter into an agreement for same.

FAA Grant Agreement

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $604,709.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $604,709, is for the project consisting of: installing runway lighting for Runway 34 (Category II Touchdown Zone Lighting); rehabilitate taxiway lighting, and construct perimeter security/service road, Phase II.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-27.

Setting Public Hearing to Close Portion of Old Haywood Road

Summary: The consideration of a resolution setting a public hearing on October 8, 2002, to close a portion of Old Haywood Road from Park Avenue to Roberts Street.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

On September 23, 1997, a public hearing on the question of closing a portion of Old Haywood Road between Park Avenue and Roberts Street was held at the regular meeting of City Council. A decision was deferred on "closing" until staff could further advise Council on the ability of using this portion of Old Haywood Road in the Greenway Master Plan.

The Planning Department has completed the Greenway Master Plan and determined that this portion of Old Haywood Road from Park Avenue to Roberts Street would not serve as a good link in an anticipated greenway connecting the downtown with the river. The Planning Department has also not identified a viable public use for this property as requested on September 23, 1997. Based on those findings the closing proceedings were reinitiated at the request of Mr. Rice.

The Public Works Department staff has determined that the right-of-way known as Old Haywood Road, beginning at Park Avenue and ending at Roberts Street, as shown in the

Buncombe County Tax Maps bordered by PIN Nos. 9648-09-07-1425, 9648-09-07-0394, and 9638-12-97-9347 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution of intent to set a public hearing on October 8, 2002, to close a portion of Old Haywood Road from Park Avenue to Roberts Street.

Private Sewer Line Easement over City-owned Property on Choctaw Street

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property in the East Riverside Redevelopment Project Area on Choctaw Street for a private residential sewer line.

The City owns property (PIN No. 9648.10-25-8823) located between Tolula Lane and Choctaw Street and Town Branch approximately 400 feet west of McDowell Street. Due to its location, shape and topography, its current and anticipated use is for park green space with plans for an improved greenway path along Town Branch.

Tilman and Sabrina Jackson purchased a parcel of land from the City adjacent to the greenway parcel in May of 2002 and have since erected a single-family dwelling. Due to the location of water lines and sewer lines the Jacksons have requested an easement, which would provide the most direct and efficient route to the sewer main. The easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the City from constructing a greenway path or planting trees which is the proposed use of the City's property.

Approval of the resolution will authorize conveyance of the easement to Tilman and Sabrina Jackson for the purpose of a private residential sewer line.

The staff of the Community Development Division, Parks & Recreation Department and Water Resources Department recommend adoption of the resolution authorizing the easement.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

SUMMER YOUTH EMPLOYMENT PROGRAM 2002

Ms. Rebecca Janes, Project Coordinator from Community Solutions for Youth Employment, spoke to Council about the success of the summer youth program and submitted a copy of their final report.

Mr. Butch Kisiah, Superintendent of Recreation, explained that the Summer Youth Employment Program was unable to be funded by the City for the first time in many years due to the budget shortfall caused by the State of North Carolina. A non-profit agency, Community Solutions for Youth Employment (CSYE), stepped forward and funded the program through a cooperative agreement with the Parks and Recreation Department. The amount provided by the CSYE was $37,400. Because of the demand for summer youth employment positions, the CYSE gained additional financial support from the Asheville Housing Authority, in the amount of $8,928 to pay for additional youth positions. These additional funds require a budget amendment so they can be utilized and to move funds from unused line items to the line item for part-time seasonal salaries.

City staff recommends City Council adopt the budget amendment for the Summer Youth Employment Program 2002.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

AMENDMENTS TO THE ANIMAL CONTROL ORDINANCE

Police Chief Will Annarino said that this is the consideration of an ordinance amending the Animal Control ordinance.

The Asheville Police Department is seeking to improve public safety and the humane treatment of animals by reviewing and updating the animal control ordinance.

The animal control ordinance was last revised on October 27, 1999. In an effort to meet public expectations and insure the most up to date ordinance possible, the Asheville Police Department began a review of the ordinance in early 2002. The ordinance was also modified to establish the City of Asheville's relationship with the animal shelter, which was previously defined by Buncombe County ordinance.

Consistent with City Policy, the Asheville Police Department sought input from organizations such as the Coalition of Asheville Neighborhoods, and the Haw Creek Neighborhood Association and the Kenilworth Neighborhood Association. A public meeting was held and comments were received on August 19, 2002.

The ordinance will be enforced solely by civil citations. If there is a serious violation, the Police Department can criminally charge the violators through state law in terms of dangerous dogs and cruelty to animals.

Police Chief Annarino stated that the community has made it know that they want strict enforcement of this ordinance. Roughly 10% of owners have their dogs registered now, which is unacceptable. He said they would enforce the ordinance in a fair and consistent manner.

Chief Annarino pointed out some amendments as follows:

- All persons keeping an animal in the City for 30 days or longer or to all owners whose animal has a set of permanent K-9 teeth are required to obtain an annual license tag for such dog.
- Change in language making it easier to classify barking dogs as a nuisance and have the nuisance definition be in line with the noise ordinance.
- Change wording for the maximum number of animals within a household from "more than six" to "seven or more." However, the maximum number without a permit in the City remains at six.
- Add a section making it unlawful for a person to tether an animal to public property.
- Change in penalty section whereby a violation of any section of the animal control ordinance will be a civil violation where the animal control officer may impose a civil penalty (i.e. $50).
- Owner of an animal must keep the animal on his or her premises or if off premises the animal must be on a leash in the hand of the owner. This does not apply to cats, service animals with the proper documentation and dogs in specified dog parks.
- Addition of language allowing the animal control officer to require a dog owner to obtain liability insurance after a violation of the ordinance.

- If the owner fails to comply with an order from an animal control officer, then each day that the owner violates the order, the owner may be fined $50 per day. Each day in violation constitutes a separate violation.
- The City will attempt to give notice to the owner that his/her animal was impounded. If the owner is unknown, persons much check the designated shelter. The owner has 72 hours to claim his/her animal and the clock begins to run when the animal control officer brings the animal to the shelter. However, according to the Humane Society's policy, if the name of the owner is known, the Humane Society will hold the animal for 10 days. If the owner does not claim his/her animal in 72 hours, the Humane Society can either put the animal up for adoption or destroy it.
- In instances where the animal must be kept at the shelter for more than the 72-hour period, the owner may pay a bond in order to prevent the animal from being put down or put up for adoption.
- Enforcement of the amended ordinance will begin on October 1, 2002.

Discussion was held and questions were responded to by Police Chief Annarino and Assistant City Attorney Curt Euler with regard to the amendments.

Upon inquiry of Councilwoman Jones, Police Chief Annarino said that there would be a good education component for this amended ordinance. He agreed that since not all pet owners are homeowners who will receive a notice to license their dogs in their water bills, a way to reach renters would be investigated.

Councilman Mumpower suggested reviewing the language in Section 3-29 (c) in that it may contain some typographical errors.

City staff recommends the adoption of the ordinance to amend the animal control ordinance.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON THE CIVIC CENTER

Mayor Worley updated City Council on his conversation with Crawford Murphy, who is heading up a group working on the possibility of the performing arts center on the parking lot of the Renaissance Hotel. Mr. Murphy has talked with the Renaissance Hotel and they have expressed their willingness to cooperate and they would negotiate further after they see a pro forma and feasibility study. He expects to be able to present that to them with the next 60-90 days. In a couple of months they will be holding a formal meeting involving all potential players, including the City, arts community, key users, and key people in community. He is forming his leadership group to help push this forward and they should be in place within the next 30-60 days. There has been interest from a master developer who will coordinate the development process and bring other splinter developers. In addition, they have talked to a cost management firm about working with them on the project as well.

Mr. Scott Osborn presented City Council with two issues of the Dual Jewel Project showing the concept of the Asheville Sports Campus and Village at the SunSpree Golf Course and Resort located just off I-240. He reported that they would be discussing different avenues for financing and how the public and the private sector can get involved. Mayor Worley said that City Council would be anxious to hear the next update.

Councilman Mumpower stressed that City Council is anxious to hear from anyone who has a concept that is doable and can be supported.

Civic Center Director David Pisha gave City Council a brief update on the list of summer projects they have and are hoping to accomplish.

OTHER BUSINESS

After discussion, it was the consensus of City Council to have the City Attorney prepare a resolution to be placed on Council's next formal agenda that raises our concerns to our state legislators and asks them to come to a conclusion regarding reimbursements and other sources of revenue. Mayor Worley encouraged all of Council to make contact with our state legislators, and others, by e-mail, letter, telephone or even a personal visit.

CLOSED SESSION

At 4:50 p.m., Councilman Mumpower moved to go into closed session for the following reasons. (1) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate – G. S. 143-318.11(a) (5); and (2) To consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Morris Communications, Inc. d/b/a Fairway Outdoor Communications; Maple Cove, Inc.; Carl and Janis Ricker; Asheville Board of Adjustment; and City of Asheville - G.S. 143-318.11(a) (3). This motion was seconded by Councilman Ellis and carried unanimously.

At 6:40 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:40 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 10, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 11, 2002, AS "ALWAYS REMEMBER 9-11 DAY"

Mayor Worley read the proclamation proclaiming September 11, 2002, as "Always Remember 9-11 Day" in the City of Asheville. He presented the proclamation to Assistant Fire Chief Robert Griffin, who accepted the proclamation on behalf of the entire Asheville Fire Department and the entire Asheville Police Department.

B. PROCLAMATION PROCLAIMING SEPTEMBER 11, 2002, AS "SPIRIT OF AMERICA – DAY OF CARING & REMEMBRANCE"

Mayor Worley read the proclamation proclaiming September 11, 2002, as "Spirit of America – Day of Caring & Remembrance" in the City of Asheville. He presented the proclamation to Mr. David Bailey from United Way. Mr. Bailey briefed City Council on some activities taking place during that day, noting that there are 1,500 Asheville and Buncombe County volunteers who will work on 140 projects.

C. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 16-20, 2002, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Vice-Mayor Bellamy read the proclamation proclaiming September 16-20, 2002, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. Marvin Vierra, who briefed City Council on some activities taking place during the week.

D. RESOLUTION NO. 02-143 - RESOLUTION REGARDING SECURE LOCAL REVENUE TO THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

RESOLUTION NO. 02-144 - RESOLUTION REGARDING SECURE LOCAL REVENUE TO THE NORTH CAROLINA SENATE

RESOLUTION NO. 02-145 - RESOLUTION REGARDING SECURE LOCAL REVENUE TO GOVERNOR OF NORTH CAROLINA

At City Council's direction, City Attorney Oast said that he has drafted resolutions requesting our North Carolina House of Representatives, the North Carolina Senate and Governor Easley to act with all deliberate speed to secure local revenue by accelerating the effective date of the local option sales tax authorization, requiring the distribution of State-collected revenues, or other appropriate measures.

This draft resolution requests the General Assembly and Governor to act to secure local revenues, either by providing for a local sales tax or requiring the distribution of State-collected revenues that have been withheld. The N.C. League of Municipalities has requested that cities take some action to encourage the General Assembly to resolve their current budgetary disagreement in a way that provides a secure source of local revenue.

Councilman Ellis moved for the adoption of Resolution Nos. 02-143, 02-144, and 02-145. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 239, 240, 241

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 27, 2002; THE REGULAR MEETING HELD ON AUGUST 29, 2002; AND THE WORKSESSION HELD ON SEPTEMBER 3, 2002

B. RESOLUTION NO. 02-146 - RESOLUTION AUTHORIZING THE CITY TO EXCHANGE CITY-OWNED PROPERTY AT THE CORNER OF MOUNTAIN STREET AND CLEMMONS STREET FOR PROPERTY AT TUSKEEGEE STREET

Summary: The consideration of a resolution authorizing the Mayor to convey property on Mountain Street in exchange for real property located on Tuskeegee Street.

The City and Groundstar Development, Inc. have negotiated an exchange of Disposal Parcel 173 on Mountain Street for Groundstar's property on Tuskeegee Street. Disposal Parcel 173 (PIN No. 9649.19-60-8939) is a residential lot owned by the City on Mountain Street comprising 8,276 square feet and designated to be sold for redevelopment as part of the East End/Valley Street Community Improvement Program.

The City's property is located one block from property on Tuskeegee Street, owned by Groundstar (PIN No. 9649.19-60-4246). Groundstar purchased the lot on Tuskeegee Street to build a house for sale, but then discovered that the lot is not buildable because of an essential drainage structure on the property on Tuskeegee. An exchange of property will satisfy Groundstar's need for a buildable lot and the City's need to continue to provide storm drainage on Tuskeegee Street.

Pursuant to City Council Resolution No. 02-132, notice was duly published in the Asheville Citizen-Times on August 30, 2002.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. Gen. Stat. sec. 160A-271.

Planning & Development staff recommends adoption of the resolution authorizing the Mayor to convey property on Mountain Street in exchange for real property located on Tuskeegee Street.

RESOLUTION BOOK NO. 27 – PAGE 242

C. RESOLUTION NO. 02-147 - RESOLUTION AUTHORIZING THE CITY TO APPROVE THE SALE OF CITY-OWNED PROPERTY ON OTEEN CHURCH ROAD TO JAMES R. AND IRMA S. LEWIS

Summary: The consideration of a resolution authorizing the Mayor to convey 1.58 acres of land off Oteen Church Road to Jim and Irma Lewis.

On August 27, 2002, the City Council directed the City Clerk to advertise for upset bids on property off Oteen Church Road. The advertisement ran in the Asheville Citizen-Times on August 30, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Jim and Irma Lewis in the amount of $24,000 was not upset and the sale to Jim and Irma Lewis should be approved.

Planning staff recommends adoption of the resolution authorizing the sale of the property off Oteen Church Road to Jim and Irma Lewis in the amount of $24,000.

RESOLUTION BOOK NO. 27 – PAGE 243

D. RESOLUTION NO. 02-148 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF CITY-OWNED PERSONAL PROPERTY BY PUBLIC AUCTION ON SATURDAY, OCTOBER 5, 2002

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction on Saturday, October 5, 2002.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction to be held Saturday, October 5, 2002, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street, Asheville, N.C.

City staff requests City Council approve the resolution authorizing the Purchasing Director to hold a public auction on October 5, 2002, at 10:00 a.m. at the Public Works Complex, 161 S. Charlotte Street, Asheville, N.C.

RESOLUTION BOOK NO. 27 – PAGE 244

E. RESOLUTION NO. 02-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT RENEWAL WITH MOTOROLA COMMUNICATIONS AND ELECTRONICS INC.

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at a cost of $9,795.10 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. Effective with the service agreement covering the period of September 1994 through August 1995, the maintenance cost per unit of equipment has remained fixed. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2002, through August 31, 2003, remains fixed at the original cost per unit.

This renewal agreement reflects a monthly decrease of $1,758.80. This is due to the fact that some radio equipment will include labor only as part of the maintenance agreement. The agreement covers additional equipment purchased by the City that has come out of warranty during the past year. The monthly cost of this service is $9,795.10.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance to the City's radio communication system.

RESOLUTION BOOK NO. 27 – PAGE 245

F. ORDINANCE NO. 2954 - BUDGETAMENDMENT TO ALLOW FOR THE EXPENDITURE OF ADDITIONAL FUNDS PROVIDED BY THE HOUSING AUTHORITY FOR THE SUMMER YOUTH EMPLOYMENT PROGRAM 2002

Summary: The Summer Youth Employment Program was unable to be funded by the City for the first time in many years due to the budget shortfall caused by the State of North Carolina. A non-profit agency, Community Solutions for Youth Employment (CSYE), stepped forward and funded the program through a cooperative agreement with the Parks and Recreation Department. The amount provided by the CSYE was $37,400. Because of the demand for summer youth employment positions, the CYSE gained additional financial support from the Asheville Housing Authority, in the amount of $8,928 to pay for additional youth positions. These additional funds require a budget amendment so they can be utilized and to move funds from unused line items to the line item for part-time seasonal salaries.

City staff recommends City Council adopt the budget amendment for the Summer Youth Employment Program 2002.

ORDINANCE BOOK NO. 20 – PAGE 64

G. ORDINANCE NO. 2955 - BUDGET AMENDMENT FROM MOUNTAIN MOBILITY OF BUNCOMBE COUNTY

Summary: The consideration of (1) a budget amendment, in the amount of $50,000, to receive additional funding by Mountain Mobility of Buncombe County to provide two additional bus trips provided by the Asheville Transit to Black Mountain; and (2) a resolution authorizing the City to enter into an agreement with Mountain Mobility of Buncombe County to provide said service.

Mountain Mobility has received federal funds for the provision of additional service for persons seeking to commute to work using public transportation. Mountain Mobility seeks to enter into an agreement with Asheville Transit to use these monies to fund two additional trips to Black Mountain at times conducive to employment commuting. Mountain Mobility will subsequently provide feeder routes with its vans to feed these and currently existing Black Mountain trips run by Asheville Transit.

City staff recommends City Council approve the budget amendment to receive additional funding from Mountain Mobility, and grant City Manager authority to enter into an agreement for same.

ORDINANCE BOOK NO. 20 – PAGE 66

H. RESOLUTION NO. 02-150 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BUNCOMBE COUNTY TO PROVIDE ADDITIONAL TRANSIT SERVICES TO THE TOWN OF BLACK MOUNTAIN

Summary: See Consent Agenda Item "G" above.

RESOLUTION BOOK NO. 27 – PAGE 246

I. RESOLUTION NO. 02-151 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $604,709.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $604,709, is for the project consisting of: installing runway lighting for Runway 34 (Category II Touchdown Zone Lighting); rehabilitate taxiway lighting, and construct perimeter security/service road, Phase II.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-27.

RESOLUTION BOOK NO. 27 – PAGE 247

J. RESOLUTION NO. 02-152 - RESOLUTION SETTING A PUBLIC HEARING ON OCTOBER 8, 2002, TO CLOSE A PORTION OF OLD HAYWOOD ROAD BETWEEN PARK AVENUE AND ROBERTS STREET

RESOLUTION BOOK NO. 27 – PAGE 248

K. RESOLUTION NO. 02-153 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER CITY-OWNED PROPERTY ON CHOCTAW STREET TO TILMAN AND SABRINA JACKSON

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property in the East Riverside Redevelopment Project Area on Choctaw Street for a private residential sewer line.

The City owns property (PIN No. 9648.10-25-8823) located between Tolula Lane and Choctaw Street and Town Branch approximately 400 feet west of McDowell Street. Due to its location, shape and topography, its current and anticipated use is for park green space with plans for an improved greenway path along Town Branch.

Tilman and Sabrina Jackson purchased a parcel of land from the City adjacent to the greenway parcel in May of 2002 and have since erected a single-family dwelling. Due to the location of water lines and sewer lines the Jacksons have requested an easement, which would provide the most direct and efficient route to the sewer main. The easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the City from constructing a greenway path or planting trees which is the proposed use of the City's property.

Approval of the resolution will authorize conveyance of the easement to Tilman and Sabrina Jackson for the purpose of a private residential sewer line.

The staff of the Community Development Division, Parks & Recreation Department and Water Resources Department recommend adoption of the resolution authorizing the easement.

RESOLUTION BOOK NO. 27 – PAGE 249

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE TWO LOTS ON ARDMION PARK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley said that this public hearing was continued from the August 13, 2002, at which time the petitioner requested additional time within which to prepare for the City Council meeting.

On September 10, 2002, the petitioner made a written request for a two-week extension in order to arrange neighborhood meetings. Therefore, Councilman Peterson moved to continue the public hearing until September 24, 2002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AUTHORIZING THE CITY TO ENTER INTO AN EASEMENT FOR AN ECONOMIC DEVELOPMENT INCENTIVE

RESOLUTION NO. 02-155 - RESOLUTION AUTHORIZING EXECUTION AND ECONOMIC DEVELOPMENT AGREEMENT (MINKLES LLC)

Mayor Worley opened the public hearing at 5:30 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution authorizing the City to enter into an agreement with Electrolux Home Products for an economic development incentive in the form of an easement onto city-owned property for construction of a retention pond. This public hearing was advertised on August 30, 2002.

Electrolux Home Products operates a regional distribution hub in a facility it leases located at 1310 Fanning Bridge Road in Asheville. The company is proposing an expansion of their distribution capacity by improving the efficiency of their site for increased truck & trailer movements. To accomplish this, an existing stormwater retention pond must be relocated.

The location and size of the new pond requires that a portion of it be located on city-owned property adjacent to the Electrolux site. To assist the company, the city is offering an easement onto its land for the location of the new retention pond. All other costs and liabilities associated with the construction and maintenance of the pond are the responsibility of the company. The pond is being designed to accommodate any future development on the remaining portion of the city property.

With the ability to increase the efficiency of this site, Electrolux has decided to keep the Asheville facility operational. The Asheville operation occupies a 500,000 square foot building and employs 128 people at an average hourly wage of $12.28.

Mayor Worley closed the public hearing at 5:34 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 02-155. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 251

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2956 - ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF ORDINANCE REGARDING ANIMAL CONTROL

Police Chief Will Annarino said that this is the consideration of an ordinance amending the Animal Control ordinance.

The Asheville Police Department is seeking to improve public safety and the humane treatment of animals by reviewing and updating the animal control ordinance.

The animal control ordinance was last revised on October 27, 1999. In an effort to meet public expectations and insure the most up to date ordinance possible, the Asheville Police Department began a review of the ordinance in early 2002. The ordinance was also modified to establish the City of Asheville's relationship with the animal shelter, which was previously defined by Buncombe County ordinance.

Consistent with City Policy, the Asheville Police Department sought input from organizations such as the Coalition of Asheville Neighborhoods, and the Haw Creek Neighborhood Association and the Kenilworth Neighborhood Association. A public meeting was held and comments were received on August 19, 2002.

The ordinance will be enforced solely by civil citations. If there is a serious violation, the Police Department can criminally charge the violators through state law in terms of dangerous dogs and cruelty to animals.

Chief Annarino pointed out some amendments as follows:

- All persons keeping an animal in the City for 30 days or longer or to all owners whose animal has a set of permanent K-9 teeth are required to obtain an annual license tag for such dog.
- Change in language making it easier to classify barking dogs as a nuisance and have the nuisance definition be in line with the noise ordinance.

- Change wording for the maximum number of animals within a household from "more than six" to "seven or more." However, the maximum number without a permit in the City remains at six.
- Add a section making it unlawful for a person to tether an animal to public property.
- Change in penalty section whereby a violation of any section of the animal control ordinance will be a civil violation where the animal control officer may impose a civil penalty (i.e. $50).
- Owner of an animal must keep the animal on his or her premises or if off premises the animal must be on a leash in the hand of the owner. This does not apply to cats, service animals with the proper documentation and dogs in specified dog parks.
- Addition of language allowing the animal control officer to require a dog owner to obtain liability insurance after a violation of the ordinance.
- If the owner fails to comply with an order from an animal control officer, then each day that the owner violates the order, the owner may be fined $50 per day. Each day in violation constitutes a separate violation.
- The City will attempt to give notice to the owner that his/her animal was impounded. If the owner is unknown, persons much check the designated shelter. The owner has 72 hours to claim his/her animal and the clock begins to run when the animal control officer brings the animal to the shelter. However, according to the Humane Society's policy, if the name of the owner is known, the Humane Society will hold the animal for 10 days. If the owner does not claim his/her animal in 72 hours, the Humane Society can either put the animal up for adoption or destroy it.
- In instances where the animal must be kept at the shelter for more than the 72-hour period, the owner may pay a bond in order to prevent the animal from being put down or put up for adoption.
- Enforcement of the amended ordinance will begin on October 1, 2002.

As a result of discussion at Council's September 3 worksession, Chief Annarino pointed out some further amendments:

- Section 3-12 (h) - It shall be unlawful for any person injuring or killing a domestic animal by striking it with an automobile or other vehicle to fail to contact and cooperate with the local authorities.
- Section 3-29 (c) – Clarification of what happens if the dog is impounded and how the animal can be retrieved.
- Section 3-30 (a) – The animal control officer shall have the authority to summarily seize the animal from the premises when they determine that the animal is receiving insufficient care or treatment or that the animal in the surrounding circumstances is dangerous to the health, safety or welfare of the general public.

Assistant City Attorney Curt Euler explained the difference between a civil vs. criminal penalty regarding this ordinance.

Upon inquiry of Vice-Mayor Bellamy, Mr. Euler explained that if a dog is deemed dangerous or potentially dangerous, the victim of an animal bite can file criminal charges against the dog owner and it would be up to the courts to determine restitution.

Animal Control Supervisor Brenda Covey responded to various questions from Council regarding when a dog can be seized, the reasoning why a dog would be quarantined in the home vs. being taken to the animal shelter, the steps that would be taken when the animal control officer goes on a call for a dog bite, and what is involved in a bite investigation.

Councilman Peterson felt that having a public nuisance declared should not only be for "adjoining" property owners but for "surrounding" property owners. Mayor Worley explained that it doesn't require that the adjoining property owner make a compliant - a complaint could come from six houses away. The standard is that if it's too loud for the surrounding property owners, it's going to be much louder for the adjoining property owner. It's the standard, not who makes the complaint.

Councilman Peterson explained why he felt a public nuisance should be declared not when the keeping of an animal is "frequently" at large, but "occasionally" at large.

Councilman Mumpower felt that the amended language in Section 3-12 (h) was a little heavy-handed and suggested that persons be asked to make a reasonable and immediate effort to contact the animal's owner and/or animal control.

Mr. Fred English, Haw Creek resident, felt that the ordinance is not strict enough and must be enforced.

Ms. Mary Folds, West Asheville resident, was concerned about the sanitation in the City, but more importantly pointed out violations occurring in her back yard with dogs and problems she has encountered with the dogs and their owner. She expressed her frustration with the animal control officers not enforcing the ordinance.

Mr. Clark Walter, Chairman of the Libertarian Party of Buncombe County, said the proposed ordinance delegates to the Police Department the enforcement of animal control regulations and they suggest the powers granted to the animal control officers are in some cases excessive and too vaguely defined. Sections 3-8 (c) should not be applied to animals that do not leave the home. In Section 3-9 (a) (4), they suggest that the owner be required to keep the dog muzzled and leashed at all times when off of the owner's property. The owner should be held responsible and the choice of insurance should be left to the owner. In Section 3-12 (c), owners should be permitted to tie leashed dogs to public property with an approved muzzle. Warning should be given and entered into the computer. He explained how the fees for dog tags are grossly inadequate to cover the total costs for the enforcement program.

A resident who has been recently attacked by a dog stressed that any violation of this ordinance should be a criminal offense.

Ms. Shirley Campfield said that if the City is going to have an ordinance, then the ordinance must be strictly enforced and when violations occur, tickets should be given.

Mr. Bob Brummond, Haw Creek resident, said that the Haw Creek Animal Concerns Committee feels that City Council should establish an animal control advisory committee to address animal control matters on an on-going basis. In addition, they felt that if an officer sees a person walking a dog on a leash, that the officer should stop and ask the person if they have a way to clean up after the dog. If they do not, then it shows that they have no intention of abiding by the law to clean up after their pet, and they should be given a citation.

Mr. Tom Glanville, North Asheville resident, pointed out that owning a dog is a responsibility and the ordinance should be written with that in mind. In addition, he felt some language should be in the ordinance for false accusations.

Mr. Thomas Penland, Haw Creek resident, stressed that the ordinance needs enforcement.

Mr. Bob Swan, Haywood Street resident, supported the ordinance. He suggested a police officer approach a person walking a dog and asking them how they will handle cleaning up after their animals. If they don't have anything, then the officer can hand them a bag. That way, people will more than likely be prepared next time.

Ms. Bernie Wolf said understood that the ordinance is to protect the safety of citizens and pets, but doesn't think taking away the dog tethering is consistent with pet safety. Asheville shouldn't be advertised as "pet friendly" if it does not offer alternatives to attaching a dog's leash to something while making a quick purchase. She suggested a way to deal with this type situation and passed out pictures. She said Telluride, Colorado, has installed leash racks (puppy parking) convenient to shopping and eating establishments. She urged Council to seek another alternative other than banning tethering.

Councilman Peterson asked why owners could not be cited for not carrying bags to clean up after their pets. He felt it was a way to send a message that we are serious about enforcement. Mr. Euler said that the matter was considered and it was the consensus that it would be hard to fine someone $50 for not having clean-up material in his or her pocket. In addition, there are a limited number of animal control officers and they have to prioritize what they will enforce. Chief Annarino said that he would have a serious concern of issuing a citation before an actual offense occurs.

Upon inquiry of Vice-Mayor Bellamy, Chief Annarino outlined how they plan on educating the public on these changes. Some ways include brochures, door hangers, availability of offices at community and association meetings, information on the government channel, etc.

When Vice-Mayor Bellamy asked about an animal control advisory committee, City Attorney Oast said that to the extent the enforcement is in the Police Department, there would probably be a liaison from the Police Department.

Councilwoman Jones asked if the Police Department would be open to something similar to a "puppy park." Chief Annarino said that something in the future might work. Perhaps a non-profit group or someone wanting to lead an independent effort (separate and apart from the Police Department) could establish something similar to that and then the ordinance could be revisited.

Mayor Worley noted that the ordinance does not prohibit the tethering of animals to private property, but only to public property.

Councilwoman Jones suggested that Pritchard Park have a box installed where bags are available, as they are in Montford Park, for owners to use to clean up after their dogs.

Vice-Mayor Bellamy felt that another dog park closer to downtown might be good idea because a lot of people do use the one we currently have.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2956, with the following two amendments: (1) Section 3-12 (h) read "Any person injuring or killing a domestic animal by striking it with an automobile or other vehicle shall make reasonable and immediate efforts to notify the owner of said animal, if ownership information is available. If the owner cannot be contacted and the animal is still alive, reasonable measures must be taken to notify appropriate local agencies;" and (2) Section 3-9 (a) (3) read "The keeping of any animal which occasionally is at large. This motion was seconded by Councilman Mumpower and carried unanimously.

At Councilman Peterson's request and Council's consensus, City Manager Westbrook said that he would bring information before Council on establishing an animal control advisory committee. He did note that the ordinance should be in effect for a period of time before any committee is formed.

ORDINANCE BOOK NO. 20 – PAGE 68

B. RESOLUTION NO. 02-156 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Bellamy said that the terms of Selina Sullivan, Hedy Fischer and Max Haner, as members on the Planning and Zoning Commission, expired on August 14, 2002.

Mr. Haner has served two full successive terms and is not eligible for reappointment.

On September 3, 2002, City Council interviewed Hedy Fischer, Selina Sullivan, Richard Griffin, Barbara Fishburne and Kenneth Kidd.

On September 10, 2002, City Council interviewed Gail Moody, Jane Mathews and Nathaniel Cannady.

Hedy Fischer received 7 votes; Selina Sullivan received 6 votes; Richard Griffin received no votes; Barbara Fishburne received no votes; Kenneth Kidd received no votes; Gail Moody received 1 vote; Jane Mathews received 2 votes and Nathaniel Cannady received 5 votes.

Therefore, Selina Sullivan was reappointed to serve a three year term, term to expire August 14, 2005; Hedy Fischer was reappointed to serve an additional three year, term to expire August 14, 2005; and Nathaniel Cannady was appointed to serve a three year term, term to expire August 14, 2005. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 252

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of August 23-29, 2002: Lori Brewer (Streets), Pat Doran (Streets), Bobbie Bishop (Police), BellSouth (Water), Bob Blanchard (Water) and Karen Moseley (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Worley said that the City Manager would be providing Council with an update on the conditional use permit for the Super Wal-Mart in the near future.

Mr. Fred English stressed that signs that are put out need to be removed after the event. If the sign is not removed within 24 hours after the event, it should be taken down, returned to the address on the sign and that person issued a citation for $50.

Ms. Martha Fullington, Chair of the Historic Resources Commission of Asheville and Buncombe County (HRC), said that the City of Asheville was designated as a Destination of Distinction by the National Trust for Historic Preservation. Representatives from the National

Trust for Historic Preservation in Washington, D.C., and Charleston, S.C., would like to present the City with the award on September 24, 2002, along with a brief discussion of what this means to the City of Asheville's preservation community and to the economic benefits of our City and County. She also reported about what the HRC does for the community.

Mr. Frank Thomson, Vice-Chair of the Historic Resources Commission of Asheville and Buncombe County, explained how proud Asheville should be in receiving the prestigious award from the National Trust for Historic Preservation.

Mr. Neal Booker spoke about the need for affordable housing in Asheville and how he has been working on that for the past three years. Two problems he has run into is that incentives for developers are not known and he felt the City should publicize those incentives more. In addition, another problem encountered is getting homeowners financing. He felt the key to have more affordable housing is education – for the developer and for homeowners.

Mr. Alan Ditmore, Leicester resident, said that even though there are arguments of how the expansion of the City's extraterritorial jurisdiction benefits the environment, he explained how expansion is a detriment to the environment as well.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:37 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 24, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 02-154 – RESOLUTION OF APPRECIATION TO ROBERT E. SHEPHERD

Mayor Worley read and presented a resolution of appreciation to Robert E. Shepherd who is retiring as Executive Director of the Land-of-Sky Regional Council.

RESOLUTION BOOK NO. 27 – PAGE 250

B. PRESENTATION OF THE MERIT AWARD

Mr. Craig Van Dussen, Branch Manager of WK Dickson in the Asheville Office, and Mr. Edward Czyscon, Branch Manager of WK Dickson in the Atlanta Office, President of Georgia American Society of Landscape Architects, and representative for the American Society of Landscape Architects, presented to Mayor Worley, Chair of the Recreation Board Frank Fishburne and Parks and Recreation Director Irby Brinson, the Merit Award they received for their design of the French Broad River Park Phase IV Master Plan.

C. PRESENTATION OF THE DESTINATION OF DISTINCTION AWARD BY THE NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. John Hildreth, representative from the National Trust for Historic Preservation, presented the City with the Destination of Distinction Award by the National Trust for Historic Preservation and briefed Council on what this designation means to the City of Asheville's preservation community and to the economic benefits of our City and County.

Ms. Martha Fullington, Chair of the Historic Resources Commission of Asheville and Buncombe County (HRC), along with members of the community, briefed Council on the positive impact historic preservation has had in Asheville. They explained how historic preservation increases property values, how it increases tax revenues, how it creates jobs, how it relates to smart growth and how it maintains our sense of place.

A brief discussion occurred regarding the possible reorganization of the HRC. Ms. Fullington explained why the HRC should not be reduced from its current 14 members to 7 members and said that they are discussing this with the Director of Planning and Development. Chief Planner Gerald Green explained that a focus group has been formed which will meet to discuss how to improve the efficiency of the Historic Resources Division.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 10, 2002

B. RESOLUTION NO. 02-157 - RESOLUTION FIXING DATE OF A PUBLIC HEARING ON OCTOBER 8, 2002, ON THE QUESTION OF VOLUNTARY ANNXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, SECTION 3 AT BILTMORE PARK

Chief Planner Gerald Green responded to a concern from Councilman Dunn who asked if the City was being fair to require developers who develop property within the City to mitigate traffic if there aren't any similar requirements to parties who are outside the City who request annexation.

RESOLUTION BOOK NO. 27 – PAGE 253

C. RESOLUTION NO. 02-158 - RESOLUTION AUTHORIZNG THE CITY MANAGER TO EXECUTE A CONTRACT WITH APAC CAROLINA INC. FOR CONTRACTED PAVING 2002-03

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. for the project known as "Contracted Paving 2002-2003".

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose eight streets to be resurfaced based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for resurfacing Maney Avenue, Linden Avenue, Julia Street, Heritage Drive, Lionel Place, Guinevere Court, Galahad Drive and Compton Drive.

Money for this project will come from the $600,000 allocated to the Public Works Department's operating budget for service priorities for Streets and Sidewalks.

The project was advertised for three weeks. The Engineering Department received very competitive bids on Friday, August 30, 2002. Three bids were received and opened. One bid was from APAC Carolina Inc. in the amount of $215,714.35, the second bid came from Tarheel Paving Company in the amount of $229,049.06 and the third bid came from Precision Contracting in the amount of $306,390.00.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents. All bids were reviewed by the Office of Minority Affairs for compliance with the City's minority business goals. The bid by APAC Carolina Inc. was found to be in full compliance and was deemed as a responsive bid.

Due to the very favorable unit prices received, City staff recommends that City Council adopt a resolution authorizing the City Manager tc execute a contract with APAC Carolina Inc. in the amount of $215,714.35 for the project known as Contracted Paving 2002-2003.

RESOLUTION BOOK NO. 27 – PAGE 256

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Peterson moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING PROPERTY AT 738 TUNNEL ROAD FROM RM-6 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2957 - ORDINANCE TO REZONE PROPERTY AT 738 TUNNEL ROAD FROM RM-6 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 6:09 p.m.

Chief Planner Gerald Green said that this is the consideration of an ordinance to rezone property located at 738 Tunnel Road from RM-6 Residential Multi-Family Low Density District to Highway Business District. This public hearing was advertised on September 13 and 20, 2002.

The applicant, Norman Lizzaraldi, is requesting rezoning of approximately half of the 0.65 acre (PIN No. 9658.11-77-0013) split zoned property to Highway Business District. The southern portion of the property (abutting Tunnel Road) is currently zoned Highway Business. The requested rezoning would permit the northern portion of the lot to be used for offices or other commercial uses supported by the automobile traffic on Tunnel Road. Access to the portion of the property to be rezoned is via Mountain View Road off Tunnel Road.

Two buildings are located on the property. Both are currently used as offices; the one on the residentially zoned portion of the property has a residential appearance but has been used as an office building for approximately 9 years. The requested rezoning would permit the office use of this building to be made conforming. The portion of the property to be rezoned is abutted by residential property, both single family and multi-family, on the north and west. Commercial uses abut the property on the east and south. This portion of the property is buffered from the abutting residential properties with existing vegetation and by changes in topography. Any future redevelopment of the property would require compliance with all applicable development standards, including buffering, lighting, and off-street parking. Given the size of the property, any redevelopment of the site would be limited.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 738 Tunnel Road from RM-6 to HB.

Mayor Worley closed the public hearing at 6:15 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2957. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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B. PUBLIC HEARING RELATIVE TO REZONING PROPERTY AT 400 CARIBOU ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2958 - ORDINANCE TO REZONE PROPERTY AT 400 CARIBOU ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 6:17 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone property located at 400 Caribou Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on September 13 and 20, 2002.

The applicant, Robert Tucker, is requesting rezoning of the 0.69-acre parcel (PIN No. 9657.13-13-6778) in order to redevelop the property for uses permitted in the RM-16 District. The purpose of the RM-16 District is to permit a full range of high-density multi-family housing types along with limited institutional, public and commercial uses appropriate in high-density residential areas.

Two existing buildings are located on the property. One is an abandoned mobile home on the eastern portion of the site while the other is a former nursing home that contains nearly 5,000 square feet of space. The property is bordered by three rights-of-way, only two of which actually have streets built in them (Caribou Road and Booker Avenue). The site's main frontage is on Caribou Road, however, the parcel is a through-lot with frontage on Booker Avenue as well. Caribou Road functions as a major north-south collector street running parallel to Hendersonville Road providing access to a number of neighborhoods in the area.

This property is located within the City limits in an area that is predominantly residential. The properties immediately adjacent and across Caribou and Booker are zoned RS-8 as is the majority of the surrounding neighborhood save for a group of vacant properties zoned Neighborhood Business District located a few blocks southwest of the property at the intersection of Shiloh Road and Kent Street. The property is also located in a mobile home overlay district. The existing land uses in the area include single-family detached homes as well as mobile homes.

The applicant had recently requested to rezone this property to Neighborhood Business District, but withdrew his request at the City Council's public hearing on May 28, 2002, due to significant neighborhood opposition. During the review period of that rezoning process, City staff had originally recommended that the applicant withdraw and refile the rezoning as a request for RM-16, since staff thought this District would be a more appropriate one due to the likely traffic impact generated if the property was rezoned to Neighborhood Business District and used primarily for office use. The applicant also met with representatives of the neighborhood prior to filing the current rezoning request to discuss the possibility of RM-16 zoning for the property.

City staff feels RM-16 is an appropriate district for this property since it would remain zoned residentially, but the existing building on the site could be retained and used for an economically viable small-scale institutional use, like a child or adult day care center or assisted living care facility, or as multi-family residential units. In addition, the traffic generated by uses permitted in the RM-16 would likely be considerably less than uses in a business district. As such, staff recommends approval of the request.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 400 Caribou Road from RS-8 to RM-16. Planning staff recommends approval of the request as well.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast explained why he did not feel that rezoning this property would constitute spot zoning.

Mayor Worley closed the public hearing at 6:27 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2958. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 89

C. PUBLIC HEARING RELATIVE TO REZONING PROPERTY AT 169 STARNES COVE ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

ORDINANCE NO. 2959 - ORDINANCE TO REZONE PROPERTY AT 169 STARNES COVE ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT

Mayor Worley opened the public hearing at 6:28 p.m.

Mr. Alan Glines, Urban Designer, said that this is the consideration of rezoning property located at 169 Starnes Cove Road from RS-4 Residential Single Family Medium Density District to Neighborhood Business District. This public hearing was advertised on September 13 and 20, 2002.

The request is for the rezoning of a .76-acre tract (PIN No. 9618.19-72-3414) in the City's extraterritorial jurisdiction (ETJ) from RS-4 to Neighborhood Business District. Harold and Susan Hoglen who reside at 55 Old Starnes Cove Road own the property.

The properties to the north, east and south are zoned RS-4 (Residential Single Family 4 units per acre). The properties to the west are outside of the City's ETJ area. The parcel is located at the intersection of Pisgah View Road and Starnes Cove Road. An existing building on the property has operated for a number of years as a general store for the community. The parcel also contains a residence near the back of the lot. The parcel just across from the subject property on Pisgah View Road is also used commercially (this parcel is outside the ETJ area).

The Neighborhood Business zone is designed to allow low intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods. The intent is to provide for daily convenience and personal service needs while minimizing conflicts with the surrounding residential uses. Structures may be constructed or enlarged to a 3,000 square foot footprint. Multiple story structures may be built with a total gross square footage of 6,000 square feet if the upper stories contain residential units.

The site is easily accessed with frontage on both Starnes Cove Road and Pisgah View Road.

The Planning & Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located at 169 Starnes Cove Road from RS-4 to Neighborhood Business District. City staff recommends approval of the rezoning request as well.

Ms. Hoglen said that she had met with neighbors and has worked out an agreement regarding the concerns of the neighbors regarding alcohol sales. An agreement was reached that there would be no single beers sold on the premises, nor would there be any on-site drinking.

City Attorney Oast reminded Council that rezoning this property to Neighborhood Business District means it can be used for any purpose under that zoning classification. Even if this were a conditional use, City Council could not impose conditions regarding sales of alcohol. That is controlled by the ABC Board. Whatever agreements the applicant has with the neighbors are between them.

Mayor Worley closed the public hearing at 6:36 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2959. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 91

D. PUBLIC HEARING TO REZONE TWO LOTS ON ARDMION PARK ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley said that this public hearing was continued from the August 13, 2002, at which time the petitioner requested additional time within which to prepare for the City Council meeting. On September 10, 2002, the petitioner requested an additional two-week extension in order to arrange neighborhood meetings.

On September 23, 2002, the City received a letter from the petitioner Mr. Dean Pistor "requesting to be removed from the agenda … rezoning in Ardmion Park. On the 18th, I met with neighbors and discussed concerns they may have for the development of multi-family housing and we have reached an agreement to request a conditional use RM-16 zoning for that project." Mr. Pistor said that he would be in touch with the Planning Department regarding further action.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of September 1-19, 2002: Susan Carter (Water), Wayne Hensley (Water), Marlene Worley (Streets), Douglas Campbell Jr. (Streets), Heather Ross (Transit Services), Roger Hall (Police), BellSouth (Water) and John Darity (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City was served with a Petition for Writ of Certiorari and Complaint for Declaratory Judgment on September 16, 2002 from Beverly Hills Area Homeowners Association, et al. The nature of the proceeding is to declare the rezoning ordinance in the Riverbend Marketplace matter as improperly adopted and invalid, that UDO Section 7-5-9 (a) (4) is invalid, revocation of conditional use permit and nullify ordinance granting conditional use permit. This matter will be handled in-house, but the attorneys for the applicant will intervene and do most of the work.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English, Haw Creek resident, commented about the raising of taxes when his services are not improving.

Water Efficiency Program

Ms. Hazel Fobes, Chair of Citizens for Safe Drinking Water and Air, said "steps are underway which could drastically reduce the scope and impact, or even abolish, the program of education of children and citizens groups on the importance of water conservation. One position being heard is that we do not need conservation; rather that we need to produce more water in order to generate income. Under consideration is the elimination of two posts in the Conservation Division of the Water Resources Department. The two women in those posts, among other duties, make dramatic presentations in schools and field trips and also workshops to civic, business and other groups here (and in the world) to eliminate wasteful use of water which with air is essential to life on the plant. The facts for your attention are first, that the Water Authority approved a program and budget for the year 2002-2003 which includes funds for these two posts and for an active public education program on water conservation. Any radical change in that provision, in our view, requires a full consultation with and hearing by the Board of the Water Authority – not policy-making by the Water Resources Department. The City Council and County Commissioners approved that program and budget and should be informed of any radical change in its implementation." School teachers and concerned citizens want water conservation to be covered in their discussions and the Water Authority should undertake a full discussion of this matter without delay and report to the Council and Commissioners. She passed out information regarding the Water Conservation Division.

City Manager Westbrook felt that there is some information being circulated that is not fact. He would like to meet each member of Council and explain to them, from the staff's prospective, what will be presented to the Water Authority. He said it is a re-engineering idea and since it has not in a form yet to even go to the Water Authority, we are premature in talking about it in that respect. He wanted City Council to have the correct information before they talk to the Water Authority.

Councilwoman Jones was in complete support of good water conservation and education.

Councilman Dunn suggested the Water Authority review the tap-on fee. Perhaps if the fees were not so high, the City could get more water users on line.

Mr. Gary Semlak, former Water Authority Vice-Chair, spoke in support of the water efficiency program and felt it was a long-term effort that should not be altered in any way.

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Ms. Nelda Holder, President of the League of Women Voters of Asheville-Buncombe County, said that they have heard directly from the two women in question that they were being offered dismissal or a night-time security job at a much lower responsibility and something that would certainly not utilize their training and professionalism. That does not coincide with the statement that the City wants to allocate their resources better. The conservation program is an award-winning program that speaks well for the City and the women who are running the program. Conservation is certainly not a program that the City should cut whether we are in a period of heavy rain or serious drought. She was concerned about the abruptness of the announcement to the two women and the fact that this is a public program and a policy issue. The handling of the matter did not allow for these women to speak to their own issue. If it were a monetary problem they should have been allowed time to look for grants and other ways to manage the program. If it's not a monetary program and truly a policy program, then she encouraged Council to ask their Water Authority representatives to speak in favor of maintaining the program.

Mr. Gwain Mainwaring, the first Captain Hydro, went into classrooms to educate children about water conservation and water issues. During the time he spoke with the children, he was able to talk about a lot more than just water conservation, e.g. water cycle and where water comes from. He felt that the program is very important.

Ms. Leni Sitnick said that in recognizing the budget dilemma she hoped that as this is discussed, that you don't look to generate revenues by dissolving, even in part, any part of the water efficiency program. Stopping the leaks and making sure everyone pays their fair share for water is the way to generate revenue. This program has received numerous awards and other states are emulating this program. When kids go on field trips, they are there in part having fun. When kids are in the classroom, they have their learning and thinking caps on. It's a different mode. The City and the Water Authority should not allow any part of this program to be diminished.

Interim Water Resources Director David Hanks updated City Council on our current water levels and explained the percentage of unaccounted water and what the City is doing to locate that water loss.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 1, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

City Council Community Meeting on October 29, 2002, at the Public Works Facility located at 161 S. Charlotte Street at 7:00 p.m.

Contract with the Asheville Citizen-Times

Summary: The consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. This year, the City qualifies for a weekly frequency rate of 16 to 31 column inches per week.

The open rate for advertising in the Asheville Citizen-Times is $47.96 per column inch daily and $64.67 per column inch on Sunday. This contract will allow the City to advertise for $30.45 per column inch daily and $41.43 per column inch on Sunday. Based on the amount of advertising placed in 2002, the City will save $59,534 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been re-scheduled to October 8, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Create Neighborhood Corridor Zoning District

Chief Planner Gerald Green said that this ordinance revision was reviewed by City Council at it's August 20, 2002, worksession and as a result of comments made at that worksession, the amendment is being brought back again for review. He said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to create a new mixed use in-fill corridor zoning classification, the Neighborhood Corridor District, which incorporates City Council direction for Smart Growth and sustainable development initiatives as well as input from the community.

Since the first presentation of the Neighborhood Corridor zoning district to City Council on August 20, 2002, staff has met with the Coalition of Asheville Neighborhoods, Economic Development Task Force, and the self-named Broadway Coalition (development interests and neighborhood residents). A number of meetings have been held with the Broadway Coalition group and several changes have been made to the proposed district. Most of the discussion and changes have centered on uses permitted along the corridor, the scale of the potential structures and some requirements for mixed-use projects. The items that staff feels could be changed are noted here:

(1) Permitted Uses:

Remove	Bars and nightclubs
Add	Pubs that by definition serve food (will require a revision to the definition section of the ordinance).
Remove	Parking decks
Ensure	That parking structures can be built as a part of an allowed project in the district in the parking standards section of this district.

(2) Scale and Height:

A series of incentives have been created to encourage projects to meet the community goals of affordable housing, a variety of residential units, and some balance of office and retail uses. These incentives also allow some of the neighborhood concerns about height and building scale to be addressed. The following illustrates this incentive program:

• Base Density permitted in NCD = 24 units/ acre	Bonus to 32 units / acre
• Building footprint maximum in NCD = 12,000 S. F.	
• Building square foot maximum in NCD = 24,000 S.F.	Bonus to 48,000 S.F.
• Base building maximum height in NCD = 3 stories	Bonus to 4 stories

Incentive Table

Incentives	Mixed Use	Residential
Density > 24 units / acre	Minimum 20% square footage in building retail or office	In combination with, 25 % of units provided are affordable units OR 25% of the units are < or = to 700 S.F. each and 10 % of the residential units are affordable.
Building square footage > 24,000 S.F.	Minimum 25% of building s.f. is retail OR minimum 20 % s.f. is retail and 15 % s.f. is office	In combination with a minimum of 25 % of building s.f. are residential units
Height > than 3 stories		Minimum of 25 % of building s.f. are residential units

(3) Design Standards:

To ensure that new projects are in keeping with the scale and bulk of the surrounding neighborhoods a few additional design and operational issues have been included in the language for the district that takes their inspiration from the Charlotte Street Overlay District: Where new building facades will be wider than 45 feet the façade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms, or other architectural elements.

We also propose to change the wording in the NCD to require that upper level windows make up at least 25% of the wall surface to allow a fuller range of uses to utilize the upper floors of buildings. The previous ordinance proposed that upper level windows make up 40% of the wall surface.

The Board of Adjustment will be authorized to consider requests to waive some basic design standards for all buildings (articulation and fenestration).

In presenting these changes to City Council, staff does not intend to suggest that all parties are in total agreement with every item in the revised provisions of this district. Some members of the community still have concerns about the height of the structures permitted, some about the size of the footprint of the structures. What staff has tried to do is reach a compromise that will alleviate the bulk of the concerns that they have heard. Staff feels that the incentive table will do just that and create a healthy mixed use community along our medium sized corridors where this district is applied.

City staff recommends City Council provide direction with regard to any changes desired for this district prior to the public hearing.

Discussion occurred regarding the proposed changes and suggestions were made regarding affordable housing and sidewalk standards.

It was the consensus of City Council to continue the public hearing, which is scheduled on October 8, 2002, until either October 22, 2002, or November 12, 2002, so that the Planning Department can continue to meet with groups to review the proposed ordinance. The continuation date will be determined by the Mayor and noted prior to the meeting of October 8, 2002.

Councilman Jones asked that Planning staff begin developing a list of pros and cons to amend the Unified Ordinance to require developers to meet with neighbors and not just strongly encourage them to meet with the neighbors. Councilman Mumpower felt a better way than creating another level of regulation might be to look for creative ways or incentives for that communication to occur. This matter will be placed on an upcoming worksession agenda.

CAROLINA AVENUE RIGHT-OF-WAY CLOSING

City Attorney Oast said that this matter is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled for November 12, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Public Works Director Mark Combs said that this is the consideration of a resolution of intent to close the right-of-way known as Carolina Avenue from Mount Clare Avenue to its dead-end and setting a public hearing on November 12, 2002.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, Walter Christian, Montview Drive resident, on behalf of the Montview Drive Neighborhood, has requested to close the right-of-way known as Carolina Avenue from Mount Clare Avenue to the dead end.

Public Works Department staff has determined that the right-of-way known as Carolina Avenue, beginning at Mount Clare Avenue, and ending at the dead end, is not part of an adopted street plan and is not a City maintained right-of -way. Lots bordering Carolina Avenue are PIN Nos. 9649-09-26-1492, 1531, 0596, 0650, 0605, 1149 and 9649-09-16-8599, 8801, 9792, 9778, 9846, 9966 and 9649-09-27-0013, 0047, 0171, 0217 and 9649-09-17-8176.

The Engineering and Planning and Development Departments recommend that the right-of-way not be closed for the following key reasons:

- The right-of-way provides potential future access to developable property. Staff estimates that the existing right-of-way would facilitate the development of up to 14 lots;

- The Carolina Avenue right-of-way is important for the long-term transportation connectivity off Mount Clare. A current obstacle to the neighborhood is its lack of ready access to the local and state street network. Closing Carolina Avenue would potentially compound this problem in the future; and

- The right-of-way is essential for continuing the potential in-fill of single-family residential development. Closing the right-of-way may encourage multi-family or office development since there are owners who would not be likely to develop a single-family subdivision without better access.

City staff recommends that City Council adopt the resolution setting a public hearing for November 12, 2002, to close Carolina Avenue from Mount Clare Avenue to the dead end.

Councilman Peterson said that the adjoining property owners to the right-of-way have a concern of people walking and congregating in their backyards.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON CIVIC CENTER

Mayor Worley updated City Council on a meeting he had with Mr. Crawford Murphy and Ms. Lillian Fisher regarding the performing arts facility on the grounds of the Renaissance. Mr. Murphy said that more detailed information will be available by Council's next informal update on November 5 and they requested to be allowed to make a presentation before Council at that time.

Councilman Mumpower felt it would be appropriate to allow a representative of The Dual Jewel Project to make a brief presentation to Council at the November 5 worksession as well because City Council is interested in hearing about organized efforts and proposals.

Mr. Scott Osborne, representative of The Dual Jewel Project, presented City Council with a printed update of the conception and development of the projects to date along with a power point disc.

Mayor Worley said that City Council has the Heery report and there are other things going on in the community. He understood it was Council's decision to give the remainder of this year for those projects to develop to a feasible stage and demonstrate their feasibility because that would impact how Council might make a decision on going forward with the Civic Center. In January of 2003, he understood that Council will look at overall picture, what the feasibility or likelihood of success of other projects would be, and then Council would weight that information and make their decision about moving forward. After a decision is made, the task will then be to go out and build support for the decision.

Discussion occurred regarding Councilman Dunn's comment about what the City's alternative is if City Council cannot reach a consensus, or there is no funding stream or no reliable groups to step forward to help with funding.

All of Council agreed that there are a variety of options including just maintaining the existing facility.

City Manager Westbrook said that approximately 4-5 years ago, a consultant estimated $10 Million just to bring the facility up to Code.

Councilman Peterson felt that the first step might be to find out what is the minimum that has to be done and then build from there. Even if Council agrees to move forward on a particular plan, we may not get funding or public support for the plan.

Upon inquiry of Councilman Peterson, City Manager Westbrook explained why the City would probably do Certificates of Participation for the funding mechanism instead of General Obligation Bonds or Revenue Bonds.

It was the consensus of City Council to have a 10-15 minute each formal presentation by a representative for the performing arts facility and a representative for The Dual Jewel Project at the November 5, 2002, worksession.

BOARDS AND COMMISSIONS

It was the consensus of City Council to readvertise for vacancies on the Civic Center Commission and the Downtown Commission.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Gene Bell as Chair to the Civil Service Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Jack Saye to the Greenway Commission.

It was the consensus of City Council to appoint a City Council member to the Regional Water Authority.

MISCELLANEOUS

A brief discussion was held on the following items: dumpster trash; why the City has an appointed Water Authority and School Board; and the possibility of Buncombe County joining in the lawsuit against the State regarding reimbursements.

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ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:17 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 8, 2002 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 10, 2002, AS "PUT THE BRAKES ON FATALITIES DAY" IN THE CITY OF ASHEVILLE

Councilman Mumpower read the proclamation proclaiming October 10, 2002, as "Put the Brakes on Fatalities Day" in the City of Asheville. He presented the proclamation to President-Elect Marc Worth of the PENC Western Carolina Chapter and Mr. Robert Welch, Past President of the Western Carolina Chapter of PENC, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING OCTOBER 18, 2002, AS "CLEAN WATER ACT DAY" IN THE CITY OF ASHEVILLE

Councilman Peterson read the proclamation proclaiming October 18, 2002, as "Clean Water Act Day" in the City of Asheville. He presented the proclamation to Ms. Mollie Rose, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 24, 2002, AND THE WORKSESSION HELD ON OCTOBER 2, 2002

B. RESOLUTION NO. 02-159 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE FOR A COMMUNITY MEETING ON OCTOBER 29, 2002, BEGINNING AT 7:00 P.M. IN THE WILLIAM F. WOLCOTT JR. BUILDING LOCATED AT 161 SOUTH CHARLOTTE STREET, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 27 – PAGE 257

C. RESOLUTION NO. 02-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE ASHEVILLE CITIZEN-TIMES FOR RETAIL ADVERTISING

Summary: The consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. This year, the City qualifies for a weekly frequency rate of 16 to 31 column inches per week.

The open rate for advertising in the Asheville Citizen-Times is $47.96 per column inch daily and $64.67 per column inch on Sunday. This contract will allow the City to advertise for $30.45 per column inch daily and $41.43 per column inch on Sunday. Based on the amount of advertising placed in 2002, the City will save $59,534 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

RESOLUTION BOOK NO. 27 – PAGE 258

D. RESOLUTION NO. 02-161 - RESOLUTION OF INTENT TO CLOSE A RIGHT-OF-WAY KNOWN AS CAROLINA AVENUE FROM MOUNT CLARE AVENUE TO ITS DEADEND AND SETTING A PUBLIC HEARING ON NOVEMBER 12, 2002

RESOLUTION BOOK NO. 27 – PAGE 259

E. RESOLUTION NO. 02-162 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD

Summary: Annually the City Council must appoint a Chair to the Civil Service Board.

On October 1, 2002, it was the consensus of City Council to reappoint Gene Bell as Chairman of the Civil Service Board.

RESOLUTION BOOK NO. 27 – PAGE 260

F. RESOLUTION NO. 02-163 - RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Summary: There currently exists a vacancy on the Greenway Commission.

On October 1, 2002, it was the consensus of City Council to appoint Mr. Jack Saye as a member of the Greenway Commission to serve the unexpired term of Elizabeth Budd, term to expire December 31, 2003, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 261

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Peterson moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT

Councilwoman Jones moved to continue this public hearing until November 12, 2002. This motion was seconded by Councilman Ellis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CLOSING OF A PORTION OF OLD HAYWOOD ROAD BETWEEN PARK AVENUE AND ROBERTS STREET

RESOLUTION NO. 02-164 - RESOLUTION TO CLOSE A PORTION OF OLD HAYWOOD ROAD BETWEEN PARK AVENUE AND ROBERTS STREET

Mayor Worley opened the public hearing at 5:12 p.m.

Public Works Director Mark Combs said that this is consideration of a resolution to close a portion of Old Haywood Road from Park Avenue to Roberts Street. This public hearing was advertised on September 13, September 20, September 27 and October 4, 2002.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

On September 23, 1997, a public hearing on the question of closing a portion of Old Haywood Road between Park Avenue and Roberts Street was held at the regular meeting of City Council. A decision was deferred on "closing" until staff could further advise Council on the ability of using this portion of Old Haywood Road in the Greenway Master Plan.

The Planning Department has completed the Greenway Master Plan and determined that this portion of Old Haywood Road from Park Avenue to Roberts Street would not serve as a good link in an anticipated greenway connecting the downtown with the river. The Planning Department has also not identified a viable public use for this property as requested on September 23, 1997. Based on those findings the closing proceedings were reinitiated at the request of Mr. Rice.

The Public Works Department staff has determined that the right-of-way known as Old Haywood Road, beginning at Park Avenue and ending at Roberts Street, as shown in the Buncombe County Tax Maps bordered by PIN Nos. 9648-09-07-1425, 9648-09-07-0394, and 9638-12-97-9347 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution to close a portion of Old Haywood Road from Park Avenue to Roberts Street.

Vice-Mayor Bellamy said that there is a draft plan for the West End/Clingman Avenue Neighborhood (WECAN) greenway. She felt the neighborhood doesn't want to block any expansion, however, they would like to make sure the expansion enhances the neighborhood that the residents have to live in daily.

Economic Development Director Mac Williams said that in order to accommodate the business expansion of AvL Technologies, this portion of Old Haywood Road would need to be closed so the expansion could occur. Mr. Williams said that Mr. Mike Rice, property owner, has incubated his business in Asheville and the business is growing. He said the business manufactures satellite equipment and has good high paying jobs. If the business did expand, more jobs would follow.

Mr. Joe McGuire, attorney representing Mr. Mike Rice, said that the building is rented out to AvL Technologies and they need to expand. He said they currently have 12-15 employees and the proposed expansion would result in approximately 40 employees. Mr. Rice would like to add on an approximate $40,000 expansion and then add a new building, for AvL Technologies, for approximately $250,000. He passed out a brochure showing that AvL Technologies is a clean industry, is high tech and has high-paying jobs. The only way the company can expand is if this portion is closed. Unless the expansion is able to occur, the owner and president of AvL Technologies, Inc., will have to look elsewhere to relocate his business. The other section of Old Haywood Road was closed back in 1982 and he submitted Affidavits by those two property owners which state that they "have no plans to grant a public easement across the property that is located between Clingman Avenue and Park Avenue, which is the portion of the Old Haywood Road that was closed in 1985." He explained that Mr. Rice is in favor of a greenway, but this is not the best location. He explained the location for a much better location for a greenway. He urged Council to close this portion to allow this industry to expand, as it will improve the tax base, will improve the community because of the nature of the building that will be there, and will allow the greenway to be at its best location. Mr. McGuire also passed out some photographs of the building.

Ms. Gail McCarthy, business and property owner in the area and representative of the Asheville River District Artists (30 working artists and craftsmen in the Asheville River District), stated that this portion of Old Haywood Road is located in the heart of the Asheville River Arts District and their neighborhood has been growing and developing since 1994. She read quotes from the 1995 Economic Contribution Study of Craft on our region's economy, which showed how important crafts are to Western North Carolina. She shared statistics of how the River District Artists have brought visitors to our area. Artists and craftsmen have begun to own property in the area and they are very interested in what happens within the community. They have supported the efforts and participated in the WECAN Citizens Master Plan and have supported the efforts of RiverLink in the RiverLink Design charette. They feel that this closing is short-sighted in that the property holds more value if it can be integrated into a design process compatible with the WECAN Citizens Master Plan, the RiverLink Plan and the City's 2010 Plan. They asked that before the City does anything that influences development in the neighborhood, they would like to know what plans are being made and approved for the area. They understand that no plans have been filed with the City at this point for use of what is now public property. Since the closing of this portion involves giving away public property, as owners of this property they would like to be able to offer their opinion and suggestions for its future use.

Mr. Ronnie James, representing the North Carolina Department of Commerce in the western region as Manager of the Business and Industry Development Division, urged Council to close this portion of property so the business can expand. He said that in Buncombe County one manufacturing job generates another 1.1 job increasing personal income in Buncombe County by $69,000 – that's $37,000 directly and approximately $32,000 indirectly, adding over $16,000 in federal tax revenues and over $6,000 in local and state revenues. AvL Technologies is a very clean operation and they pay high wages and if Mr. Rice is unable to expand, unfortunately the business will have to relocate, possibly outside of Asheville or even Buncombe County.

Ms. Carol Hensley, Assistant Vice-President for Small Business and Entrepreneurship with the Asheville Area Chamber of Commerce, said that she was representing the Buncombe County Economic Development Commission which supports the close of this portion of Old Haywood Road. She explained why the expansion of the business is important to our community. She said that in Buncombe County existing business and industry create well over 80% of all new jobs.

Ms. Lou Heetderks, President of WECAN, said that they have had interest and concerns regarding the Old Haywood Closing since 1997 when the same parcel of public land came before

City Council then. At that time WECAN, and other interested parties, successfully convinced that City Council to keep this property and other publicly owned properties in both the WECAN district and the Riverfront under public domain until all the plans for this area were finalized. The City's consultant who prepared the Greenway Master Plan in a letter to her dated March 20, 1998, identifies this unused roadway "as a feasible route for an off-road greenway" and recommended "to maintain this old roadway right-of-way in public ownership because of it's greenway potential." Plans for this area include the West End/Clingman Avenue 2010 Plan, the WECAN Citizens Master Plan, RiverLink's Riverfront Development Plan, the City's Master Greenway Plan and there is also a site-specific greenway planning process being started this month using local greenway planners and local architects. This plan will address the urban forest that runs behind Clingman Avenue that will provide a link between Aston Park and the River. The WECAN Citizens Master Plan identifies the property at the corner of Roberts and Haywood Road, which includes the unused roadway, as a key and strategic site for development in this district. The type of development created at this corner will set the tone for the district and for future development. WECAN supports the type of clean, high wage, high tech industry that AvL Technologies brings to this district and to the City and they do not object to this business. Their concern is that the physical development of this property supports the principles and guidelines set forth in the numerous plans developed for this area. City Council should ensure that any development of this area complies with the various guidelines that have been developed in these plans. Meetings have been held with Mr. Rice in an effort to reach a compromise for something that will truly enhance the area, not only if AvL Technologies expands, but if the business moves out that what is left behind is something that supports the overall visions for the area and for the City as a whole.

Mr. Jim Oliver, President and Owner of AvL Technologies, explained that his company designs and manufactures mobile satellite antennas. He said that he does need to expand his business and would like to stay in the downtown area, however, that won't be possible unless his business is allowed to grow. He said that it is his intent to hire from the Asheville area. He said that since they don't manufacture any parts inside their building, they farm them out to 6-8 manufacturing companies in the Asheville area so those other businesses would be affected as well if he could not expand.

Mr. Jeff Hayes, employee at AvL Technologies, spoke in support of the Old Haywood Road closing.

A representative from Carolina Stone Works, property owner in the area, asked that Council postpone the closing until all plans are finished to see how that area will affect the arts community in the long-run.

Mr. Mike Rice, property owner, said that the Greenway Master Plan does not include this abandoned street. The drawing shows the greenway going down Clingman Avenue. He explained two better choices for the greenway. He urged Council to close this portion of Old Haywood Road in that it really is a win-win situation for the City and the business.

Mr. Brian McCarthy, Owner of High Water Clays, said that he supports high tech jobs and also supports the various plans for the area. His concern is that whatever buildings are developed there, especially any ones that are close to Old Haywood Road, are done in a fashion that they will enhance the area. The closing of this portion of Old Haywood Road may not have anything to do with what finally gets developed along Haywood Road, but it's important to the community that City Council keeps that in mind in any decision that they make.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities (MHO), said that they have invested approximately $3 Million in the WECAN area including the construction of the new building at the corner of Clingman Avenue and Merritt Street. MHO strongly supports these kinds of jobs for Asheville. He has spent many hours meeting with Mr. Rice and the Operations Manager at AvL Technologies and had hoped to work out a clear compromise. He explained where he felt there were three potential routes for the greenway. He also questioned if the legal advertisement included the entire portion of property requested to be closed or only a smaller portion of the property. In summary, he explained that it's the future development of the frontage on Haywood Road that is of particular concern.

Mayor Worley closed the public hearing at 6:16 p.m.

Planning & Development Director Scott Shuford said that the greenway route doesn't seem to be the big issue in this closing. It seemed to him that more of the concern is addressed about the potential development of the area with buildings being kept with the character of the River District, the downtown and plans. What is important is that there be the potential to link greenways across the river through different opportunities and alternatives have been suggested. He doesn't see the closure before Council as being something that would preclude greenway access. Again, he seems to think the concern is how the development will occur at that key location, how the buildings look, and how they are sited on the property. He did not think that any procedural errors occurred as alluded to by Mr. Dedman.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that the development will probably not come before City Council given the scale of it, however, it will have to be built in accordance with the zoning requirements.

Mayor Worley said that there is a substantial area of right-of-way between pavement of Haywood Road and Mr. Rice's property line that lies north of the section requesting to be closed. It seems to him that the largest concern is what actually takes place within that right-of-way which owned by the N.C. Dept. of Transportation (NC DOT). He felt that the City would have a lot of effect with the NC DOT in that particular area and could preserve that for use as part of a potential greenway master plan.

Mr. Shuford responded to questions from Councilwoman Jones regarding the zoning of that area and what type of standards are in that zoning classification.

Councilman Ellis appreciated the efforts of the River District Artists, the WECAN citizens and MHO to all work toward a compromise and they all support jobs and jobs people can walk to. He did not think the closing of this portion would be a detriment to the area.

Vice-Mayor Bellamy understood that the residents support the jobs, however, they have concerns about the design of the building being compatible with the residential neighborhood. Council hasn't discussed the close proximity of the houses to the industry. The residents support expansion, but they would like it done in a way that is compatible with the WECAN Citizen Master Plan. She hoped Mr. Rice would go back and talk back to the neighborhood about a compatible building that will fit into the residential neighborhood.

Councilman Mumpower explained how he felt there are three issues in this matter of timing, economic development and fairness. He felt that Council has committed itself to retain good industry and industrial space.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved to adopt Resolution No. 02-164 to close the portion of Old Haywood Road between Park Avenue and Roberts Street. This motion was seconded by Councilman Dunn.

Councilman Dunn agreed that it was important to make the building compatible and he felt sure that Mr. Rice would do the best he could to make the expansion of his industrial building compatible to the neighborhood.

Councilman Jones pointed out how easy it is sometimes to put plans at the bottom of the stack, but here's a great example of how important plans are for the City. She hoped that Mr. Rice will continue to talk with the neighbors because they have given a lot to their neighborhood and have enhanced it for everyone.

The motion made by Councilman Mumpower and seconded by Councilman Dunn carried unanimously.

At 6:40 p.m., Mayor Worley announced a short break.

RESOLUTION BOOK NO. 27 – PAGE 262

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, SECTION 3 OF BILTMORE PARK

ORDINANCE NO. 2961 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED NORTH OF LONG SHOALS ROAD AND IDENTIFIED AS OAKBROOK, SECTION 3 OF BILTMORE PARK

Mayor Worley opened the public hearing at 6:45 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to annex property located north of Long Shoals Road and identified as Oakbrook, Section 3 at Biltmore Park. The public hearing was advertised on September 27, 2002

Biltmore Farms Inc. and The Broadlands Company, LLC, have submitted an annexation petition for Oakbrook, Section 3 at Biltmore Park. This area is contiguous to the existing corporate limits, being bordered to the south by sections of Biltmore Park that have been previously annexed

The area proposed for annexation consists of 16.911 acres and is platted for 18 single-family residential lots, corresponding street rights-of-way, and a common area. The area will be accessed primarily by White Ash Drive and Red Cedar Lane. This area is within the extraterritorial jurisdiction and is currently zoned RS-2 Residential Single Family Low Density District.

Biltmore Farms Inc. is developing utilities and streets. City services will begin on the effective date of annexation. Biltmore Farms, Inc. has requested that the effective date of annexation be six months from the adoption of the ordinance, which would be April 8, 2003.

This would be the 25th section of the Biltmore Park development to be annexed.

City staff recommends City Council adopt an ordinance to annex property located north of Long Shoals Road and identified as Oakbrook Section 3.

Councilman Dunn asked why the City was not asking Biltmore Park to spend any money on traffic mitigation because a developer in Shiloh was required to spend $84,000 on traffic mitigation for his development, which was already in the City. Planning & Development Director

Scott Shuford explained that that the Shiloh development dealt with public safety with regard to the widths of the streets and some of the intersections needing improvements, as well as the speed of traffic. This particular development is a planned development that has continued to develop in phases. While the Master Plan has changed a little over time, the infrastructure that is being put in by the developer is adequate and safe at the time it is put in. The developer is building all the streets and after they are built they are brought into the City. If, for example, we had a multi-family project that was part of a master plan development, we wouldn't need to go back and say we've got to have exactions to deal with the public safety issues or traffic claming, because those issues would have been taken care of in the original planning. It's when we go to infill-type development that greatly increases the density above and beyond what is designed planned for the area that we need to start looking at those types of public service exactions.

Mayor Worley closed the public hearing at 6:53 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2961. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 95

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 02-165 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Bellamy said that the term of Ted Patton as a member on the Regional Water Authority expired on September 30, 2002.

On October 1, 2002, it was the consensus of City Council to appoint a Council member to said Authority.

Mayor Worley moved to appoint Councilman Peterson to serve a three year term, term to expire September 30, 2005, or until his successor has been appointed. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Peterson said that all of Council appreciated Mr. Ted Patton's contribution and his technical expertise that he has brought to the table on the Water Authority. But that given some changes in the direction that Council may have about the Water Authority and the potential significant changes, there needs to be a little bit more direct involvement with City Council on the Water Authority. Mr. Patton's technical expertise has been a big contribution, but at this stage, City Council needs something slightly different.

RESOLUTION BOOK NO. 27 – PAGE 263

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of September 20-26, 2002: Melissa Doyle (Sanitation), Jimmy Deese (Streets), Tameca Mills (Streets), Shea D. Knupp (Water) and Marcus Ban-Lokeren (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilwoman Jones announced that the YMI is sponsoring "In the Footsteps of Pilgrims, Historic Travels of Faith" which explores the cultural and historical issues of travels of faith from the viewpoints of Judaism, Christianity, Islam, Hinduism and Buddhism. She invited Council and the public to take advantage of this opportunity, which will run from October 16 through November 29, 2002.

Councilman Ellis congratulated Councilwoman Jones, who is Executive Director of the YWCA, in making the new YWCA available to the entire community.

Mayor Worley also was pleased to announce that Vice-Mayor Terry Bellamy received the prestigious Grace Dorn and Sophie Dixon First Annual award at the NAACP banquet on October 5, 2002.

Mr. Mickey Mahaffey stated that Mr. Ted Patton was the least political member on the Water Authority and one of the most knowledgeable people on the Water Authority over the past three years. He hoped Councilman Peterson would keep as his primary initiative the issue that that there are more people in our area who are having a difficult time of affording to live here, and urged him to remember that when there is talk of raising water rates.

Ms. Hazel Fobes, representing Citizens for Safe Drinking Water and Air, stressed how we need regionalism and a true Regional Water Authority. She spoke highly of Mr. Ted Patton and stated that he knows more about the water system than anyone around here.

CLOSED SESSION

At 7:06 p.m., Councilwoman Jones moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Morris Communications, Inc. d/b/a Fairway Outdoor Communications, Lamar OCI - South Corp., Maple Cove, Inc., Carl and Janis Ricker, Asheville Board of Adjustment, City of Asheville, James E. Martin, Jeffrey A. Martin, Susanne A. Zuerner, Donald E. Williams, Paul E. Fruits, B. Joy MacFadyen Bulluck, Buncombe County, and City of Asheville - the statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To prevent the disclosure of information that is privileged or confidential pursuant to the laws of the State or the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed privileged or confidential is N.C.G.S. 132-1.1. This motion was seconded by Councilman Ellis and carried unanimously.

At 8:20 p.m., Councilman Dunn moved to excuse Vice-Mayor Bellamy due to her health. This motion was seconded by Councilman Ellis and carried unanimously.

At 8:35 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:35 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 15, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Joseph C. Dunn

CONSENT:

Minority Business Plan Amendments

Summary: The consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended three times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December of 1999 to clarify the provisions of the Plan; and (3) in 2001 to expand certification to two years.

At their meeting on August 8, 2002, the Minority Business Commission recommended that the Plan be further amended to enhance and clarify provisions of the Plan. The most significant change is the reduction of the Minority Business Commission from 13 to 11 members. The Minority Business Alliance is no longer active and one of the three certified minority business owners has been deleted in order to keep the board balanced to an odd number. In addition, the grievance procedures for hearings has been revised and made more concise for use.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

Budget Amendment for Governmental Accounting Standards Board Implementation

Summary: The consideration of a budget amendment to eliminate the use of internal service funds pursuant to Governmental Accounting Standards Board (GASB) regulations and amend the General Fund Budget accordingly.

The City of Asheville has several operations that are established to supply goods or services to other city departments or governmental units. These operations include Fleet Management, Graphic & Printing Services, Central Stores, and Group Health/Risk Management. Each of these four operations is currently set up as an ***Internal Service Fund***, a separate accounting entity established to budget and account for the activities of a department or division that supplies goods or services to another department or governmental unit.

The accounting and management procedures used by an internal service fund are similar to those of a private business; that is, the internal service fund predominantly charges other departments on a cost-reimbursement basis for the use of its goods and services. For instance, when Fleet Management repairs a police car, it charges the Police Department for the cost of parts and labor involved in the repair. The revenue that Fleet Management receives from charging the Police Department is used to pay the salaries of the mechanics and cover the cost of vehicle parts.

The use of internal service funds results in "double-budgeting" city expenditures, once in the Internal Service Fund and again in the City's General Fund. The Fleet Management Internal Service Fund, for example, has approximately $450,000 in its budget to cover the cost of maintaining police vehicles. The General Fund, through the Police Department, also has $450,000 in its budget to "pay back" Fleet Management for maintaining its vehicles. Thus, when adding the Police Department's vehicle maintenance budget to Fleet Management's budget for police vehicle maintenance, it appears that the City is spending $900,000 on maintenance of police vehicles, when in fact the actual cost to the organization is only $450,000.

To eliminate the appearance of double-budgeting and to respond to recent accounting changes advocated by the GASB, the Budget and Finance Directors recommend that the City discontinue using separate internal service funds to budget and account for the City's internal "business-like" operations. It is recommended that the internal service budgets for Fleet Management, Graphic/Printing Services, Central Stores, Group Health /Risk Management be reduced to zero and that the expenses for internal service functions be charged directly to department operating accounts in the general fund, where budgets already exist.

In addition to providing services to other City departments, several of the City's internal service funds provide limited services to external governmental agencies. The Fleet Management Internal Service Fund, for instance, sells gas to Memorial Mission Hospital, allowing Memorial Mission to benefit from the City's government rate. The budget to cover the cost of providing services to external agencies, however, is currently budgeted solely in the City's internal service funds. Thus, when the various internal service funds are reduced to zero, as recommended in this report, the cost of providing services to external agencies (i.e. Memorial Mission) will need to be moved to the general fund and the general fund budget increased accordingly. The increase in general fund expenditures will be offset by also moving revenues received from outside agencies (i.e. Memorial Mission) into the general fund, resulting in no net increase in general fund expenditures.

City staff recommends City Council adopt the budget amendment to eliminate the use of internal service funds pursuant to GASB regulations and increase general fund expenditures by $4,324,717 to reflect expenditures and revenues associated with internal service functions providing goods and services to outside agencies.

Offer of Purchase for Upset Bids for Land off Blake Mountain Circle

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 0.40 acres of land off Blake Mountain Circle.

A bid from Rhett A. Grotzinger, in the amount of $3,700.00, has been received for the purchase of land adjacent to his property at 307 Blakewood Court. The bid is not less than the appraised value of $3,700.00.

The property is zoned RS-2 and comprises approximately 0.40 acre of land. Thus the lot does not contain the required area for a standard lot in RS-2 zoning. The property has a trapezoid shape and is gently sloping to below street level. The parcel is wooded except for an abandoned circular water tank with a domed cover, which is partially below ground. The water tank is in the middle of the lot and covers about 1/3 of the land area. The appraisal by Richard Smith in the amount of

$3,700.00 takes into consideration the substandard size of the lot as well as the negative impact of the water tank on the land value.

There is no current or contemplated use for the property by the City. If the sale is approved the property will be sold as is and the City will retain an easement for water lines on the property. Mr. Grotzinger plans to assemble the property with the property he owns and whether the water tank is removed or not will be his decision and responsibility.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

Relinquishing an Easement in the Closed Alley between Riverview Drive and Euclid Boulevard

Summary: The consideration of a Resolution authorizing the Mayor to execute a non-warranty deed to relinquish the City's easement in the closed portion of the alley between Euclid Boulevard and Riverview Drive.

The City closed a portion of an unopened alley between Euclid Boulevard and Riverview Drive on June 27, 1995, reserving for itself an easement for the possible future installation and maintenance of public utilities. Subsequent to adoption of the Resolution, the petitioning property owner contacted the City and requested that the City, to the extent possible, relinquish its easement as the reservation of the easement defeated the purpose of closing the alley. Key City staff considered the request and did not oppose the request. The petitioning property owner was informed that City staff was prepared to recommend that the City relinquish its easement upon the receipt of certain information, which information was not received until July 22, 2002. Due to the lapse of time, key City staff was once again consulted and no objection was raised to the City relinquishing its easement. The closed portion of the alley whereby the City is relinquishing its easement is more specifically shown in Plat Book 7 at Page 72.

City staff recommends City Council adopt the resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement in the closed portion of the alley between Euclid Boulevard and Riverview Drive.

Agreement with the Asheville Humane Society

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

On July 1, 2002, Buncombe County required the City to pay for animal shelter services with the Asheville Humane Society who has contracted to run the shelter. From July 1, 2002, through August 30, 2002, the City contracted with the Humane Society for shelter services based on funding approved in the City's interim budget. On September 1, 2002, the City approved the final budget for Fiscal Year 2002-2003, and in that budget approved $100,000 to pay for shelter services. The City and Humane Society need to enter into the same agreement for shelter services for the term of September 1, 2002, through June 30, 2003.

City staff recommends approval of the resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services for the term of September 1, 2002, through June 30, 2003.

Budget Amendment to Renovate the Building at Memorial Stadium

Summary: The consideration of an amendment to the City's general capital project fund, in the amount of $72,593, to cover the renovation of the storage building at Memorial Stadium.

In November of 2001, the storage building at Memorial Stadium was destroyed by fire. The estimated cost to renovate the storage building is $72,593.

After a year of negotiation with the City's insurance carrier, the Risk Management office, with the assistance of the Parks & Recreation Department, received an insurance settlement to help cover the cost of renovating the storage building. Insurance settlement revenue in the amount of $64,593, as well as funds in the amount of $8,000 that can be transferred from the City's building maintenance reserve are available to support the cost of the renovation project.

Staff is requesting the establishment of a capital project budget in the amount of $72,593 for renovation of the storage building at Memorial Storage. The project budget will be balanced with the insurance settlement proceeds and building maintenance reserve funds noted above.

The Parks & Recreation Department recommends City Council approve the amendment to the City's general capital project fund for the renovation of the storage building at Memorial Stadium.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

SOLITATION ORDINANCE

Police Chief Will Annarino said that this is the consideration of an amendment to the City's solicitation ordinance by (1) making it a class three misdemeanor to ask, beg or solicit funds for alms or contributions within certain areas within the City limits boundaries; and (2) making it a class three misdemeanor to urinate in public, sleep on public property and loiter with the intent to obstruct any public street, public highway, public sidewalk or other public place or building by impeding the free uninterrupted passage of vehicle traffic or pedestrians.

City staff has received numerous complaints from residents, visitors and merchants regarding the large amount of panhandling and soliciting occurring in Asheville. In addition, the Asheville Police Department has also witnessed a large increase in panhandling occurring in the City. City staff has determined that such activities are causing a public safety hazard by interfering with the free flow of pedestrian traffic on sidewalks; creating fear and anxiety for persons traveling downtown; and discouraging people from visiting Asheville's downtown and Biltmore Village. In an effort to insure the public safety of pedestrians in high traffic areas and to preserve a pleasant family friendly atmosphere in the downtown area and Biltmore Village, City staff recommends placing a limited ban on solicitation in specified areas based on the volume of pedestrian traffic as well as the impact the location has on tourism. Staff is proposing prohibiting solicitation in the following zones: ZONE 1 - Hilliard Avenue as the southern boundary south, French Broad Avenue as the western boundary, Cherry Street and Woodfin Avenue as the northern boundary and Woodfin and Valley Street as the western boundary and ZONE 2 – the entire Biltmore Village Historic District.

Staff is also proposing prohibiting solicitation throughout the City within a certain distance from bus stops, banks and automatic teller machines, entrances to buildings, and outdoor dining areas. The ordinance will also prohibit soliciting in the evening and prohibit a person from soliciting while under the influence of drugs or alcohol.

In an effort to reduce the amount of street nuisance type activities in Asheville, City staff is also recommending the ordinance prohibit relieving one's self on public, sleeping on public property and loitering that impedes pedestrian or vehicular traffic throughout the City.

Class 3 Misdemeanor – conviction on 1st offense results in a $50.00 fine. 2nd and subsequent convictions can result in fines up to $500.00.

City staff recommends approval of the ordinance.

Upon inquiry of Councilman Mumpower, Police Chief Annarino said that the boundaries could be expanded as conditions are justified.

Vice-Mayor Bellamy asked about how we can enforce our ordinances inside Aston Park, which is a County park. City Attorney Oast said that the City can enforce our ordinances for activities on County properties that are located inside the City. He said he would be happy to confirm that.

Vice-Mayor Bellamy stressed that the City needs to involve and assist other agencies to provide solicitation alternatives. City Manager Westbrook said that the Asheville Downtown Commission, the Asheville Downtown Association and the merchants will be monitoring the ordinance and investigating ways in which alternatives for solicitation might work. For example, a sign in a window that states you cannot solicit for funds, but if you would like to help, here are other ways – and maybe have a box placed there for funds.

When Councilman Mumpower asked for a monitoring report, City Manager Westbrook felt sure that the different downtown groups will be asking to come before Council with a report.

Councilwoman Jones felt that the City was criminalizing poverty in two instances in the proposed ordinance and explained her suggested following changes: (1) That under Section 11-16 (Sleeping on Public Property), that (a) read "It shall be unlawful for any person to sleep on any of the streets and sidewalks." She asked the rest of the sentence ("public places or upon the private property of another without the consent of the owner thereof") be deleted; and (2) That Section 11-15 (Public Urination) be deleted in its entirety. She understood that there are public health issues. However, she strongly felt that the City should have a simultaneous response to prohibiting this by providing public restrooms. She wasn't saying that we shouldn't prohibit public urination, but that we need to deal with a more comprehensive response for it. She stated that she would bring the funding issue of public restrooms up at City Council's annual retreat. In addition, she felt that we need to make a bigger commitment to get behind the shelters by redirecting some of our Community Development Block Grant funds and outside agency funds to work with them on solutions.

Mayor Worley stated that the City did have public restrooms downtown but they were vandalized and destroyed. He did note, however, that there are some public restrooms located downtown. In addition, he felt that there are shelters for those people who are currently sleeping on park benches, realizing also that some people cannot be in a shelter due to mental illness.

Police Chief Annarino said that the problem with people sleeping on park benches is so bad that merchants want to remove the benches.

Councilman Ellis, liaison to the Asheville Downtown Commission, said that the Commission is working aggressively at suggesting a special taxing district for the downtown area for security and restrooms.

Vice-Mayor Bellamy asked about the education component in the ordinance. Police Chief Annarino responded that the downtown merchants will be working on some plans and the police officers would be there to phase in the ordinance changes.

Vice-Mayor Bellamy felt that City Council should write to the Governor and our state legislators and ask them to require a housing plan for inmates being released from prison into our community. She also felt there needed to be a hard look at the intake system for public housing. In addition, City Council needs to hear about our mental health issues in the community, even though Buncombe County is responsible for that issue. At the suggestion of Councilman Mumpower, Vice-Mayor Bellamy and Councilwoman Jones agreed to draft a letter for Council's consideration.

Vice-Mayor Bellamy questioned the Class 3 misdemeanor fine of $50. Police Chief Annarino said that the Class 3 misdemeanor amount is established by state law, however, Assistant City Attorney Curt Euler said that the fine would be left up to the judge and that could range from $5 to $500.

Upon inquiry of Councilman Mumpower, Police Chief Annarino said that a new system will be on line in December and it will take approximately six months to a year to compile statistics on this complaint driven issue.

Councilwoman Jones said that she did support the loitering section and the public solicitation and begging section and asked the City Attorney how she could vote for two and possibly not for the other two sections (public urination and sleeping in public). After discussion, City Attorney Oast gave three alternatives and suggested that when the matter comes before Council for a formal vote, that Councilwoman Jones could make a motion to divide a complex motion and consider it by paragraph. It would then be up to City Council to support the motion or not.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on an upcoming formal City Council agenda.

MISSION STATEMENT

City Manager Westbrook said that City staff is requesting City Council approve the revised mission statement "The City of Asheville is committed to delivering an excellent quality of service to enhance your quality of life."

The City's current mission statement was adopted in 1995. The mission statement has served us well, but needs to be updated. After reviewing the mission statement at last year's staff retreat, the Management Team set up a team of City employees to bring forward a recommendation for change in the mission statement. The staff feels strongly that a mission statement should be simple enough that every City employee will be able to recite it when asked, "what is your job?" We believe the mission statement crafted by the team meets that standard, as well as capturing the essence of public service.

In addition to the mission statement, the Management Team also crafted core values. In previous years these were adopted by the Management Team on how we would work with the public and manage our various missions within the City. It is our intent to update the core values for all City employees. The core values represent sound standard practices and ideals that all City employees should follow.

Lastly, a motto was crafted as a simple way of stating our mission and how it affects all citizens.

Ms DeAnn Lyda, Ms. Sasha Vrtunski and Ms. Leslie Carreiro, showed how they developed the mission statement and its applicability to the way we think and work in the City of Asheville.

Staff recommends City Council adopt the mission statement as presented by the team and endorse it to all employees and citizens of Asheville.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

HOUSING TRUST FUND

Planning & Development Director Scott Shuford said that this is the consideration of a resolution to offer Housing Trust Fund loans for the construction of affordable housing.

In its final Fiscal Year 2003 City Budget, City Council approved a $500,000 appropriation for the City's Housing Trust Fund (HTF). Adding repayments from prior year loans, staff estimates that at least $580,000 will be available for lending this year.

The Housing and Community Development Committee has reviewed the process for offering HTF loans and has made some improvements, while keeping the guidelines broadly similar to those used last year.

In summary, the proposed loan guidelines (*and changes*) are as follows:

- Projects must be new construction, or rehabilitation of vacant property.
- Homes for sale must be priced at not more than $120,000; and sold to a person with household income below area median.
- Homes for rental must be affordable to households below 80% of are median income, and the first tenants must meet that income limit.
- Maximum loan amounts per unit are $40,000 for construction loans and $25,000 for long-term loans (*increased from $20,000 for both loan types*); the maximum loan to one applicant is $250,000 *(increased from $200,000)*.
- Loans must be repaid within 30 years – no grants, forgivable loans, or indefinitely deferred loans are allowed.
- Loans will be fully amortizing with 2% interest, except that for the most affordable projects loan repayments may be either principal-only with 0% interest, or interest-only with deferred principal (*not both 0% and deferred*).
- Applicants have the option to purchase land from a list of City-owned sites; there are ten suitable properties currently on this list.
- Minor changes have been made to the evaluation criteria.

The loan offering can be published immediately after Council's approval, with an application deadline on November 27. Applications will be reviewed and scored by a panel of City staff and outside professionals and their findings will be considered by the Housing and Community Development Committee in December. The Committee's recommendations for loans will ready for Council's final review and approval in January.

Mr. Shuford then gave Council a brief update of the Fiscal Year 2001 and 2002 Projects.

City staff recommends City Council approve the resolution to offer Housing Trust Fund loans for the production of affordable housing in Fiscal Year 2003.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

RESOLUTION NO. 02-166 - RESOLUTION SUPPORTING MAYOR OF ASHEVILLE'S NOMINATION FOR SECOND VICE PRESENT OF THE BOARD OF DIRECTORS OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES

Councilman Ellis said that Mayor Charles R. Worley is currently Chairman of the Finance Administration and Intergovernmental Relations Committee and has had the pleasure of working with League staff and other elected and appointed officials throughout North Carolina for some period of time. It appears that the North Carolina League of Municipalities is approaching a new relationship with the State of North Carolina. As Charles R. Worley is the Mayor of the largest city west of Winston-Salem and north of Charlotte, the Asheville City Council and other leaders from this part of the state feel that Mayor Worley can bring a unique perspective to the Board which would be helpful and productive. Western North Carolina certainly has its challenges, as do other parts of the state, but the Asheville City Council believes that Mayor Worley can articulate Western North Carolina's needs and challenges to the Board of Directors and the general membership of the League. The Asheville City Council hereby endorses and supports Mayor Charles R. Worley's nomination for the position of Second Vice President of the Board of Directors of the North Carolina League of Municipalities.

Councilman Ellis moved to waive the rules and take formal action at this meeting since the North Carolina League of Municipalities Annual Conference is October 20-21, 2002. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Ellis moved to adopt Resolution No. 02-166. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 264

BOARDS AND COMMISSIONS:

It was the consensus of City Council to arrange an interview for Mr. Sylvia Farrington for a vacancy on the Civic Center Commission and to verify that Mr. Dan Breneman was still interested in serving.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Andy Archie to the Downtown Commission.

It was the consensus of City Council to arrange interviews for Ms. Carol Ann Pothier and Mr. Leonard Jones for a vacancy on the Recreation Board.

UPDATE ON THE 2025 PLAN

Planning & Development Director Scott Shuford updated City Council on the 2025 Plan, which is an update to the City's comprehensive plan. The City Plan Advisory Committee, the group charged with overseeing public participation and input into the plan, has endorsed moving the plan forward to the public hearing phase. They will schedule the draft plan to be heard by the Planning & Zoning Commission at their October 24 worksession and again on November 6 at their formal meeting. After the Planning & Zoning Commission's review is complete, they will schedule it for a City Council worksession and formal meeting.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 22, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

MOTION ADOPTING THE REVISED MISSION STATEMENT OF THE CITY OF ASHEVILLE

Ms. Sasha Vrtunski, Interim Director of City Development, said that this is the consideration of requesting City Council approve the revised mission statement "The City of Asheville is committed to delivering an excellent quality of service to enhance your quality of life."

The City's current mission statement was adopted in 1995. The mission statement has served us well, but needs to be updated. After reviewing the mission statement at last year's staff retreat, the Management Team set up a team of City employees to bring forward a recommendation for change in the mission statement. The staff feels strongly that a mission statement should be simple enough that every City employee will be able to recite it when asked, "what is your job?" We believe the mission statement crafted by the team meets that standard, as well as capturing the essence of public service.

In addition to the mission statement, the Management Team also crafted core values. In previous years these were adopted by the Management Team on how we would work with the public and manage our various missions within the City. It is our intent to update the core values for all City employees. The core values represent sound standard practices and ideals that all City employees should follow.

Lastly, a motto was crafted as a simple way of stating our mission and how it affects all citizens.

Staff recommends City Council adopt the mission statement and endorse it to all employees and citizens of Asheville.

Vice-Mayor Bellamy moved to adopt the revised mission statement. This motion was seconded by Councilwoman Jones and carried unanimously.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 8, 2002, AND THE WORKSESSION HELD ON OCTOBER 15, 2002

B. RESOLUTION NO. 02-167 - RESOLUTION AMENDING THE ASHEVILLE-BUNCOMBE MINORITY BUSINESS PLAN

Summary: The consideration of a resolution to amend the Minority Business Plan in order to enhance and clarify provisions of the Plan.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan has been amended three times: (1) November 1998 to expand participation in the Mentor-Protégé Program; (2) December of 1999 to clarify the provisions of the Plan; and (3) in 2001 to expand certification to two years.

At their meeting on August 8, 2002, the Minority Business Commission recommended that the Plan be further amended to enhance and clarify provisions of the Plan. The most significant change is the reduction of the Minority Business Commission from 13 to 11 members. The Minority Business Alliance is no longer active and one of the three certified minority business owners has been deleted in order to keep the board balanced to an odd number. In addition, the grievance procedures for hearings has been revised and made more concise for use.

The resolution amends the Plan as recommended by the Minority Business Commission. The recommended revision to the Plan will also be presented to the Buncombe County Commission for their consideration and adoption.

City staff recommends City Council adopt the resolution amending the Minority Business Plan.

RESOLUTION BOOK NO. 27 – PAGE 265

C. ORDINANCE NO. 2962 - BUDGET AMENDMENT TO ELIMINATE THE USE OF INTERNAL SERVICE FUNDS PURSUANT TO GOVERNMENTAL ACCOUNTING STANDARDS BOARD REGULATIONS AND AMEND THE GENERAL FUND BUDGET ACCORDINGLY

Summary: The consideration of a budget amendment to eliminate the use of internal service funds pursuant to Governmental Accounting Standards Board (GASB) regulations and amend the General Fund Budget accordingly.

The City of Asheville has several operations that are established to supply goods or services to other city departments or governmental units. These operations include Fleet Management, Graphic & Printing Services, Central Stores, and Group Health/Risk Management. Each of these four operations is currently set up as an ***Internal Service Fund***, a separate accounting entity established to budget and account for the activities of a department or division that supplies goods or services to another department or governmental unit.

The accounting and management procedures used by an internal service fund are similar to those of a private business; that is, the internal service fund predominantly charges other departments on a cost-reimbursement basis for the use of its goods and services. For instance, when Fleet Management repairs a police car, it charges the Police Department for the cost of parts and labor involved in the repair. The revenue that Fleet Management receives from charging the Police Department is used to pay the salaries of the mechanics and cover the cost of vehicle parts.

The use of internal service funds results in "double-budgeting" city expenditures, once in the Internal Service Fund and again in the City's General Fund. The Fleet Management Internal Service Fund, for example, has approximately $450,000 in its budget to cover the cost of maintaining police vehicles. The General Fund, through the Police Department, also has $450,000 in its budget to "pay back" Fleet Management for maintaining its vehicles. Thus, when adding the Police Department's vehicle maintenance budget to Fleet Management's budget for police vehicle maintenance, it appears that the City is spending $900,000 on maintenance of police vehicles, when in fact the actual cost to the organization is only $450,000.

To eliminate the appearance of double-budgeting and to respond to recent accounting changes advocated by the GASB, the Budget and Finance Directors recommend that the City discontinue using separate internal service funds to budget and account for the City's internal "business-like" operations. It is recommended that the internal service budgets for Fleet Management, Graphic/Printing Services, Central Stores, Group Health /Risk Management be reduced to zero and that the expenses for internal service functions be charged directly to department operating accounts in the general fund, where budgets already exist.

In addition to providing services to other City departments, several of the City's internal service funds provide limited services to external governmental agencies. The Fleet Management Internal Service Fund, for instance, sells gas to Memorial Mission Hospital, allowing Memorial Mission to benefit from the City's government rate. The budget to cover the cost of providing services to external agencies, however, is currently budgeted solely in the City's internal service funds. Thus, when the various internal service funds are reduced to zero, as recommended in this report, the cost of providing services to external agencies (i.e. Memorial Mission) will need to be moved to the general fund and the general fund budget increased accordingly. The increase in general fund expenditures will be offset by also moving revenues received from outside agencies (i.e. Memorial Mission) into the general fund, resulting in no net increase in general fund expenditures.

City staff recommends City Council adopt the budget amendment to eliminate the use of internal service funds pursuant to GASB regulations and increase general fund expenditures by $4,324,717 to reflect expenditures and revenues associated with internal service functions providing goods and services to outside agencies.

City Manager Westbrook responded to an inquiry from Councilman Dunn about why the City sells gas to Mission Hospital and what would happen if other non-profits asked for that service.

ORDINANCE BOOK NO. 20 – PAGE 97

D. RESOLUTION NO. 02-168 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR LAND OFF OF BLAKE MOUNTAIN CIRCLE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for 0.40 acres of land off Blake Mountain Circle.

A bid from Rhett A. Grotzinger, in the amount of $3,700.00, has been received for the purchase of land adjacent to his property at 307 Blakewood Court. The bid is not less than the appraised value of $3,700.00.

The property is zoned RS-2 and comprises approximately 0.40 acre of land. Thus the lot does not contain the required area for a standard lot in RS-2 zoning. The property has a trapezoid shape and is gently sloping to below street level. The parcel is wooded except for an abandoned circular water tank with a domed cover, which is partially below ground. The water tank is in the middle of the lot and covers about 1/3 of the land area. The appraisal by Richard Smith in the amount of $3,700.00 takes into consideration the substandard size of the lot as well as the negative impact of the water tank on the land value.

There is no current or contemplated use for the property by the City. If the sale is approved the property will be sold as is and the City will retain an easement for water lines on the property. Mr. Grotzinger plans to assemble the property with the property he owns and whether the water tank is removed or not will be his decision and responsibility.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 266

E. RESOLUTION NO. 02-169 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-WARRANTY DEED TO RELINQUISH THE CITY'S EASEMENT IN THE CLOSED PORTION OF THE ALLEY BETWEEN RIVERVIEW DRIVE AND EUCLID BOULEVARD

Summary: The consideration of a Resolution authorizing the Mayor to execute a non-warranty deed to relinquish the City's easement in the closed portion of the alley between Euclid Boulevard and Riverview Drive.

The City closed a portion of an unopened alley between Euclid Boulevard and Riverview Drive on June 27, 1995, reserving for itself an easement for the possible future installation and maintenance of public utilities. Subsequent to adoption of the Resolution, the petitioning property owner contacted the City and requested that the City, to the extent possible, relinquish its easement as the reservation of the easement defeated the purpose of closing the alley. Key City staff considered the request and did not oppose the request. The petitioning property owner was informed that City staff was prepared to recommend that the City relinquish its easement upon the receipt of certain information, which information was not received until July 22, 2002. Due to the lapse of time, key City staff was once again consulted and no objection was raised to the City relinquishing its easement. The closed portion of the alley whereby the City is relinquishing its easement is more specifically shown in Plat Book 7 at Page 72.

City staff recommends City Council adopt the Resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement in the closed portion of the alley between Euclid Boulevard and Riverview Drive.

RESOLUTION BOOK NO. 27 – PAGE 267

F. RESOLUTION NO. 02-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL CONTROL SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

On July 1, 2002, Buncombe County required the City to pay for animal shelter services with the Asheville Humane Society who has contracted to run the shelter. From July 1, 2002, through August 30, 2002, the City contracted with the Humane Society for shelter services based on funding approved in the City's interim budget. On September 1, 2002, the City approved the final budget for Fiscal Year 2002-2003, and in that budget approved $100,000 to pay for shelter services. The City and Humane Society need to enter into the same agreement for shelter services for the term of September 1, 2002, through June 30, 2003.

City staff recommends approval of the resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services for the term of September 1, 2002, through June 30, 2003.

RESOLUTION BOOK NO. 27 – PAGE 268

G. ORDINANCE NO. 2963 - BUDGET AMENDMENT TO RENOVATE THE BUILDING AT MEMORIAL STADIUM

Summary: The consideration of an amendment to the City's general capital project fund, in the amount of $72,593, to cover the renovation of the storage building at Memorial Stadium.

In November of 2001, the storage building at Memorial Stadium was destroyed by fire. The estimated cost to renovate the storage building is $72,593.

After a year of negotiation with the City's insurance carrier, the Risk Management office, with the assistance of the Parks & Recreation Department, received an insurance settlement to help cover the cost of renovating the storage building. Insurance settlement revenue in the amount of $64,593, as well as funds in the amount of $8,000 that can be transferred from the City's building maintenance reserve are available to support the cost of the renovation project.

Staff is requesting the establishment of a capital project budget in the amount of $72,593 for renovation of the storage building at Memorial Storage. The project budget will be balanced with the insurance settlement proceeds and building maintenance reserve funds noted above.

The Parks & Recreation Department recommends City Council approve the amendment to the City's general capital project fund for the renovation of the storage building at Memorial Stadium.

ORDINANCE BOOK NO. 20 – PAGE 105

H. RESOLUTION NO. 02-171 - RESOLUTION OFFERING HOUSING TRUST FUND LOANS

Summary: The consideration of a resolution to offer Housing Trust Fund loans for the construction of affordable housing.

In its final Fiscal Year 2003 City Budget, City Council approved a $500,000 appropriation for the City's Housing Trust Fund (HTF). Adding repayments from prior year loans, staff estimates that at least $580,000 will be available for lending this year.

The Housing and Community Development Committee has reviewed the process for offering HTF loans and has made some improvements, while keeping the guidelines broadly similar to those used last year.

In summary, the proposed loan guidelines (*and changes*) are as follows:

- Projects must be new construction, or rehabilitation of vacant property.
- Homes for sale must be priced at not more than $120,000; and sold to a person with household income below area median.

- Homes for rental must be affordable to households below 80% of are median income, and the first tenants must meet that income limit.
- Maximum loan amounts per unit are $40,000 for construction loans and $25,000 for long-term loans (*increased from $20,000 for both loan types*); the maximum loan to one applicant is $250,000 *(increased from $200,000).*
- Loans must be repaid within 30 years – no grants, forgivable loans, or indefinitely deferred loans are allowed.
- Loans will be fully amortizing with 2% interest, except that for the most affordable projects loan repayments may be either principal-only with 0% interest, or interest-only with deferred principal (*not both 0% and deferred*).
- Applicants have the option to purchase land from a list of City-owned sites; there are ten suitable properties currently on this list.
- Minor changes have been made to the evaluation criteria.

The loan offering can be published immediately after Council's approval, with an application deadline on November 27. Applications will be reviewed and scored by a panel of City staff and outside professionals and their findings will be considered by the Housing and Community Development Committee in December. The Committee's recommendations for loans will ready for Council's final review and approval in January.

City staff recommends City Council approve the resolution to offer Housing Trust Fund loans for the production of affordable housing in Fiscal Year 2003.

RESOLUTION BOOK NO. 27 – PAGE 269

I. RESOLUTION NO. 02-172 - RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION

Summary: Mr. Alan Levy has resigned as a member of the Downtown Commission, thus leaving an unexpired term until December 31, 2003.

On October 15, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Mr. Andy Archie to serve the unexpired term of Mr. Levy, term to expire December 31, 2003, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 270

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Peterson and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT THE INTERSECTION OF ARDMION PARK ROAD AND ALEXANDER DRIVE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF 12 DWELLING UNITS

Due to an error in legal advertisement, Vice-Mayor Bellamy moved to reschedule this public hearing until November 12, 2002. This motion was seconded by Councilman Ellis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 612 MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT/ CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A NEW STRUCTURE AND SITE PLAN SUPPORTING A DRUG STORE

ORDINANCE NO. 2964 - ORDINANCE TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 612 MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2965 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR A NEW STRUCTURE AND SITE PLAN SUPPORTING A DRUG STORE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a request to rezone property located on 612 Merrimon Avenue from Community Business I District to Community Business II District/Conditional Use and of a motion to issue a Conditional Use Permit for a new structure and site plan supporting a drug store.

On August 30, 2002, the City received a request to rezone a 1.78 acre parcel in the north area of the City of Asheville from Community Business I District to Community Business II/Conditional Use (City Exhibit 3 – Location Map). The parcel is known as PIN No. 9649-06-39-6470 at 612 Merrimon Avenue. Currently the property is the site of an Autozone Auto Parts Store. The existing building is 10,622 s.f. The proposed building will be 10,880 s.f. The conditional use component for this proposal will be the site plan, which is submitted for review along with the rezoning request. This site plan outlines the organization of the lot, size of the building, where driveways will be located, pedestrian amenities, street trees and buffering (City Exhibit 3 – Landscape Plan).

CB I zoning (the current zoning) allows a wide range of medium density neighborhood related services. This district may serve as a workplace for many residents and is also expected to be pedestrian friendly. The building size maximum is 6,000 s.f. for single story buildings or 12,000 if the building is multi-story. Existing single story buildings are allowed to be expanded up to 12,000 s.f. CB I does not allow drive-through facilities and parking must be placed to the side or rear of the structure.

CB II zoning (the proposed zoning) allows medium to high density business and service uses serving several residential neighborhoods. A wide range of neighborhood services is allowed in this district. CB II districts should also be pedestrian friendly while providing safe vehicular access. In this district, buildings may be up to 45,000 s.f. and may be one or several stories tall. Drive-through facilities are allowed in this district. Parking is to be placed at the side or rear of the structure, the same as for CB I.

The Zimmer Development Company is seeking to rezone the property to CB II because they are unable to salvage the old Autozone building. The building size proposed by the applicant is not permitted in the CB I zoning district.

The current zoning in the area is CB I for the parcels along Merrimon Avenue on both sides of the street. The parcel to the west of this site is zoned RM-16 and is the site of the Pinnacle Ridge Apartments.

A Traffic Impact Analysis (TIA) was prepared for this project and was reviewed by the City Engineering Department. No issues of concern were identified by the TIA aside from existing issues with Merrimon Avenue. The plan limits access directly to the site from Merrimon, allowing only a right in – right out turning movement.

The site plan places the building to the front of the lot to enhance the pedestrian experience and increase visibility by drivers. The structure features a brick façade with windows to relate to the street and to passersby (City Exhibit 3 – Building Elevations). Placing the building forward on the lot also increases the sense of place for the area. With the additional site improvements such as street trees and connecting sidewalks, Merrimon Avenue will begin to develop an attractive streetscape. In keeping with the requirements under the existing zoning and the recommendation of the Planning and Zoning Commission, the proposed project will not provide a drive through facility. Drive-through facilities can greatly increase traffic flow, increasing the potential for congestion at this intersection and decreasing the level of pedestrian safety. A drawing of the structure provided by the developer to Council does portray a drive through facility but it is not relevant for the current proposal.

The proposed project will comply with a signage package that is in keeping with CB I zoning, and not the CB II signage package. This will help the project fit into the neighborhood in which it is located. In addition, the signage will be externally illuminated signage; i.e. gooseneck external lighting or the like instead of internally illuminated plastic signage.

In addition to these considerations, the Planning and Zoning Commission has recommended the conditions for approval.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The development is within standards of development practice set forth by the City of Asheville. In addition, public safety providers have reviewed the site plan as part of the TRC review.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The proposed development is not substantially changing the existing topography of the site. In addition, more permeable areas will be provided by this site plan than are on the existing site. The existing buffer area that is adjacent to the Pinnacle Ridge Apartment complex will be protected and preserved.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Most adjacent properties are commercial enterprises; the development will be buffered from the adjacent residential development. The proposed development will not injure neighboring property values.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed use is a commercial use and will continue a tradition of single structure buildings in this part of Merrimon Avenue. The proposed structure is only about 200 feet larger than the existing structure.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed development will support the City's Smart Growth goals of redevelopment within the City area where services and infrastructure are already in place to adequately serve the development. The building will be placed towards the front on the Merrimon Avenue side of the property making it inviting for drivers and people walking. In addition the development is providing pedestrian connections to the project site and a pedestrian waiting space at the corner of Merrimon Avenue and Edgewood Road to facilitate crossing at the corner.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development site is located along a central artery for the City of Asheville and is has adequate infrastructure services.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The project engineers produced a TIA for this project that was reviewed by the City Engineering Department. It was noted at the last public hearing during Planning and Zoning review that traffic issues are a concern of some residents along Merrimon. This is a system wide problem and not caused by this project. A project going on this site will increase the traffic on Merrimon to a limited extent. Some additional signage and pavement markings on Edgewood Road may improve the use of the entrance on Edgewood. The Merrimon access will be right in and right out only to limit conflict points onto Merrimon. A transit shelter will be provided at the site by the developer. These actions and improvements will address the traffic impacts identified in the TIA.

The Planning and Zoning Commission voted 6-0 at their October 2, 2002, meeting to recommend approval of the conditional use proposal and site plan with the following conditions. Staff also recommends approval with conditions.

1. The traffic situation shall be evaluated further in an effort to identify additional traffic congestion mitigation strategies.
2. Signage and/or road striping shall be done on Edgewood to limit the blocking of the driveway.
3. Signage for the development shall comply with CB I standards.
4. No drive-through facility shall be provided.
5. Ensure that curb cuts provide ADA accessibility.
6. Buffer and landscape requirements will be finalized when existing tree counts are completed.
7. Consider the use of stormwater improvement practices.
8. Building must have an automatic fire sprinkler system.

Mr. Glines responded to various questions/comments from Council, some being, but are not limited to: will there be additional trees than what is currently located on the site; will there be a left turn arrow on Merrimon Avenue to turn onto Edgewood; is this CVS Pharmacy design different than a traditional CVS Pharmacy design; what is the sign package difference from a Community Business I district vs. a Community Business II district; will there be any problems with site distance from the trees on Edgewood Road; are there any environmental concerns on the site; and is the developer planning to do anything different regarding stormwater control.

Councilman Mumpower asked about the elimination of the drive through facility. Mr. Glines understood that the developer deleted the drive through because he wanted a project that would be received by the community and in an effort to compromise and reflect the residential goals, they deleted it. He explained that drive throughs tend to have potential conflict points for pedestrians on three sides of the building. Advantages of a drive through include (1) if you're sick, you don't have to get out of the car; (2) if you have small children, you don't have to park and get everyone out; or (3) elderly people don't have to go into the store to get prescriptions.

Regarding existing traffic, Vice-Mayor Bellamy asked if the incline on Edgewood Road toward Merrimon Avenue was taken into consideration for any roadway improvements. Mr. Glines said that the area out of the proposed development onto Edgewood Road could be stripped on the pavement so people coming down Edgewood Road waiting at the Merrimon Avenue light would not block the driveway. Vice-Mayor Bellamy asked if the driveway on the other side of Edgewood Road leading into Edgewood Square shopping center try to be aligned with the driveway going into the CVS Pharmacy to help eliminate blocking of the driveways and the blind spot coming down Edgewood Road.

Upon inquiry of Councilman Dunn about the location of the building on the property and the windows, Mr. Glines explained that this type of layout is required in the UDO under the Community Business I and II zoning. That layout is buildings forward on the lot and parking to the side or rear. The layout is staff's suggestion, but UDO supported. In addition, Mr. Glines felt that the developer recognized the pedestrian potential for this project since it is so close to UNC-Asheville and neighborhoods. He did note that because of the topography of the site, the building is located in the most likely spot, as is the current building.

Mr. Larry McDevitt, attorney representing Zimmer Development Company and CVS Pharmacy, said that because they want to build a better building (with brick) that would be compatible with the community and meet still their needs, they determined that they could not build on the existing foundation. They talked to numerous people in the community about the project and found they objected to two things – rezoning to Community Business II and the drive through facility. Even though they could make more money at the store with a drive through, they analyzed it, listened to the community's objections and decided to show they were flexible and cooperative. In an effort to respond to the community, they decided to delete the drive through facility (Applicant Exhibit 1 – Revised Site Plan). This project has been going on for approximately two years (but since August 2002 for the formal submittal process) and they have had a lot of discussions with City staff in a give and take process. They have worked cooperatively with staff and feel they have addressed the major community concerns. He asked that the following exhibits be entered into the record: Applicant Exhibit 2 – Application; Applicant Exhibit 3 - Planning & Zoning Minutes of October 2, 2002; Applicant Exhibit 4 – TRC Conditions of September 16, 2002. Mr. McDevitt said that they feel that Condition No. 1 (The traffic situation shall be evaluated further in an effort to identify additional traffic congestion mitigation strategies) has already been done and he believed that they have an agreement with City staff about traffic mitigation. He said the TIA they submitted find that they comply with traffic requirements. Regarding Conditions 2-7, they agree to abide by and be bound by those conditions if this is approved. He urged Council to rezone the property in order to have a better building, one that is aesthetically more pleasing, one that serves the public interest, one that is more pedestrian friendly and a project that will actually assist in some of the traffic situations. Applicant Exhibit 5 – Aerial Photo of the Site. He noted that their development is compatible with other development in the area – a one level building that is commercial. He said they have added a number of amenities for pedestrians, some being a covered shelter for a bus stop and a rest area at the corner. Applicant Exhibit 6 – Photo of Another CVS Pharmacy. He felt this project was worthy of Council's total support and asked for Council's approval. Applicant Exhibit 7 – Traffic Impact Analysis.

Mr. Keith Thomson, resident on Bridle Path Road, felt that traffic studies by developers should be held to a higher standard. In this particular project, the TIA did not mention Edgewood Road except in the footnotes to mention that the intersection of Edgewood and Merrimon is at 104% of capacity as measured by the State Department of Transportation. He felt that intersection is already a problem and if the pharmacy is built, it will only add to that congestion. We need the developer to join us, as new neighbors, in helping to address the issues and not ignore them. They have been trying to get sidewalks and traffic calming measures in the Jackson Park/Woolsey neighborhood for over 8 years and when the Center for Creative Retirement opens up at UNC-Asheville, there will be a potential for more elderly drivers to come through the neighborhood. He said that another serious traffic flow problem is that every time a large semi-truck making a delivery comes off Edgewood onto the property, they get stuck and he hoped they have a plan to address that concern.

Mr. William Sabo, representing the Grace Neighborhood Association, explained why he felt this request is a product of a system that is designed for sound planning, but in reality it's a product of a process that gives the petitioner the upper hand. He said that even though the petitioner has been working with the City for two years, the neighborhood only found out about it a couple of weeks before the Planning & Zoning Commission meeting. He said the petitioner only contacted one individual and at a meeting of three neighborhood people, they were only given a rough overview of some of the conditions the City was imposing on the project. The neighborhood opposed the rezoning of the property because among other reasons, that would permit CVS to install a drive through window. They were told that rezoning was essential because they work with an off-the-shelf floor plan for the store. They were told it was not financially feasible to modify the plan. They encouraged the petitioner seek alternatives which would allow CVS to expand without rezoning. In summary, the next time the petitioner talked to the neighborhood was during the Planning & Zoning Commission meeting in which they said they dropped the drive through but would continue with the rezoning. He felt that CVS only created the illusion of working with the neighborhood. After review of the TIA, there at least four fundamental methodical errors. One was their failure to ignore the impact of traffic on the other side of Edgewood Road and the petitioner just challenged their ability to understand the report. CVS is asking the City to bend it's rules to their interest by rezoning the property, but the City needs to protect the citizens in these neighborhoods by enforcing the City's rules and regulations. Until there is a true consultation by all parties affected, no one can really say if this change is for the better. In order to preserve the rules and integrity of the system, he asked Council to refuse to rezone the property and begin to revisit and revise the process to ensure that true consultation of all interested parties takes place.

Ms. Katherine Fincher, resident on Wildwood, reiterated there was no traffic impact analysis where Kimberly comes down to Merrimon Avenue. Whether or not CVS Pharmacy is built or not, there needs to be left turn arrows heading north and south on Merrimon Avenue.

Ms. Laura Chase, representing the Norwood Park Neighborhood Association, said that they feel that City staff and the petitioner worked together without neighborhood involvement. She felt that zoning is here for a reason and it should be upheld. She felt that rezoning this property might set a precedent and others will request their property be rezoned to Community Business II thus creating more traffic on Merrimon Avenue. She felt that one of the reasons City staff is advocating a larger structure is that it's consistent with the proposed Neighborhood Corridor District and they are not familiar with the standards for that district.

Ms. Melanie Shelor, resident on Merrimon Avenue, spoke against the rezoning in that the intersection will not handle the capacity of vehicles generated by a CVS Pharmacy.

Mr. Dwayne Conner spoke in support of the rezoning. He felt they are going to develop a project that is pedestrian friendly and feels this is one of the best uses of this property.

Mr. Craig Justus, attorney representing Zimmer Development Company and CVS Pharmacy, stressed that conditional use zoning is a tool City Council has in their rules and that it allows City Council to control what is built on a piece of property. They have offered a lot of pedestrian improvements, e.g. moving the bus stop to a safer location on their property, moving the building closer to the street for an attractive streetscape. City staff directed them on what study in the TIA and after their review, they said the report was fine. The comment that the intersection at Edgewood Road and Merrimon Avenue is at 104% capacity is not accurate. Their traffic engineer will address that point. He pointed out that when they knew there was neighborhood opposition, they requested a meeting and there were two things the neighborhood was opposed to – a drive through facility and the rezoning. They needed to request rezoning because without it, they could not develop their project. So, they deleted the drive through, which was not an easy decision. They believe they have met the concerns expressed, feel that they have a good application and a good precedent will be set if Council approves this project.

Ms. Kelly Grady, traffic engineer with Kimley-Horn and Associates Inc., said that they use the highway capacity manual method for TIA's. The highway capacity manual method shows that the intersection of Edgewood Road and Merrimon Avenue would be a Level of Service A in the morning peak hours and a Level of Service B in the afternoon peak hours, based on a scale of A through F. The 104% capacity is related to a different software method and not the standardized highway capacity manual method, which is the accepted standard used. She reiterated that the intersection is not a failing intersection.

Upon inquiry of Councilman Ellis, City Engineer Cathy Ball said it appears the numbers are accurate based upon our review of the developer's TIA.

Vice-Mayor Bellamy strongly advocated a traffic calming mechanism on Edgewood Road that has nothing to do with intersections. She said that driving from UNC-Asheville to Merrimon Avenue on Edgewood Road is not safe. She said there is a blind spot and an incline coming down to Merrimon Avenue.

Upon inquiry of Mayor Worley, Ms. Grady explained how the data of 126 additional trips per day was arrived at in the TIA. She noted that there is a negligible difference in trip generation between with and without a drive through facility.

Upon inquiry of Councilman Mumpower about a problem with trucks accessing the property, Mr. Justus said that they propose to improve the parking lot grades so there is a better transition with adjoining streets. Mr. Jim Bell, with Kimley-Horn and Associates, Inc., said that when they redesign the site they would work with the grades to make sure that the problem will not exist. He said they could even limit the size of trucks that will deliver to the store.

Councilman Mumpower questioned why the drive through facility was deleted, especially when it shows there will only be a negligible difference in traffic. City Engineer Ball said that in reference to the information that is provided by Ms. Grady, there is a standardization and that is accepted practice. She is assuming if the numbers are negligible then there must be the assumption that people are going to come to the pharmacy regardless of whether or not it has a drive through. The thought behind putting in a drive through would be that it would be more convenient and therefore people would have a desire to go there. She said that it's hard from an engineering standpoint to say that a drive through facility generates more traffic, but that there is the perception is that there is more traffic as well as a potential for more pedestrian conflicts if there is a drive through.

Councilwoman Jones asked about traffic calming measures on Edgewood Road. City Engineer Ball said that the City is in the process of, due to another project, looking at some traffic calming measures on Edgewood Road, but it is not funded. In the early 1990's there were some traffic calming measures installed on Edgewood Road. Those consisted of rumble strips but they created a problem because of the noise and the neighborhood requested they be removed. They were removed and then traffic calming measures of stop signs were installed, which are not recommended traffic calming measures. The reason why City staff did not recommend traffic calming on Edgewood Road is that the study seemed sound and the study indicated that there is only an additional 50 vehicles a day added to Edgewood Road as a result of this development. A recommendation to require the developer to do traffic calming would have been excessive considering there would only be 50 additional vehicles per day on Edgewood Road.

Upon inquiry of Councilman Mumpower, Ms. Ball used Figure 4 from Applicant's Exhibit 7 to show there would be an additional 25 vehicles traveling on Edgewood Road from Merrimon Avenue to Kimberly Avenue.

Vice-Mayor Bellamy asked about sidewalks on Edgewood Road. City Engineer Ball said that there are only sidewalks to the apartments on the left on Edgewood Road from Merrimon Avenue. The City has also looked at the opportunity in working with UNC-Asheville and the neighborhood to put sidewalks in. It appears that without taking right-of-way, we would need to decrease the width of the pavement. That is an option, however, there are a lot of people who use on-street parking and you have to give up the option of using on-street parking if you put in the sidewalks without right-of-way.

When Councilwoman Jones asked how citizens could participate in discussions of the proposed Neighborhood Corridor District, Planning & Development Director Scott Shuford suggested they contact Chief Planner Gerald Green. Mr. Shuford did say that if that district is applied to another street in the City (other than the proposed Broadway Avenue), meetings would be held.

When Councilwoman Jones suggested the UDO be amended to make it mandatory that developers meet with neighborhoods, Councilman Mumpower felt there might be creative ways to meet this objective other than making it mandatory.

Upon inquiry of Councilman Mumpower, Mr. McDevitt said that even though a drive through would be a convenience to certain groups and doesn't have a significant impact on traffic, they will not ask City Council to approve the project with a drive through.

Councilman Dunn asked how many CVS pharmacies have drive throughs. Ms. Leigh Polzella, Construction Project Manager with CVS Realty Co., said that most freestanding locations have drive throughs and explained the convenience associated with them. Through the last two years on this project there has been a lot of give and take and they are trying to be community friendly and more accessible to their customers.

When Councilman Mumpower asked if City Council can modify what is before City Council, City Attorney Oast said that if he is talking about adding the drive through facility, it is a significant enough of a change to the site plan to require a new notice and public hearing process.

Councilman Ellis said that he would not be in favor of adding the drive through facility because the developers are not asking for it now and the neighborhood does not want it.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:38 p.m.

Councilman Peterson said that he felt CVS has made a number of changes and he felt this rezoning would be better for the property and the City as a whole. He felt that considering what could be done on the property with the existing zoning, this proposal with conditions would be better for the neighbors. He was somewhat concerned that the developer negotiated with the City for 1-1/2 years without having direct input from the neighbors. We also need to be looking at what is happening on Merrimon Avenue as a whole because we are reaching a breaking point regarding traffic.

Mayor Worley felt that most comments were about the process, not the seven conditional use standards City Council must determine that the project meets. He felt the project would be better for the community.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2964 to rezone property located on 612 Merrimon Avenue from Community Business I District to Community Business II District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

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Mr. Shuford said that Condition No. 1 could be eliminated if Council chooses. Council could direct staff to look at Edgewood Road at every opportunity to calm traffic and cut down on cut-through on that roadway. He suggested Council delete that condition and give staff direction as a separate action. He felt that Condition No. 1 would place a burden on the developer that staff doesn't feel is necessary. We have a formal process for handling traffic calming and staff will look at Edgewood Road.

Councilman Peterson doesn't think we are looking at requiring the developer to put any off-site traffic calming measures, but asking staff to keep in mind this site plan if there are minor changes that need to be made to Edgewood Road, e.g., widening the driveway a little or stripping immediately adjacent to this property.

Vice-Mayor Bellamy does want off-site traffic calming measures on Edgewood Road. She felt that this development is a key player regarding traffic in the area.

City Engineer Ball explained how Condition No. 1 was placed on staff's recommendations. She said it came directly out of comments made at the Planning & Zoning Commission meeting in which there were some comments made by the neighborhoods about different issues and we were talking about some possible solutions. The intent was just not to close the door and to leave some options on the table to say if something comes out that seems like a good idea to do, then we should pursue that. She felt staff evaluated everything and she doesn't think there is anything else on site that we can do – it wasn't with the intent of doing major off-site mitigation. The City has been in discussions with the State about Merrimon Avenue for the past 5-6 years and evaluated three different possibilities of treating Merrimon Avenue – all of which weren't feasible. A tool that Council can use is obtaining special legislation to impose a traffic impact fee. In that case, different stores may not contribute to the whole problem, but you can collect money that will go toward fixing the whole problem. City Council may wish to pursue that option in the future to be fair about the impact that development pays on making improvements.

Councilman Ellis moved to adopt Ordinance No. 2965 to issue the conditional use permit for a new structure and site plan supporting a drug store, subject to the following conditions (which is staff's conditions deleting Condition No. 1): (1) Signage and/or road striping shall be done on Edgewood to limit the blocking of the driveway; (2) Signage for the development shall comply with CB I standards; (3) No drive-through facility shall be provided; (4) Ensure that curb cuts provide ADA accessibility; (5) Buffer and landscape requirements will be finalized when existing tree counts are completed; (6) Consider the use of stormwater improvement practices; and (7) Building must have an automatic fire sprinkler system. This motion was seconded by Councilman Mumpower.

Vice-Mayor Bellamy moved to amend the original motion to include an additional condition to direct City staff to consider the need for additional traffic calming measures on

Edgewood Road from Merrimon Avenue to Darcy and, if recommended, implement those at the developer's expense. This motion was seconded by Councilman Peterson.

Councilman Dunn wondered if Vice-Mayor Bellamy would amend her motion to read: "The traffic situation shall be evaluated further in an effort to identify additional traffic congestion mitigation strategies, at the City's expense." Vice-Mayor Bellamy did not agree to amend her motion.

Upon inquiry of Councilman Mumpower, City Engineer Ball said that there is a traffic problem on Edgewood Road. The past history over the past ten years indicates that people have been trying to work on issues there with traffic calming that has already occurred. However, in the review of the project, our request of the developer was in line with the additional impact that they were creating, based on the engineering data they provided.

Mayor Worley felt all of Council agreed that there needed to be traffic calming measures on Edgewood Road, but the question of who should pay for it – the developer or City taxpayers. Since the traffic study shows the development will bring negligible additional traffic to the area, he couldn't agree with making the developer pay for those measures.

The amendment to the motion made by Vice-Mayor Bellamy and seconded by Councilman Peterson failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no".

The original motion made by Councilman Ellis and seconded by Councilman Mumpower carried unanimously.

It was the consensus of City Council to make it a priority to have City staff to look at Edgewood Road from a safety standpoint and also from a traffic calming standpoint.

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At 8:10 p.m., Mayor Worley announced a short break.

C. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED AT BILTMORE LAKE – ENKA IDENTIFIED AS THE GABLES AT BILTMORE LAKE

ORDINANCE NO. 2966 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT BILTMORE LAKE – ENKA IDENTIFIED AS THE GABLES AT BILTMORE LAKE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:35 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is a request to consider a conditional use permit for property located at Biltmore Lake – Enka identified as The Gables at Biltmore Lake for a proposed 258 unit residential development in the City's western extraterritorial jurisdiction.

On August 30, 2002, Biltmore Farms submitted an application for Level III site plan review for an age restricted residential community consisting of both single housing units and multifamily units (City Exhibit 3 – Location Map). The parcels include PIN Nos. 9616.01-18-6804 and a portion of 9616.01-07-9761 and total approximately 59 acres bordering Biltmore (Enka) Lake. The housing total is made up of 168 condominium units, 38 multiplex units, 24 villa units (duplex format) and 28 single family units for a total of 258 units (City Exhibit 3 – Site Plan). The development is accessed from Enka Lake Road by a central street with the residential streets coming from this central spine. Streets in the development will be private but will be built to City of Asheville standards. As proposed, the entrance at Enka Lake Road will be gated.

The surrounding area is zoned RM-16 Residential Multi-Family High Density District including this parcel. The adjacent Buncombe County school parcel is zoned Institutional. The RM-16 multi-family residential district allows up to 16 units an acre. Under the current zoning, up to 940 residential units could be constructed on the site given the acreage. With the current rezoning request the applicant is seeking approval of 258 units with a density yield of 4.4 units per acre.

In addition to the different housing types that will be a part of this proposal, the Gables project will also include a 19,000 square foot recreation center. For open space and recreation uses, the Unified Development Ordinance (UDO) requires nearly 3 acres of open space for the project. The proposed site plan far exceeds this minimum amount of open space.

The engineers for the project have submitted a letter describing the traffic impacts of the project. The original Traffic Impact Analysis (TIA) for the Biltmore Lake project included a projected 88 single family houses for this area of the development. Because this is a special population of active retirees in an age restricted community, it is felt that the traffic generated will be less than if the uses were being developed for the same number of typical single family units. The 88 single family units accounted for in this area of the development in the original TIA would actually have a greater impact than this number of 'retiree' units. The traffic impact analysis completed for this project noted the need for improvements on Sand Hill Road and connecting streets in the area. This includes the need for additional turning lanes in the roadway system and perhaps additional signalization. Widening for Sand Hill Road is in the N. C. Dept. of Transportation (DOT) schedule already but is still some time off. Biltmore Farms has been discussing the roadway issue with DOT staff to speed up the construction time frame. The final traffic plan is also being worked on at this time.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case

(UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The development is within standards of development practice set forth by the City of Asheville. Public safety providers reviewed the project as part of the TRC review.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The nearly 59-acre site is mostly wooded and slopes towards the lake. The developer is proposing to maintain a minimum 80' vegetated buffer between the proposed structures and the lake. This area will be undisturbed save for minimum impacts from the construction of walking paths and other park style amenities.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed development will not injure neighboring property values. Overall the Biltmore Lake project is expected to increase values of property in the area.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The surrounding properties include a school property and other wooded property. This residential project will be well buffered to retain the wooded nature from both inside and outside of the project. The entire Biltmore Lake project will be a part of what defines the character of the surrounding area.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The development will provide housing options for current and new residents.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This area is being considered by the DOT for roadway improvements for Sand Hill Road. Other utilities will be adequately served in the area. Currently Buncombe County will provide protective services in this community. If the area is annexed by the City of Asheville, then the City will extend services here.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The roadway network in the Enka area has received increased traffic from Sardis Road, along Sand Hill Road to the area of Highway 19-23. The Biltmore Lake development will add to this traffic situation. Biltmore Farms has been in discussions with DOT to determine what improvements are required and to complete them in a timeframe consistent with the construction of the development phases.

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The Planning and Zoning Commission voted 6-0 at their October 2, 2002, meeting to recommend approval of the conditional use proposal and site plan with the following conditions. Planning and Development staff concurs with this recommendation.

1. If the Gable project's main drive from Enka Lake Road is connected through to Case Cove Road at some time in the future, then the issue of making the street a public street be reviewed again.
2. All streets within the project shall be built to City of Asheville standards.
3. Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings, street trees and parking lot plantings included) which should include existing plant material that will be credited towards the planting requirements.
4. The developer shall work with City staff to insure that the urban type of development proposed for this project receives an urban level of public safety services.
5. Sidewalks are required for all new streets and along Enka Lake Road.
6. Cul-de-sac streets should be avoided and loop streets should be created where feasible.
7. Parking space needs will be reviewed with requirements from the UDO.
8. Water line extension plans will be reviewed by the City Engineering Department
9. Sewer extension plans will be reviewed by MSD.
10. Maintain a minimum 80' of undisturbed lakeside buffer area.

One additional condition that was not mentioned during prior reviews may be:

11. Biltmore Farms will continue to work with DOT to complete roadway improvements identified in the TIA in a manner timely to the completion of Biltmore Lake project phases.

Upon inquiry of Councilwoman Jones, Mr. Glines explained the pros and cons of a cul-de-sac. The advantage is that some people like to live at the very end of a street and a disadvantage is that a cul-de-sac destroys the connectivity to other streets.

Councilman Peterson was concerned that, even though Sand Hill Road and Enka Lake Road are state maintained roads, with only one road in and out of the development, in the future there may be a problem with traffic, especially with the schools in the area. Mr. Mark Teague, N. C. Dept. of Transportation (DOT) Division Traffic Engineering, responded that as far as access, there can be problems and technically DOT is just now beginning to work with the developer on this as well as the entire development. He didn't recall if any improvements were recommended but if you have that much traffic coming out, there's a chance that a turn lane may be recommended. He didn't think a traffic signal would be warranted, however, he has not seen the numbers.

Upon inquiry of Councilman Peterson, City Manager Westbrook said that it was his understanding that the developer will voluntary annex in the future in phases, as they did with the Biltmore Park developments. City Attorney Oast cautioned Council to not let that influence City Council's action in this matter.

Upon inquiry of Councilwoman Jones, Mr. Dan Baechtold, the City's Transportation Planner, said that there are a number of improvements recommended in Transportation Improvement Analysis (TIA) for this development. The developer and DOT are working together to come up with a schedule on how those would be phased and how the cost-sharing would work. There are other projects under consideration in the area that are more on the scale of projects that the State would do as part of the Transportation Improvement Program (TIP). Those would include any major road widenings of Sand Hill Road and Sardis Road, which there is a feasibility study in the TIP now to look at widening that whole section. There are some specific improvements that the developer would do as part of concurrency with the phases of the development and then some other longer term major improvements that DOT will consider. There is a smaller TIP project to replace the bridge over Hominy Creek and to widen a short segment of Sand Hill Road in the vicinity of this development and that is already scheduled and funded in the TIP.

Mr. Will Buie, engineer with William Lapsley and Associates, said that if the project is approved, Vantage Senior Care will purchase the property, which is owned by Biltmore Farms, and develop an age-restricted community. The reason why they are asking that the project be a gated community is because the people that the owners are marketing to are not necessarily from this area and living in a senior community, being gated and secured, is very important to them. We have had discussions with City staff about the main artery road and possibly making that a public street if it's ever extended in the future and we have no problem with leaving that in as a condition to project approval. At this time we have taken the staff's directive to look at looping the roads in the development and we do believe there are some opportunities to provide some loops and eliminate some cul-de-sacs. If the project is approved, we will go back to City staff for their final approval. Regarding traffic at a single entrance, they have looked at that. This is an age-restricted community and the traffic generation out of this development is very different. Even though there are 258 units, the actual traffic corresponds to approximately 88 single-family homes. We believe the traffic generated by this project will be significantly less than 258 typical single-family homes. We do intend to work with DOT for the entrance to the development and we already anticipate that we will be building turning lanes or making some improvements to that entrance.

Upon inquiry of Councilwoman Jones of what is a gated community, Mr. Buie explained that specifically there is supposed to be an entrance feature at the main entrance off of Enka Lake Road. That will be made up of landscaping and other improvements and it will also probably include a gatehouse. At this time they are not proposing to have closed gates. At some point in future the property owners association will take over all of the facilities. They may find that they would like to have someone man a gatehouse and to admit people as necessary. The developers feel that is an important aspect of this project.

Upon inquiry of Councilwoman Jones, Mr. Buie said that the range of units would be approximately $250,000 - $400,000.

City Attorney Oast reminded Council that there has been information about the group that has this property under contract and what their particular intentions are with respect to it. If Council approves this, the owners could turn around and sell it and it would not necessarily be for an age-restricted community. It would be for the development that is on the site plan. Again, they have made representations about their target residents but City Council is approving the use, not the population.

Upon inquiry of Councilman Mumpower, Mr. Glines said that a concern raised at the Planning & Zoning Commission meeting was primarily for the main artery to be a through street for connectivity.

Councilwoman Jones asked how many gated communities does Asheville currently have. Planning & Development Director Scott Shuford said that we have a limited under and that we discourage gated communities because of the connectivity issue and the exclusivity.

Councilwoman Jones understood that our community is growing and that the City is trying to accommodate the range of buyers who might live or come to our community, but she didn't quite feel like it was the right spirit of how we are operating in a community to support a gated community. She did understand, however, that this gives us more options for our current and future residents and give us more housing options for them to choose from and that is part of our comprehensive plan. Mr. Glines responded that there are portions of the Biltmore Lake project that will appeal to different housing needs and types in the community.

Ms. Sylvia Farrington, resident of Biltmore Commons, spoke in support of the development.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 9:26 p.m.

Councilman Mumpower moved to adopt Ordinance No. 2966 to issue the conditional use permit for property located at Biltmore Lake – Enka identified as The Gables at Biltmore Lake for a proposed 258 unit residential development, subject to the following conditions (which is staff's conditions deleting Condition No. 6, not including Condition No. 11 and adding an entirely new condition): (1) If the Gable project's main drive from Enka Lake Road is connected through to Case Cove Road at some time in the future, then the issue of making the street a public street be reviewed again; (2) All streets within the project shall be built to City of Asheville standards; (3) Final landscape plans will be fully reviewed for shrub and tree counts (buffer plantings, street trees and parking lot plantings included) which should include existing plant material that will be credited towards the planting requirements; (4) The developer shall work with City staff to insure that the urban type of development proposed for this project receives an urban level of public safety services; (5) Sidewalks are required for all new streets and along Enka Lake Road; (6) Parking space needs will be reviewed with requirements from the UDO; (7) Water line extension plans will be reviewed by the City Engineering Department; (8) Sewer extension plans will be reviewed by MSD; (9) Maintain a minimum 80' of undisturbed lakeside buffer area; and (10) Any change in the permitted population which would have a substantial traffic impact increase greater than 10% shall require an amendment to the conditional use permit. This motion was seconded by Councilman Peterson.

After a brief discussion about the developer's willingness to do loop streets in the development, Councilman Ellis moved to amend the original motion to include two conditions (which are staff's Conditions 6 and 11): (1) Cul-de-sac streets should be avoided and loop streets should be created where feasible; and (2) Biltmore Farms will continue to work with DOT to complete roadway improvements identified in the TIA in a manner timely to the completion of Biltmore Lake project phases. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no".

Vice-Mayor Bellamy explained that since the developer has already noted on the site plan where cul-de-sacs would become loops and the condition is too vague.

The original motion, as amended, made by Councilman Mumpower and seconded by Councilman Peterson carried unanimously.

Councilwoman Jones hoped that the developer makes the gate as friendly as possible and that it remains more open than closed. In terms of her hopes for future gated communities, she hoped that they are more the exception than the rule.

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D. PUBLIC HEARING TO CONSIDER A REQUEST FOR A MODIFICATION FROM THE SUBDIVISION STANDARDS TO ALLOW THE CREATION OF A LOT THAT DOES NOT ABUT A PUBLIC STREET ON PROPERTY LOCATED AT 5 BELL HAVEN ROAD

Mayor Worley opened the public hearing at 9:37 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a request for a modification from the subdivision standards to allow the creation of a lot that does not abut a public street on property located at 5 Bell Haven Road. This public hearing was advertised on October 11 and 18, 2002.

The City has received a request from Tim and Jan Haynes to subdivide a parcel located at 5 Bell Haven Road (PIN No. 9668.05-19-0612) into two lots. The parcel is 2.47-acres in size and zoned RS-4 Residential Single Family Medium Density District. The property has very narrow frontage onto Bull Mountain Road, which is a public street. The lot also has a narrow strip of land running from Bull Mountain to the bulk of the lot that is located behind four other lots. There is a private street, Bell Haven Road, located within this narrow strip that provides access to the lot in question as well as seven other properties. Since it is not possible to obtain the minimum frontage for the new lot as specified in the Subdivision Ordinance, a modification is required in order to subdivide the property with one lot not having public street frontage.

The petitioners wish to subdivide the lot in order to build another home on its own lot with access to the private Bell Haven Road. Only one additional home is proposed and each of the resulting lots from the subdivision would be able to meet the UDO requirements of the RS-4 District for minimum lot size and setbacks.

The proposed subdivision modification was reviewed by the Technical Review Committee (TRC) at its September 16, 2002, meeting and they recommended approval with the following conditions:

1. The right-of-way for Bell Haven Road must be widened to a minimum of 25 feet and be able to accommodate any future work done by the Water Department in regards to maintenance of the existing water line.
2. Applicant will need to obtain an easement across another property to gain access to public sewer system.
3. The existing lot will need to retain some frontage onto Bull Mountain Road.
4. Any construction work within the water line right-of-way must be coordinated with the Water Resources Department

The TRC voted unanimously and Planning and Zoning Commission voted 6-0 to recommend approval with the above-mentioned conditions. The Planning and Development staff also recommends approval of the subdivision modification with the conditions.

When Councilman Peterson asked how the people will get garbage collection if they are on a private road, Mr. Pettibone said that there are garbage bins along the private street and the City does provide garbage pickup on a private street if it is maintained.

Mayor Worley closed the public hearing at 9:44 p.m.

Councilman Mumpower moved to allow a modification from the subdivision standards to allow the creation of a lot that does not abut a public street on property located at 5 Bell Haven Road subject to the following four conditions: (1) The right-of-way for Bell Haven Road must be widened to a minimum of 25 feet and be able to accommodate any future work done by the Water Department in regards to maintenance of the existing water line; (2) Applicant will need to obtain an easement across another property to gain access to public sewer system; (3) The existing lot will need to retain some frontage onto Bull Mountain Road; and (4) Any construction work within the water line right-of-way must be coordinated with the Water Resources Department. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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E. PUBLIC HEARING TO REZONE PROPERTY LOCATED ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 2967 - ORDINANCE TO REZONE PROPERTY LOCATED ON EMMA ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 9:42 p.m.

Urban Planner Carter Pettibone said that this is consideration of an ordinance to rezone property located on Emma Road from RM-8 Residential Multi-Family Medium Density District to Community Business I District. This public hearing was advertised on October 11 and 18, 2002.

The applicant, Salvador's Bohemian Market, is requesting rezoning of the 1.06-acre parcel (PIN No. 9639.18-30-1917) in order to redevelop the property for uses permitted in the CB I District. The purpose of the CB I District is to provide for medium-density business and service uses serving several residential neighborhoods

The property is a very shallow one as it is wedged in between Emma Road to the north and the railroad right-of-way to the south. There are three existing buildings on the site, all of which are vacant and one of which will need to be torn down due to its dilapidated condition. The larger of the two that can be salvaged is around 6,000 square feet in area. The applicant has expressed her desire to use these remaining buildings as part of a small commercial development.

This property is located just outside the City Limits in the extraterritorial jurisdiction in an area that has a variety of uses and zoning. The properties immediately across Emma Road to the north and to the east of the property are zoned RM-8 and contain a mix of single-family and manufactured homes. Properties to the west at the intersection of Emma Road and North Louisiana Avenue are commercial and function as the center of the Emma community. Immediately south across the railroad is the Holiday Inn Sunspree Resort.

The site's frontage is on Emma Road, which would likely function as the site main access. The road is a fairly well traveled one, both for cars and pedestrians, and should be able to accommodate any traffic increase that would result from development on the site.

Staff feels CB I is an appropriate zoning category for the parcel for a number of reasons. The shallow shape and wide street frontage of the property due to the street and railroad and its location adjacent to the railroad do not lend the property to being suitable for residential uses. The proposed zoning also helps to provide a transition from the CB II and Resort zoning to the west and south to the residential uses of the RM-8 to the east and north. There is a CB I district between Emma Road and the railroad directly west of the CB II zoning at Emma and Louisiana and this property would fill in the intersection's other "flank" with similar zoning. CB I zoning would also provide the opportunity to preserve and improve the remaining buildings on the site for economically viable uses and help further strengthen the Emma community area.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the property located on Emma Road from RM-8 to CB I. City staff feels CB I zoning is appropriate for the parcel as well.

Ms. Leslie Stevens, owner of the Salvador's Bohemian Market, briefed City Council on the background of the property and urged City Council to rezone it. In addition, she requested

Council's assistance in slowing down the traffic on Emma Road and seeing what they can do to get sidewalks on Emma Road.

City Attorney Oast responded to her questions regarding sidewalks for new developments.

Mayor Worley closed the public hearing at 9:58 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 2967. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 02-173 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Bellamy said that there currently exists two vacancies on the Civic Center Commission.

On October 22, 2002, City Council interviewed Ms. Sylvia Farrington. In addition, on October 22, 2002, City Council asked that the City Clerk verify that Mr. Dan Breneman was still interested in serving on the Commission. Mr. Breneman is interested.

Vice-Mayor Bellamy moved (1) to appoint Ms. Sylvia Farrington as a member of the Civic Center Commission to serve an unexpired term until June 30, 2005; and (2) to appoint Mr. Dan Breneman as a member of the Civic Center Commission to serve an unexpired term until June 30, 2004. Both terms are until their successors have been appointed. This motion was seconded by Mayor Worley and carried unanimously.

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B. RESOLUTION NO. 02-174 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Bellamy said that Mr. Thomas House has resigned as a member of the Recreation Board, thus leaving an unexpired term until December 31, 2003.

On October 15, 2002, City Council instructed the City Clerk to arrange for Carol Ann Pothier and Leonard Jones to be interviewed for a vacancy on the Recreation Board. Mr. Jones was unable to attend the interview, however, he was interested in serving.

Vice-Mayor Bellamy moved to appoint Carol Ann Pothier to serve the unexpired term of Mr. House, term to expire December 31, 2003, or until her successor has been appointed. This motion was seconded by Councilman Ellis and carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of September 27-October 10, 2002: William Proffitt (Water), Sylvia Burke (Streets), Ken Cryderman (Water) and Travelodge (Water).

The following claims were received during the period of October 11-17, 2002: CP&L (Water), Katherine Lipe (Water), Carol Bryan (Water), Dawn Hirshom (Water), Tom Karl (Streets), All Aluminum Co. (Engineering) and Mrs. Nash (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 29, 2002
Public Works Facility
161 South Charlotte Street

7:00 p.m. – Community Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Councilman Brian L. Peterson

The following topics were raised by residents and addressed by City Council and City staff: the need for UNC-Asheville, neighborhoods and the City to work together on a plan for sidewalks and traffic calming on Edgewood Road; the need for block numbers on street signs; concerns about 4-story buildings being allowed in the proposed Neighborhood Corridor District if applied to Broadway Corridor; and concern about the need for traffic synchronization signals for the two lights on Tunnel Road at Parkway Forest.

Mayor Worley adjourned the meeting at 7:30 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 5, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Terry M. Bellamy

CONSENT:

Adoption of the Buncombe County Solid Waste Management Plan

Summary: The consideration of a resolution to approve the Buncombe County Solid Waste Management Plan.

The City of Asheville actively participated in the development of the Buncombe County Solid Waste Management Plan covering the period July 1, 2002, to June 30, 2012, as required by the North Carolina Department of Environment and Natural Resources.

N. C. Gen. Stat. sec. 130 A-309.09A (b) requires each unit of local government to develop a comprehensive 10 year solid waste management plan in cooperation of local governments. The draft report was presented to City Council August 24, 2002, and the public comment period has ended. The changes to the draft report include:

- Buncombe County cardboard recycling figures changed to reflect residential customers only.
- Asheville's recycling program cost correction ($3.00/mo to $2.55/mo)
- Formatting and grammatical edits.
- Comments from private citizens.

City staff recommends approval of the Buncombe County Solid Waste Management Plan.

Temporary Services Agreement with Forsyth Initiative for Residential Self-Help Treatment Inc.

Summary: The consideration of a resolution to approve the Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment Inc. (FIRST) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation Division), Parks and Recreation Department and Civic Center. The contract is a collective contract for all City Departments.

FIRST is a non- profit organization providing counseling to individuals and provides individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville utilized FIRST staff last year with excellent results and has expanded the seasonal program with FIRST.

City staff recommends approval of the Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment Inc. for temporary workers.

Community Oriented Policing Services (COPS) in Schools Grant Award

Summary: The consideration of a resolution entering into an agreement with the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS), to accept a COPS in Schools grant award and adoption of the accompanying budget amendment.

The Asheville Police Department was awarded a $110,912 grant for three years from the U.S. Department of Justice to hire one, full-time police officer through the COPS in Schools program. No match is required for this grant.

The Asheville Police Department has participated in the School Resource Officer program since the early 1990's. Since 1988, ten schools have had contact with a school-based police officer on a regular basis. The program has been very successful in our community. The COPS in Schools grant is a great opportunity for the City of Asheville Police Department to enhance our community policing efforts by adding one full-time officer to the department to work exclusively with one of our city schools. All salary and benefit expenses for the officer are covered through this program for the three-year grant period.

The City of Asheville entered into an agreement with the City of Asheville School System for this School Resource Officer in April 2002. The agreement outlines the duties of the School Resource Officer, which include consulting with school officials on methods to increase student safety, regularly checking on the school facilities when not in use, and initiating and/or assisting with investigations of thefts, fights, drug possession, etc.

City staff recommends the City accept the grant award by entering into an agreement with the United States Department of Justice, and by increasing the budget by $110,912.

Law Enforcement Block Grant for 2002

Summary: The consideration of a resolution entering into an agreement with the U.S. Department of Justice, Office of Justice Programs, to accept a Law Enforcement Block Grant and adoption of the accompanying budget amendment in the amount of $90,066.

The Asheville Police Department was awarded a $90,066 grant from the U.S. Department of Justice to fund programs designed to reduce crime and improve public safety. A local match of $10,007 is required, which is funded with drug tax refund proceeds.

The Asheville Police Department has received Law Enforcement Block Grants since 1997. Local Law Enforcement Block Grants can be used for a variety of general purposes. These include: hiring new law enforcement officers, paying overtime for current officers, procuring equipment to aid in law enforcement functions, enhance security measures at schools, and establish crime prevention programs. These grants are very helpful for the Asheville Police Department because there are few restrictions on how the funds are spent.

The Local Law Enforcement Block Grant has enabled the Asheville Police Department to hire several new law enforcement officers as well as purchase important small equipment items, including, photographic security equipment, bomb protection equipment, and an equipment transportation trailer.

City staff recommends the City accept the grant award by entering into an agreement with the United States Department of Justice, and by increasing the budget by $90,066.

Police Chief Will Annarino responded to various questions from Councilman Dunn regarding police department personnel and activities.

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Police Chief Annarino also responded to Councilwoman Jones on how the grant money would be spent.

Budget Amendment for Fair Housing Assistance Program

Summary: The consideration of a budget amendment, in the amount of $40,700, to recognize a Fair Housing grant.

The City of Asheville has been awarded a grant of an additional $40,700 from the U.S. Department of Housing & Urban Development for the City's Fair Housing Assistance Program (FHAP).

Staff recommends approval of the budget amendment.

Financing the Purchase of Three Fire Engines

Summary: The consideration of a resolution authorizing the installment financing of three fire engines.

The City of Asheville Capital Improvement Plan 2001/02 to 2006/07 included authorization in Fiscal Year 01/02 for the installment purchase of two fire engines and the 2002/03 to 2007/08 Capital Improvement Plan included authorization in Fiscal Year 02/03 for a ladder truck.

The Finance Department sought proposals from 14 firms to finance the purchase of the above listed equipment. Proposals were received from nine firms, the best of which was submitted by Wachovia Bank, N.A. - - 3.06% for ten years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Wachovia Bank, National Association for the purchase of the three fire engines and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution to authorize the installment purchase contract for three fire engines.

There was discussion by Council on if it was cost effective to send a fire truck out on 911 calls along with Emergency Medical Services and if the City can charge for that service.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PUBLIC ACCESS CHANNEL COMMISSION UPDATE

Mr. David McConville of the IT Council's Media Arts Project (MAP) Working Group, presented to Council an introduction of the Media Arts Project of Western North Carolina. In order to address issues of developing and attracting sectors of the digital media industry, they recommend the creation of a multimedia "incubator" in the form of a media development center. Such a center would provide opportunities for people of all ages and backgrounds to access technological tools and develop much-needed skills for the future. The process of researching and planning this multimedia center has already begun with the creation of the MAP. The goals of MAP will be to provide media access and training; create and attract jobs within the multimedia industry; and to raise awareness of existing arts, community, and business organizations in WNC. He then reviewed the funding opportunities and next steps. In conclusion, he believed that a properly funded and structured media arts center will be a beneficial and exciting first step in establishing the Asheville area as a premiere region for multimedia development.

Ms. Beth Lazer, Chair of the Public Access Channel Commission, said that this is the consideration of endorsement of URTV as the Access Management Organization for the Public Access operation.

In March 2000 the Asheville City Council appointed the Public Access Channel Commission to facilitate the establishment and management of a public access channel in Asheville. Since that time, the Commission has formed a non-profit organization to manage the channel – URTV, developed a management and operations plan for the station, identified sources of funding, and enlisted community groups and individuals to produce programs for the channel.

An issue that has been of concern to the Commission is the funding of the Public Access Channel. When the City of Asheville renegotiated their cable franchise agreement, there was an understanding between the City and the Buncombe County that the City would negotiate funds for equipment and maintenance and the County would negotiate money for operations.

Buncombe County will vote on the final reading of their renegotiated contract with Charter Communications on November 5, 2002. This contract provides an initial $340,000 grant and an ongoing 20 cents per subscriber per month (approximately $79,000 annually) in funding for Public, Education, and Government (P.E.G) Access. An additional 23 cents per subscriber per month (approximately $91,000 annually) will also be collected after Charter recovers the initial grant from subscribers in about four years. The percentage of funds to be dedicated to Public Access Channel operations has yet to be determined.

The Commission recommends that the URTV founding board consist of the following: 6 current Public Access Commission members; 1 City-appointed Director; 1 County-appointed Director; 1 MAP representative; and 2 at-large members selected by the other Directors. They feel that this make-up will insulate the City and County from legal exposure.

Ms. Lazer explained the advantages to public access of the MAP collaboration: additional funding sources of foundations, economic development grants, corporate sponsors, National Endowment for the Arts, fees, private donations, etc.

Included in the contract is the provision that P.E.G. funds will be held by the County until the City and County enter into an inter-local agreement regarding oversight, funding, and management of the Public Access Channel and other aspects of the cable contract. It is also the intent of the County to hire a consultant to provide a plan to incorporate Public Access, and other technology, into a Media Arts Center. The Commission feels strongly that all organizations involved, the City, County, Commission, and Media Arts Project (MAP) group, participate in the development of plans for this center. The target markets for the Public Access Commission and the MAP group will be different, so careful consideration and planning will be imperative to making a cooperative effort work.

Future challenges include obtaining operating funds, finalizing the City/County public access agreement and differentiating public access and MAP.

The Commission requests that City Council endorse URTV as the Access Management Organization for the Public Access operation and that negotiations for the inter-local agreement between the City and County begin as soon as possible.

Discussion occurred regarding the make-up of the founding board.

It was the consensus of City Council to endorse URTV as the Access Management Organization for the Public Access operation and that negotiations for the inter-local agreement between the City and County begin as soon as possible. In addition, when the operating agreement is structured, the make-up of the board will be discussed.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

INFORMAL UPDATE ON CIVIC CENTER

Performing Arts Facility

Ms. Lillian Fisher, community representative concerned about what is happening with the Civic Center, and Mr. Crawford Murphy, architect, passed out to Council a proposal of a mixed-use performing arts development project. They showed City Council conceptual plans of Phase I improvements at the Civic Center, totaling $49,772,000 (all of which would be borne by the City), and Phase II improvements at the Civic Center, totaling $38,600,000.

Mr. Murphy then showed Council conceptual plans of a proposed Performing Arts Center (PAC) Complex for Asheville and the WNC region, which would be located in the parking lot of the Renaissance Hotel, with a joint City/County parking arrangement. He explained the goals and outcomes of the PAC, with a total project cost for the PAC of $66,378,900. Mr. Murphy said that the biggest cost of the PAC is the façade. Ms. Fischer said that the City's minimum contribution to the PAC would be to provide infrastructure and parking which would total approximately $20,000,000, with private monies being $30-50,000,000. It was noted that the owner of the Renaissance has not endorsed the project, however, they will be meeting with him on November 6, 2002.

When Ms. Fisher asked for Council's informal consensus to proceed with the project, Mayor Worley said that City Council made a decision months ago that at the first of the year they would discuss the direction within which they want to proceed. They are still interested in prospects of success on other projects that compliment what the City needs.

Mayor Worley thanked Ms. Fischer and Mr. Crawford and said that he would wait for further updates and in turn relay that information to City Council at their next monthly Civic Center update.

At 5:01 p.m., Mayor Worley announced a short break.

The Dual Jewel Project

Mr. Scott Osburn brought forward to Council a proposal of creating a totally separate Sports Recreation Hotel complex on approximately 38-42 acres in the Airport Road area. With the proximity to I-26 and increased expansion of Airport Road, this would provide the ideal draw from Buncombe and Henderson Counties while giving easy access to the WNC region and other neighboring states as well. The key to the complex will be to lure pro and amateur tournaments. The project would consist of a major new state of the art 6000-8000 capacity Multi-Sports Arena, multiple skyboxes, club seating, eateries, pro shops and full support facilities; a recreation complex featuring full size ice sheet and sports court surfaces; a 65-75 Suites Hotel, convention areas, pools, health club, and all amenities; and over 100,000 square feet of exclusive retail and office space. The total cost of the project for the sports arena and recreation complex is $25,000,000 with the City (and possibility Buncombe County) contribution not to exceed $18,000,000, which can be funded by revenue bonds.

With taking out the sports to a more suitable venue, Mr. Osburn said that their plan is to utilize the area where the Civic Center is currently located. That plan would include an IMAX 3d and Laser theatre, concession, eatery, and all supporting functions; a retail entertainment facility; a Boutique Hotel with 72 rooms; and a performing arts complex. The approximate cost would be $17,500,000.

Mr. Osburn presented Council with information regarding the renovation of the existing Civic Center. That would include renovating the arena and retooling it to a 6,100 capacity including four box skybox suites; converting the Thomas Wolfe Auditorium into a great hall exhibition space; having a 2,400 seat multi-purpose performing arts center and new rotunda designed as an entryway and small exhibition space; retooling the convention space to provide 40,000 square feet of space; site work; having CP&L move substation; land acquisition; developer fees; and FFE. That renovation will cost approximately $114,900,000.

Going into more detail, Mr. Osburn said that the Asheville Civic Redevelopment Corporation (ACRC)'s primary goal as a non-profit organization is to revitalize and restructure the purpose and usage of the existing Civic Center and turn it into a new arts center. They propose a comprehensive restructuring of the Civic Center and surrounding area by changing it from a part-time single use, to a full-time entertainment, creative arts, retail, positive and profitable part of downtown Asheville. The plan includes an IMAX theatre, multi-screen Cineplex, 800 seat theatre and 99 seat black box theatre, an urban grocery store, restaurants and commercial retail spaces, as well as a 26-story HEART (History, Entertainment, Arts, Recreation, Tower District) Tower housing condominiums, offices, parking garage and related residential features – all at the Civic Center area.

Mr. Osburn then went into a little more detail by explaining the plans and future visions to create a museum and expo; and IMAX 3d and Laser theatre; a Multiplex theatre with one of the theaters being used as a first class multimedia conference meeting center; an interactive arts studio and gallery; the transformation of the Interstate Hotel into an Arts Collective Center; an urban grocery store; and a Performing Arts Center. The major anchor to this area will feature a 24-26 story mixed use tower. This will feature some of the larger restaurants and eateries, smaller upscale boutique retailers, parking, swimming complex, office space, Boutique Hotel including executive rentals, condos with an exclusive private club, a health club, and a wonderful observation deck.

Mayor Worley thanked Mr. Osburn and suggested that he submit to Council a couple of pages regarding the essential facts about the projects including funding sources.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on November 12, 2002. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Revise the Threshold for Level II Site Plan Review Projects

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to review the threshold for Level II site plan review projects.

Several months ago, City Council adopted an ordinance amendment revising the Level II site plan threshold for residential projects. By increasing the range of residential projects identified as Level I site plan projects, this amendment eliminated Level II review for residential projects. Under the current standards, residential projects between 3 and 50 units are reviewed as Level I projects and residential developments with more than 50 units are reviewed as Level III projects. Neighborhood associations expressed concern that residential developments that could have impacts on neighborhoods, physical infrastructure, and quality of life were not subject to public meetings and discussion under the current standards.

In response to these concerns, staff worked with a focus group composed of representatives of the Coalition of Asheville Neighborhoods to develop an ordinance amendment that would assure projects of a size that could impact neighborhoods and/or the community as a whole were subject to public meetings and discussion. In addition to this goal, the focus group and City staff wanted to provide for speedy review of those residential projects that have little potential of impacting neighborhoods. In reviewing the existing standards, the focus group recognized that large non-residential uses permitted in residential districts, such as churches and schools, could impact the residential areas and should be subject to some level of public discussion.

The draft ordinance amendment presented to Council identifies the following as Level II site plan projects:

- Any manufactured housing rental community, camper/trailer park, or other residential development containing 20 to 50 individual dwelling units; and
- Any new non-residential use in a residential zoning district containing more than 10,000 square feet or the expansion of an existing non-residential use in a residential zoning district if the expansion contains more than 10,000 square feet.

As Level II site plan projects, these developments would be reviewed by the TRC (Technical Review Committee) in a public meeting. Notice of the TRC meeting would be provided to surrounding property owners and others as required by the City's public notification standards.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment revising the thresholds for Level II site plan projects. The Planning and Development staff recommends approval of the wording amendment.

Revise the Notification Requirements

Chief Planner Gerald Green said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to revise the notification requirements for public hearings.

The Planning and Development staff has been reviewing the current public hearing notification requirements in an effort to identify improvements. A focus group composed of representatives of the Coalition of Asheville Neighborhoods provided assistance with this task. The task force and staff developed the following goals to assist in developing recommendations:

- Provide improved notification of public hearings;
- Assure that people impacted by proposed projects are aware of the public hearing(s);
- Identify and implement cost-effective methods for notifying affected and interested citizens of public hearings; and
- Identify a variety of methods for notifying citizens of public hearings.

Using these goals as guidelines, the focus group and staff identified several methods for improving the public notifications processes used by the City to inform citizens of public hearings. The improvements in the notification process identified by the focus group include:

- Place a larger sign on sites proposed for rezoning, development, etc.;
- Include location and information about proposed projects on the department's web page;
- Continue to expand the department's list of neighborhood contacts and use this list to notify affected neighborhoods of proposed projects; and
- Decrease the area of notification for public hearings and other meetings requiring notification from 400 feet to 200 feet.

The only identified change that requires an amendment to the City's code is the final one regarding area of notification. The draft ordinance amendment making this change is presented with the Planning and Zoning Commission's unanimous recommendation for approval. An area of notification extending 200 feet from the affected property will assure that all property owners within the immediate area are notified of proposed projects. This change, in combination with the other notification improvements identified above, will ensure that all citizens with an interest in proposed development projects, rezonings, etc. are notified of public hearings and other public meetings.

A minor change being included in this amendment is a statement that fees charged for CA's (Certificates of Appropriateness) are established by the City of Asheville Fees and Charges Manual. This change will bring the process for establishing fees for CA's into compliance with the adopted City policy.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment revising the notification process for public hearings. The Planning and Development staff recommends approval of the wording amendment.

Upon inquiry of Councilman Peterson, a lot of discussion took place regarding the department's list of neighborhood contacts. Councilman Peterson felt that since the Coalition of Asheville Neighborhoods (CAN) does not keep an updated list of neighborhood contacts and the Planning Department doesn't update the list, it's just a façade that the City says they use that neighborhood list to notify affected neighborhoods of proposed projects. He felt the City needs to have a person dedicated to working with civic groups and neighborhoods to get them more involved with the planning process.

Planning & Development Director Scott Shuford said that Ms. Barber Melton, President of CAN, said they would take that effort on of updating the neighborhood list. He stressed that if someone is concerned about something going on in their community, they can call the Planning Department for information or get on the department's web page. He felt if there was a change in the presidency of a neighborhood association, it should be the responsibility of the out-going president to let the incoming president know that they need to contact the Planning Department to be sure that their association is properly represented. Other ways we can try to keep updated lists is to put it in City-Works and run it on the City's Government Channel.

Councilwoman Jones suggested having a receptionist call all the neighborhood representatives once a year and update the list. City Manager Westbrook said he would need other assets if it's City Council's desire for City staff to take on that responsibility.

Councilman Mumpower felt that we should look for ways to reach the neighborhood contacts within our existing framework.

Councilman Ellis felt that staff should make their best efforts to make neighborhood contacts.

Councilwoman Jones felt that the decrease in notification from 400 feet to 200 feet would be appropriate only if there was some extra effort on the part of City staff to update the neighborhood lists.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these public hearings on the next formal City Council agenda.

DESIGNATION OF THE BYNUM HOUSE AS A LOCAL HISTORIC LANDMARK AND SETTING A PUBLIC HEARING ON NOVEMBER 26, 2002

Interim Historic Resources Director Stacy Merten said that this is the consideration of a motion to set a public hearing to designate the Bynum House, located at 200 Macon Avenue, as a local historic landmark.

The Bynum House is located within the Grove Park Neighborhood, at 200 Macon Avenue, .7 miles Northeast of its intersection with Charlotte Street on a 5.7-acre tract of land. The boundaries of the proposed designated property, however, do not include the full tax parcel, but encompass a 1.17-acre parcel. The structure is located along the approach to the Grove Park Inn, nestled on a heavily wooded lot. The property backs up to the Grove Park Inn Country Club, which is located to the west and is surrounded by the Battle house to the north, Longchamps apartments, across the street to the east and single family housing to the south. The grounds slope away steeply from the house and the surrounding landscape had at one time been neglected. Recently, however, an effort has been made to reclaim some of the original landscape design features.

The Bynum House is an outstanding example of early 20th century Tudor Revival style architecture and survives nearly unchanged since its construction in 1923. Architect Ronald Greene designed the House for Curtis and Florence Bynum. Greene is best known for his commercial and civic structures, such as the Jackson Building on Pack Square, the Claxton School and the Longchamps apartments, to name a few. While the Bynum house is not a rare example of the Tudor Revival style in Asheville, the house is significant for its fine architecture, featuring a well-executed and detailed design and high degree of integrity. After nearly 80 years the interior finishes and treatment are consistent with the style of the house and much of the interior remains intact. It is also one of a few Tudor Revival style dwellings constructed of stone in the City.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. Currently the tax appraisal for the structure is $1,470, 800 and the entire 5.77 acre tract of land is appraised at $577,000.

The ordinance designates the Bynum House a local historic landmark. The property included in the designation consists of the Bynum House and 1.17 acres. The designation includes, the exterior of the house, some interior details and landscape features. When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The Historic Resources Commission of Asheville and Buncombe County (HRC) by unanimous vote recommends to the Asheville City Council that the Bynum House be designated a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Ms. Merten responded to various questions from Councilman Dunn and Councilwoman Jones regarding historic designation and the reduction of property taxes.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on the appropriate City Council agenda.

DESIGNATION OF THE GROVE PARK COUNTRY CLUB CLUBHOUSE AS A LOCAL HISTORIC LANDMARK AND SETTING A PUBLIC HEARING ON NOVEMBER 26, 2002

Interim Historic Resources Director Stacy Merten said that this is the consideration of a motion to set a public hearing to designate the Grove Park Country Club Clubhouse located on Country Club Road on the grounds of the Grove Park Golf Course, as a local historic landmark.

The Grove Park Country Club clubhouse is located on Country Club Road, .3 miles north of its intersection with Kimberly Avenue, on the grounds of the Grove Park Golf Course. The proposed designation encompasses 2.56 acres of the golf course parcel. The clubhouse is located on the north side of the golf course, overlooking the 18th green, and just southwest of the Grove Park Inn. The rolling terrain of the eighteen-hole golf course, with its manicured landscape, provides a fitting setting for the clubhouse.

The Grove Park Country Club Clubhouse is significant in the areas of social history, entertainment and recreation, and architecture. The structure was originally built for the Asheville Country Club and is a fine example of the work of New York architect, Harrie T. Lindeberg, one of the foremost architects of the Country House movement. The rambling Grove Park Clubhouse embodies the ideas of the country house on a slightly larger scale and the golf course serves as the landscaped park.

The organizational framework for country clubs, as they spread throughout the United States were based on the gentleman's city clubs of New England. Eventually there was a movement towards a suburban or county club in the 1870's. The typical country club offered its members sporting grounds for hunting, golf and tennis in a pleasant setting and as an exclusive retreat for the wealthiest members of society.

Though the Grove Park Country Club clubhouse was constructed in 1925, the origins of the Asheville Country Club, who erected the building, date back to 1894 with the organization of the Swannanoa Country Club. As an interest in golfing began to increase, the Club's original course in West Asheville was considered inconvenient, thus a new course was established in north Asheville. The new course also proved unsatisfactory, and in 1898 the Club leased 5 acres of land at the end of Charlotte Street from George W. Pack, for the construction of a new clubhouse. The original clubhouse was moved in 1908 to Edgemont Ave. About this time the golf course was expanded and the name of the Club was changed to the Asheville Country Club. The earlier clubhouse was also replaced with a new structure near the 12th tee of the present course. This clubhouse burned in the early 1920's, thus the present structure was commissioned for construction.

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The Grove Park Inn maintained an interest in the golf course and financial health of the Club, contributing to the Club for the use of its facilities. The existence of the Club and golf course were important to the successful operation of the Inn. In 1976 the Grove Park Inn purchased the 100-acre golf course, clubhouse and pro-shop from the County Club of Asheville.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. The appraised value of the clubhouse is $4,053,200, which excludes the value of the land, golf course improvements and other detached structures.

When a property is designated historic, restrictions are placed on the property. Any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

The ordinance designates the Grove Park Country Club Clubhouse a local historic landmark. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The Historic Resources Commission of Asheville and Buncombe County (HRC) by unanimous vote recommends to the Asheville City Council that the Grove Park Country Club Clubhouse be designated a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on an appropriate City Council agenda.

OTHER BUSINESS

Councilman Dunn felt City Council needs to look at earmarking $100-200,000 a year for economic development. He felt it was important for the City, possibly working jointly with Buncombe County, to set aside money in order to put in infrastructure on industrial property and have the site ready if industry wishes to locate in Asheville. Mayor Worley felt that would be a good topic at Council's annual retreat.

CLOSED SESSION

At 7:07 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Morris Communications, Inc. d/b/a Fairway Outdoor Communications, Lamar OCI - South Corp., Maple Cove, Inc., and the City of Asheville. - The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate - The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:00 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilman Peterson and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 12, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Worley gave the invocation.

ADDITION TO THE AGENDA

Mayor Worley said that there will need to be Council discussion of current status of water negations with Henderson County including what our responses might be to Henderson County. Since he anticipated that this Council meeting will be lengthy, he will add an item to "Other Business" to ask for a motion to continue the Council meeting until Thursday, November 14, 2002, at 3:00 p.m. in the Council Chamber.

I. PROCLAMATIONS:

A. RECOGNITION OF HOUSING NORTH CAROLINA AWARD FOR MOUNTAIN HOUSING OPPORTUNITIES' WIND RIDGE APARTMENTS

Mayor Worley recognized Mountain Housing Opportunities' (MHO) Executive Director Scott Dedman, MHO Board Chair John Hayes, Chairman of the Buncombe County Commissioners Nathan Ramsey, and Community Development Director Charlotte Caplan for receiving the North Carolina Award for Mountain Housing Opportunities' Wind Ridge Apartments. Each spoke about the cooperation between the City, County and non-profits and the fine example of this development resulting from that cooperation.

B. PROCLAMATION PROCLAIMING NOVEMBER 11, 2002, AS "VETERANS DAY"

Council members Dunn, Ellis and Mumpower, veterans, presented the proclamation, which proclaimed Monday, November 11, 2002, as "Veterans Day" in the City of Asheville. They acknowledged all veterans present in the Council Chamber.

II. CONSENT:

Mayor Worley removed Consent Agenda Item B from the Agenda due to an upset bid being received.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 22, 2002; THE WORKSESSION HELD ON OCTOBER 29, 2002; AND THE WORKSESSION HELD ON NOVEMBER 5, 2002

B. RESOLUTION AUTHORIZING THE SALE OF PROPERTY OFF BLAKE MOUNTAIN CIRCLE TO RHETT A. GROTZINGER

This item was removed from the consent agenda due to an upset bid being received.

C. RESOLUTION NO. 02-175 - RESOLUTION APPROVING THE BUNCOMBE COUNTY SOLID WASTE MANAGEMENT PLAN

Summary: The consideration of a resolution to approve the Buncombe County Solid Waste Management Plan.

The City of Asheville actively participated in the development of the Buncombe County Solid Waste Management Plan covering the period July 1, 2002, to June 30, 2012, as required by the North Carolina Department of Environment and Natural Resources.

N. C. Gen. Stat. sec. 130 A-309.09A (b) requires each unit of local government to develop a comprehensive 10 year solid waste management plan in cooperation of local governments. The draft report was presented to City Council August 24, 2002, and the public comment period has ended. The changes to the draft report include:

- Buncombe County cardboard recycling figures changed to reflect residential customers only.
- Asheville's recycling program cost correction ($3.00/mo to $2.55/mo)
- Formatting and grammatical edits.
- Comments from private citizens.

City staff recommends approval of the Buncombe County Solid Waste Management Plan.

RESOLUTION BOOK NO. 27 – PAGE 273

D. RESOLUTION NO. 02-176 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC.

Summary: The consideration of a resolution to approve the Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment Inc. (FIRST) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation Division), Parks and Recreation Department and Civic Center. The contract is a collective contract for all City Departments.

FIRST is a non- profit organization providing counseling to individuals and provides individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville utilized FIRST staff last year with excellent results and has expanded the seasonal program with FIRST.

City staff recommends approval of the Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment Inc. for temporary workers.

RESOLUTION BOOK NO. 27 – PAGE 274

E. RESOLUTION NO. 02-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A COPS IN SCHOOL GRANT AWARD

Summary: The consideration of a resolution entering into an agreement with the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS), to accept a COPS in Schools grant award and adoption of the accompanying budget amendment.

The Asheville Police Department was awarded a $110,912 grant for three years from the U.S. Department of Justice to hire one, full-time police officer through the COPS in Schools program. No match is required for this grant.

The Asheville Police Department has participated in the School Resource Officer program since the early 1990's. Since 1988, ten schools have had contact with a school-based police officer on a regular basis. The program has been very successful in our community. The COPS in Schools grant is a great opportunity for the City of Asheville Police Department to enhance our community policing efforts by adding one full-time officer to the department to work exclusively with one of our city schools. All salary and benefit expenses for the officer are covered through this program for the three-year grant period.

The City of Asheville entered into an agreement with the City of Asheville School System for this School Resource Officer in April 2002. The agreement outlines the duties of the School Resource Officer, which include consulting with school officials on methods to increase student safety, regularly checking on the school facilities when not in use, and initiating and/or assisting with investigations of thefts, fights, drug possession, etc.

City staff recommends the City accept the grant award by entering into an agreement with the United States Department of Justice, and by increasing the budget by $110,912.

RESOLUTION BOOK NO. 27 – PAGE 275

F. ORDINANCE NO. 2968 - BUDGET AMENDMENT FROM COPS IN SCHOOLS GRANT AWARD

Summary: See Consent Agenda Item "E" above.

ORDINANCE BOOK NO. 20 – PAGE 124

G. RESOLUTION NO. 02-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A LAW ENFORCEMENT BLOCK GRANT AWARD

Summary: The consideration of a resolution entering into an agreement with the U.S. Department of Justice, Office of Justice Programs, to accept a Law Enforcement Block Grant and adoption of the accompanying budget amendment in the amount of $90,066.

The Asheville Police Department was awarded a $90,066 grant from the U.S. Department of Justice to fund programs designed to reduce crime and improve public safety. A local match of $10,007 is required, which is funded with drug tax refund proceeds.

The Asheville Police Department has received Law Enforcement Block Grants since 1997. Local Law Enforcement Block Grants can be used for a variety of general purposes. These include: hiring new law enforcement officers, paying overtime for current officers, procuring equipment to aid in law enforcement functions, enhance security measures at schools, and establish crime prevention programs. These grants are very helpful for the Asheville Police Department because there are few restrictions on how the funds are spent.

The Local Law Enforcement Block Grant has enabled the Asheville Police Department to hire several new law enforcement officers as well as purchase important small equipment items, including, photographic security equipment, bomb protection equipment, and an equipment transportation trailer.

City staff recommends the City accept the grant award by entering into an agreement with the United States Department of Justice, and by increasing the budget by $90,066.

RESOLUTION BOOK NO. 27 – PAGE 276

H. ORDINANCE NO. 2969 - BUDGET AMENDMENT FROM THE LOCAL LAW ENFORCEMENT BLOCK GRANT AWARD

Summary: See Consent Agenda Item "G" above.

ORDINANCE BOOK NO. 20 - PAGE 126

I. ORDINANCE NO. 2970 - BUDGET AMENDMENT FOR FAIR HOUSING ASSISTANCE PROGRAM

Summary: The consideration of a budget amendment, in the amount of $40,700, to recognize a Fair Housing grant.

The City of Asheville has been awarded a grant of an additional $40,700 from the U.S. Department of Housing & Urban Development for the City's Fair Housing Assistance Program (FHAP).

Staff recommends approval of the budget amendment.

ORDINANCE BOOK NO. 20 – PAGE 129

J. RESOLUTION NO. 02-179 - RESOLUTION AUTHORIZING THE EXECUTION OF AN INSTALLMENT PURCHASE CONTRACT WITH WACHOVIA BANK, NATIONAL ASSOCIATION FOR THREE FIRE ENGINES

Summary: The consideration of a resolution authorizing the installment financing of three fire engines.

The City of Asheville Capital Improvement Plan 2001/02 to 2006/07 included authorization in Fiscal Year 01/02 for the installment purchase of two fire engines and the 2002/03 to 2007/08 Capital Improvement Plan included authorization in Fiscal Year 02/03 for a ladder truck.

The Finance Department sought proposals from 14 firms to finance the purchase of the above listed equipment. Proposals were received from nine firms, the best of which was submitted by Wachovia Bank, N.A. - - 3.06% for ten years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and Wachovia Bank, National Association for the purchase of the three fire engines and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution to authorize the installment purchase contract for three fire engines.

RESOLUTION BOOK NO. 27 – PAGE 277

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Peterson moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT THE INTERSECTION OF ARDMION PARK ROAD AND ALEXANDER DRIVE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTION OF 12 DWELLING UNITS

ORDINANCE NO. 2971 - ORDINANCE TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT THE INTERSECTION OF ARDMION PARK ROAD AND ALEXANDER DRIVE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 2972 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR CONSTRUCTIONOF 12 DWELLING UNITS

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:20 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Chief Planner Gerald Green submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Green said that this is the consideration of a request to rezone property located at the intersection of Ardmion Park Road and Alexander Drive from RS-8 Residential Single-Family

High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use and of a motion to issue a Conditional Use Permit to allow for construction of 12 dwelling units.

At their October 2, 2002, meeting the Planning and Zoning Commission recommended rezoning of property located at the intersection of Ardmion Park Road and Alexander Drive (City Exhibit 3 – Location Map) from RS-8 to RM-16. The 2.33 acre property is located on Beaucatcher Mountain in an area with a variety of land uses (City Exhibit 3 – Proposed Master Plan). Existing development in the area includes apartments, single family homes, and attached condominiums. An abandoned single family home is located on the property. Topography of the property is steep, with the area subject to the City's hillside area development standards. The standards limit the density of development and the percent of the site that can be graded. The proposed development complies with the limitations of the hillside area development standards, provided the requested rezoning is approved. The site plan calls for the buildings and the parking areas to be located on the upper part of the property in the location of the existing home in order to limit the land disturbance required to develop the site.

The original rezoning request for this property was for a standard reclassification to RM-8 (no conditional use permit requested). This request received a unanimous recommendation for approval from the Planning and Zoning Commission. Prior to being heard by City Council, the request created concern among the neighbors. Neighbors met with the applicant and expressed concern about the proposed development of the property and how this development could impact their property. The developer withdrew the original rezoning request and submitted this request for conditional use rezoning, with a specific site plan and conditions designed to address the concerns of the neighbors. The revised request appears to be supported by the area residents.

The site plan shows the two buildings and parking area located on the upper portion of the lot on the site of the existing home. Access to the 18 space parking area will be directly off Ardmion Park Road. By placing the buildings and parking in this location, grading required for the development will be minimal. Most of the property will remain undisturbed, with tree removal and clearing of vegetation also kept to a minimum.

The two buildings are proposed as 3 stories with a height not to exceed 40'. Daylight basements will be accessible via doors located on the back (downhill) side of the buildings. The first floor elevation of the buildings will be at least 20' below the elevation of the road, reducing the visual impact from the street. Exterior construction materials for the buildings will consist of wood, hardiplank, brick, stone, and/or stucco.

The City's ordinances require a minimum of 500 square feet of open space per unit for multi-family developments. A minimum of 6,000 square feet of open space is required for the Ardmion Park Town Homes development. A great deal more than this will be provided by the development.

Existing vegetation will be used to buffer the development from adjacent uses on the sides and rear. Landscaping must be provided to screen the parking area and buildings from Ardmion Park Road. Existing trees will be used for street trees along the existing street.

Sidewalks are required for any multi-family development with more than 10 dwelling units, so this development is required to provide sidewalks along all street frontage. Given the location and topography of the site, the developer is encouraged to work with the City staff to identify the best option for providing pedestrian amenities for the development.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval for conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]. Staff's opinion is that all seven standards appear to be met.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project must comply with all City standards in regards to maximum clearing and grading, erosion control, and stormwater management. The proposed buildings will be located on the upper portion of the property adjacent to the street in order to minimize land disturbance and clearing. The project will also need to demonstrate compliance with the City's Hillside Development Standards for permitted density and clearing and grading.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The density of the proposed development will be approximately 5 units per acre, which is in keeping with the overall development pattern in the area. The buildings will be constructed of materials of quality comparable to that of existing development in the area. A condition that is recommended for the project addresses stormwater to assure that it has no negative impact on property located downhill.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The project site is located in a vegetated area containing a variety of residential uses. Residential uses range from single family homes to attached condominiums and large buildings containing several multi-family units. Most of the developed properties in the area have maintained a significant number of trees and smaller vegetation. The proposed development will maintain most of the vegetation on the project site. Only a small percentage of the site will be covered by the development. In addition, the buildings, which are compatible in bulk and scale with other structures in the area, will be at a lower elevation than the street and screened from adjacent properties to minimize any visual impact.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed development will comply with all applicable UDO and Standards and Specifications requirements. The development also meets the City's goals for providing a variety of housing options and for infill development.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The project has received preliminary approval from the City's operating departments and will be subject to detailed review prior to issuance of zoning and building permits.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The addition of 12 small dwelling units at this location will not have an adverse impact on traffic in the area. Streets in the area are capable of accommodating the traffic to be generated by the 12 units.

The Planning and Zoning Commission unanimously recommended approval of the request, with conditions, at their October 2, 2002, meeting. This recommendation incorporates comments made by members of the public at that meeting. Staff concurs with the recommendation to approve the conditional use rezoning and to issue the Conditional Use Permit for the proposed use. The recommended conditions are:

- Development of the site shall be in compliance with the conceptual site plan submitted with this application;
- The development shall consist of 12 dwelling units in two buildings (6 units per building);
- Grading and land disturbance shall not exceed the limits indicated on the conceptual site plan;
- No clear cutting of the property shall occur; vegetation removal shall be limited to horticulturally correct thinning and trimming, with advice regarding tree removal provided by the City staff;
- Stormwater management plans shall be developed and implemented with consideration for the neighbors on Carroll Avenue and acknowledging current problems with water runoff and shall comply with the City's standards as set forth in the Stormwater Management Ordinance;
- Exterior building materials shall consist of wood, hardiplank, brick, stone, and/or stucco;
- Maximum building height shall not exceed 40';
- The current sewer line connection that is tapped by the neighbors across the street shall be moved to a legal easement and reconnected to the MSD system; and
- The parking area shall be screened with vegetation from the street.

Mr. Green responded to various questions from Vice-Mayor Bellamy dealing with traffic and erosion. He reiterated that our Traffic Engineer feels that the streets in the area are capable of accommodating the traffic to be generated, however, there was mention at the Planning & Zoning Commission meeting about speeding. He said that the residents were provided with information about how to become involved with the City's traffic calming program. Regarding erosion, Mr. Green said that because the site plan is being submitted as part of the conditional use permit, the limits of grading are pretty much set by the plan shown. The City will require the developer to adhere to this basic plan in terms of land disturbance as well as complying with the City's erosion control and stormwater ordinances.

Mr. Chris Eller, project engineer representing Dean Pistor, reviewed with Council their site plan (Applicant Exhibit 1) showing that they have preserved at least 2/3 of the site. He said there currently exists a private sewer line on the property. They will be relocating that sewer line and tying it into a public manhole which will be extended to serve the new units as well as the adjacent property owner. He felt that erosion control will be easily maintained because of the amount of vegetated buffer that will be between this property and the adjacent property owner and grading will be minimal.

Ms. Jan Howard, resident on Reservoir Road, spoke in favor of higher density development on Beaucatcher Mountain. However, according to Ms. Howard, she feels that Reservoir Road is her private driveway and it should be closed and used for a bike and hiking trail. She felt that Reservoir Road has been at its vehicular capacity for years.

Mr. Jeff Kelley, resident on Carroll Avenue, said that speeding is an existing problem on the narrow Carroll Avenue and doesn't feel that there is enough volume to make it as a traffic calming project. He expressed concern about the hillside development ordinance. By allowing a property owner to buy up adjacent properties and include all the parcels as one to increase the density on one part of the site seems to defeat the whole purpose of the standard. He asked City Council to instruct the Planning staff to begin the neighborhood study on the East Valley area as the study is proposed Asheville City 2025 Plan. The neighborhood wants to work to protect the RS-8 zoning in their neighborhood.

Mr. Dean Pistor, property owner, spoke in support of the project and about how he met with neighbors to try to meet their concerns.

Upon inquiry of Councilwoman Jones, Mr. Pistor said that the units will be approximately under $200,000 and they will try to meet some affordable needs with some of the units.

When Councilman Mumpower asked about what the next step would be for Ms. Howard to take regarding her request, City Manager Westbrook said that when Ms. Howard petitioned the Council to close Reservoir Road several years ago, City Council did not close it because of a public safety issue. If there are any new circumstances Ms. Howard can bring to the City's attention, he, along with the Public Works Director and the Police Chief will be happy to discuss those with her.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:51 p.m.

Councilman Ellis moved to adopt Ordinance No. 2971 to rezone two lots located on Ardmion Park Road from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 131

Councilman Peterson moved to adopt Ordinance No. 2972 to issue the conditional use permit to allow for construction of 12 dwelling units, subject to the following conditions: (1) Development of the site shall be in compliance with the conceptual site plan submitted with this application; (2) The development shall consist of 12 dwelling units in two buildings (6 units per building); (3) Grading and land disturbance shall not exceed the limits indicated on the conceptual site plan; (4) No clear cutting of the property shall occur; vegetation removal shall be limited to horticulturally correct thinning and trimming, with advice regarding tree removal provided by the City staff; (5) Stormwater management plans shall be developed and implemented with consideration for the neighbors on Carroll Avenue and acknowledging current problems with water runoff and shall comply with the City's standards as set forth in the Stormwater Management Ordinance; (6) Exterior building materials shall consist of wood, hardiplank, brick, stone, and/or stucco; (7) Maximum building height shall not exceed 40'; (8) The current sewer line connection that is tapped by the neighbors across the street shall be moved to a legal easement and reconnected to the MSD system; and (9) The parking area shall be screened with vegetation from the street. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 133

B. PUBLIC HEARING TO CLOSE A RIGHT-OF-WAY KNOWN AS CAROLINA AVENUE FROM MOUNT CLARE TO ITS DEAD-END

RESOLUTION NO. 02-180 - RESOLUTION TO PERMANENTLY CLOSE A RIGHT-OF-WAY KNOWN AS CAROLINA AVENUE FROM MOUNT CLARE TO ITS DEAD-END

Mayor Worley opened the public hearing at 5:55 p.m.

Mr. Mark Combs, Director of Public Works, said that this is the consideration of a resolution to permanently close the right-of-way known as Carolina Avenue from Mount Clare Avenue to dead end. This public hearing was advertised on October 18 and 25 and November 1 and 8, 2002.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process, Walter Christian, Montview Drive resident, on behalf of the Montview Drive Neighborhood, has requested to close the right-of-way known as Carolina Avenue from Mount Clare Avenue to the dead end.

Public Works Department staff has determined that the right-of-way known as Carolina Avenue, beginning at Mount Clare Avenue, and ending at the dead end, is not part of an adopted street plan and is not a City maintained right-of -way. Lots bordering Carolina Avenue are PIN Nos. 9649-09-26-1492, 1531, 0596, 0650, 0605, 1149 and 9649-09-16-8599, 8801, 9792, 9778, 9846, 9966 and 9649-09-27-0013, 0047, 0171, 0217 and 9649-09-17-8176.

Mr. Combs said that after the worksession on October 1, 2002, City staff met with the petitioners and now have no objection to the closing. They feel that any smart growth and density issues can be worked out if there were any future growth plans for the area.

Mr. Ed Subkis and Mr. Lothar Dohse, property owners on Montview Drive, each spoke in support of the closing.

Ms. Betty Lawrence, resident on Hillside Street, agreed with the closing from a historic prospective.

Mayor Worley closed the public hearing at 6:03 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 02-181. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 279

C. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT

ORDINANCE NO. 2973 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW NEIGHBORHOOD CORRIDOR DISTRICT

On August 27, 2002, City Council continued this public hearing until October 8, 2002. On October 8, 2002, City Council continued the public hearing until November 12, 2002.

City Attorney Oast said that a protest petition was received on Thursday, November 7, 2002, on the proposed amendment to the Unified Development Ordinance (UDO). He reviewed the petition and felt it was not a valid protest petition for the following reasons. One is that the date established for the public hearing (which was August 27, 2002) was the date from which it was continued and the way he interprets the law is that is the date that sets the deadline for submission of protest petitions. Secondly, this is a text amendment. Council is being asked to establish regulations for a particular zoning classification but not to apply that zoning classification to any particular property or any group of properties. It was recently established in the Supreme Court that the protest petitions do apply to text amendments, but he felt that also requires the determination of what the effected property is. In that case, it was a specifically identifiable set of properties that had signs on them and in this case, there is no set of properties that is specifically identifiable to which this would apply. Therefore, the affected property would be the whole City and they do not have 20% of the signatures of the owners of property in the City. For those reasons, he feels the protest petition is invalid. It may be that the protest petition submitted would be sufficient if, and when, this zoning district classification is applied to the Broadway Corridor, which he believes is what their interest is, but it is not before Council yet.

Ms. Betty Lawrence said that she respectfully differs with City Attorney Oast on a couple of the legal points. The reason that they know what property is to be affected is because in August there was a proposal, at the same time as the new proposed Neighborhood Corridor District zoning was proposed, before Council to rezone portions of Broadway to Neighborhood Corridor District. Therefore, those properties are going to be affected by what goes into Neighborhood Corridor District zoning. The signatures are from people that are within 100 feet of what is going to be rezoned. She then explained that they didn't want to submit a protest petition because a lot of people feel that the Neighborhood Corridor District is good. However, after numerous meetings, the way the negotiating procedure ended left a couple key parts of the ordinance being worse than when the ordinance was first given to Council. Therefore, since she felt this is a different ordinance than originally presented, she feels the protest petition was submitted on time.

Mayor Worley said that on the advice of our City Attorney, he would rule the protest petition not valid.

Mayor Worley opened the public hearing at 6:08 p.m.

Planning & Development Director Scott Shuford said that he could caution the audience in that this item does not apply this new zoning district to any property in the City. If Council approves this ordinance, City staff will bring forward the request to apply it to portions of Broadway Avenue at a later meeting.

Mr. Shuford explained that in analyzing our development patterns in terms of our smart growth policy, we have learned that almost all of our commercial corridors are functionally and fiscally underutilized. Problems associated with this underutilization include tax equity and inefficient use of infrastructure. In an area where land is limited due to topography and existing development patterns, it is critical for us to use the available land efficiently. If we are to overcome the problems associated with this development pattern, we will need to take active steps to provide incentives that will promote the redevelopment of our commercial corridors. The steps have to be rooted in the practicality of the local real estate market; it will do no good to create a zoning district that will not be used. Likewise, we must recognize that development of an appropriate scale is important to protect our neighborhoods.

Mr. Shuford said that consequently, his staff has spent countless hours in meetings with developers and neighborhoods in crafting this ordinance. In fact, they completed neighborhood meetings as late as Thursday of last week. All of these meetings have helped shape the ordinance that it before Council tonight. The ordinance represents a balance between the incentives necessary to spur redevelopment and the scale that is appropriate to the community.

Some opposed to the ordinance are concerned about scale of development. Please be aware that the maximum height proposed for most development is actually less than the building height allowed in our single-family zoning districts. The size standards for buildings in this district are human-scale and designed to support a pedestrian experience. The uses are compatible with the neighborhoods that abut most of our commercial areas. The intent of the ordinance is to create new development of this sort. Please note that this development is very similar to historic development in Asheville in terms of architectural style and scale. Also, please be aware that the Planning and Zoning Commission voted unanimously to recommend this ordinance. Since that vote, while there have been modifications to address the concerns of developers, most of the modifications we have made have been to "soften" it from a neighborhood scale standpoint.

We feel we have developed a zoning district that will help us implement a smart growth development pattern and allow us to reclaim our commercial corridors for more productive purposes. We feel the development of this ordinance has been highly public and that the comments received from the public have been carefully accommodated where appropriate to the objectives of the new zoning district. We urge your support of this ordinance.

Chief Planner Gerald Green said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to create a new mixed use in-fill corridor zoning classification called the Neighborhood Corridor District, which incorporates City Council direction for smart growth and sustainable development initiatives as well as input from the community. This public hearing was advertised on August 16 and 23, 2002.

Since the first presentation of the Neighborhood Corridor zoning district to City Council, staff has met with the Coalition of Asheville Neighborhoods, Economic Development Task Force, and the self-named Broadway Coalition (development interests and neighborhood residents). In addition two community forums have been held to share the goals of the district and gather input (West Asheville meeting 11-4-02 and North Asheville 11-7-02). Most of the discussion and changes have centered on uses permitted along the corridor, the scale of the potential structures and some requirements for mixed-use projects. An additional item that staff feels may be useful in the district is drive-through facilities. These facilities are identified as conditional uses in the proposed district to permit their review on a case-by-case basis. Other standards/issues that have been revised include scale and height and design standards. These are discussed below.

Scale and Height:

The community incentives table has been received with support and interest. Several comments have been received to require higher design standards. Staff feels that basic design standards can be written into the ordinance with modifications allowed by a City approved decision-making body. The highlights of the incentives table are presented below:

• Base Density permitted in NCD = 24 units/ acre	Bonus to 32 units / acre
• Building footprint maximum in NCD = 12,000 S. F.	
• Building square foot maximum in NCD = 24,000 S.F.	Bonus to 48,000 S.F.
• Base building maximum height in NCD = 3 stories	Bonus to 4 stories

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Community Incentive Table

Incentives	Mixed Use	Residential
Density greater than 24 units per acre	Minimum 20 percent of building square feet is retail or office uses	In combination with; 25 percent of units provided are affordable units **OR** a minimum of 25 percent up to a maximum of 50 percent of the units are less than or equal to 700 square feet each **and** 10 percent of the residential units are affordable.
Building square footage greater than 24,000 square feet	Minimum 25 percent of building square feet is retail **OR** minimum 20 percent of square feet is retail and 15 percent of square feet is office uses	In combination with; a minimum of 25 percent of the building square feet is residential uses **and** a minimum of 25 percent of the units are less than or equal to 700 square feet each
Height greater than 3 stories to a maximum of four stories (45')	Minimum of 50 percent of street level square feet is used for retail	In combination with; a minimum of 25 percent of the building square feet are residential units **and** building setbacks adjacent to residentially zoned properties is expanded to a minimum of 40 feet

Design Standards:

To ensure that new projects are in keeping with the scale and bulk of the surrounding neighborhoods a few additional design and operational issues have been included in the language for the district that take their inspiration from the Charlotte Street Overlay District: Where new building facades will be wider than 45 feet the façade surface shall be subdivided into portions not exceeding this distance by varying setbacks, roof forms, or other architectural elements.

We also propose to change the wording in the NCD to require that upper level windows make up at least 25% of the wall surface to allow a fuller range of uses to utilize the upper floors of buildings. The previous ordinance proposed that upper level windows make up 40% of the wall surface.

Finally to allow flexibility to the design standards for situations that would create a difficulty for a developer, modifications to these design requirements may be heard by a City appointed board. At this time we have suggested the Planning and Zoning Commission because of their valuable experience with project review and rezonings.

As a result of a meeting last Thursday evening, Mr. Green submitted to Council a revised ordinance. Said ordinance contained the following additional amendments: (1) amended the development standards for parking/loading to include the underlined language as follows:

"Shared and remote parking is encouraged ..." ; (2) outlined the use districts which recycling collection centers are permitted in; and (3) minor clarifications,

In presenting these changes to City Council, staff does not intend to suggest that all parties are in total agreement with every item in the revised provisions of this district. Some members of the community still have concerns about the height of the structures permitted and some have concerns about the size of the footprint of the structures. What staff has tried to do is reach a compromise that will alleviate the bulk of the concerns that they have heard. Staff feels that the incentive table will do just that and create a healthy mixed use community along our medium sized corridors where this district is applied.

Staff recommends adoption of the proposed ordinance amendment. The Planning and Zoning Commission recommended adoption of the earlier draft of the ordinance.

Upon inquiry of Councilman Dunn, Mr. Green explained that the modification provision applies only to design and operational standards. Regarding the relocation of the footprint in another area on the lot, setbacks can range from zero to 15 feet, although the Planning & Zoning Director can authorize an additional up to 25 foot setback if there are topographical constraints. If the developer wants to put it back 50 feet from the street, that would require a variance from the Board of Adjustment. The basic variances will still be handled by the Board of Adjustment, but only the design and operational standards can be modified by the Planning & Zoning Commission.

In addition, City Attorney Oast explained that there is a provision in the law that allows us, in certain circumstances, to assign the functions of a board of adjustment to a planning agency, and in this case we are assigning the certain functions to the Planning & Zoning Commission. Staff feels the Planning & Zoning Commission is in a better position to judge whether or not a variance was justified from these particular design standards. He suggested adding language to the modification provision which indicates that the Planning & Zoning Commission is designed to perform the duties of a board of adjustment for this purpose. He explained that if we make a reference in the section to the Planning & Zoning Commission performing the functions of a board of adjustment, then whoever is applying for a variance from those design standards would have to demonstrate the same things that anyone applying for a variance would, so we could omit the language "... upon demonstration of practical difficulty in meeting the standards."

Upon inquiry of Councilman Peterson, Mr. Green requested an amendment to the setback standards to read "2. For four story structures, a minimum side and rear setback of 40 feet shall be required, if adjacent to residential development or uses."

Regarding drive-throughs, Councilman Peterson felt that if the goal is to encourage more pedestrian oriented development, having a lot of drive-throughs detracts from that goal and people won't feel safe walking on the sidewalks. He felt that perhaps there should be at least some upper limit on the number of windows. He felt the concern is that people don't want to see a lot of fast food restaurants along Broadway to take away from the pedestrian aspect. Mr. Green responded that City staff would prefer one, but there may be a case where a particular use can't operate with just one single window. This provides the developer with the opportunity to come before City Council, as part of their conditional use permit request, and make their case for the second window.

The following individuals basically spoke in favor of the new district (with some concerns) for various reasons, some being, but are not limited to: limiting fast-food restaurants by a distance limitation; need to strengthen incentives to encourage historic preservation of older buildings; needs to be incentives for making larger apartments affordable; suggestion to have power lines be placed underground during new construction; when redeveloping, the City needs to address deteriorating traffic circumstances; need for long-term affordable housing; concern about the scale of development; need to make sure all standards contribute to a walkable lifestyle; need to increase the housing stock in the community developers should be allowed to build high in order to reduce sprawl; the need for bike lanes; the buildings will be out of scale and character and this may take away from the integrity of the remaining buildings possibly making them ineligible for historic designation; when you sit and idle at drive-throughs there are health impacts from the air quality; and the need for impervious surfaces:

Mr. Tom Gallaher, Community Corridors, LLC
Mr. Andy Reed, resident on Dogwood Road
Ms. Sharon Farr, representing the Preservation Society of Asheville and Buncombe County
Ms. L. Myers, resident on Vermont Court
Mr. Carl Ricker, real estate developer
Ms. Susan Roderick
Mr. Keith Thomson, resident on Bridle Path Road
Ms. Lynn Johnson, Asheville resident
Mr. David Ramsey, developer
Ms. Sophia Long, resident on Magnolia
Mr. Daniel Breen, Asheville resident
Mr. Alan Ditmore, Leicester resident
Mr. Fred English, Haw Creek resident
Ms. Eleanor Patronie, Cumberland Avenue resident
Mr. Walter Plaue
Ms. Betty Lawrence

The following individuals spoke in opposition of the new district for various reasons, some being, but are not limited to: remote parking should not be included in the parking/loading standards as there is just enough parking one block from Merrimon Avenue for residences; four stories is too high; lighting needs to be shielded from the neighborhood;

Mr. Jamie Thomason, Wendover Road resident
Mr. Greg McCoy, Monroe Place resident
Ms. Kathleen McLoughlin, Broadway area resident
Ms. Marilyn Hastings, Starnes Avenue resent

Vice-Mayor Bellamy said that regarding keeping units affordable after the implementation of this ordinance, it will be very important that we look at whom we are working with in partnership on the development side.

Mayor Worley closed the public hearing at 7:37 p.m.

Councilman Peterson said there are a lot of good things in this kind of development and we have had smart growth policies for a long time, but this is a start to say that we want a different kind of development pattern along some of our major corridors. He felt that Council needs to focus on getting that greater financial value on our properties, the commercial corridors. It helps those pay more so that our residential people don't have to pay as much and it helps to be able to provide services. On Broadway we need to ask the N.C. Dept. of Transportation, after some community consensus, to allow on-street parking on the lower part so that people feel safe walking. On Haywood Road, those folks need to figure out what they want to do and reach that consensus and develop some transportation plans. Just having a new district will not change the transportation pattern to allow greater pedestrian traffic. He felt there were benefits for the City and also for the developers and neighborhoods. He explained why he suggested an amendment to the incentive table that the incentive for building square footage greater than 24,000 square feet have the same mixed use requirement as the height greater than 3 stories incentive.

Upon inquiry of Councilman Mumpower regarding historic preservation enhancements, City staff suggested an amendment to the incentives table for existing historic structures. For all three incentives (density, building square footage and height), Planning & Development Director Scott Shuford recommended the following language be added to the incentives table under a new title of "Existing Historic Structures." Said language to read "Compatible adaptive reuse and/or additions to historic structures."

Mr. Green responded to various questions/comments from Council, some being, but are not limited to: application of the district will make some properties non-conforming; impervious surfaces;

Upon inquiry of Councilman Mumpower about underground utilities, Mr. Green said that we do require underground utilities in new primarily-residential subdivisions. He suggested an amendment to our Asheville Standard Specifications and Details Manual to require installation of underground power line conduits to new development and redevelopment.

Upon inquiry of Vice-Mayor Bellamy, Mr. Green said that as the new district is applied to different corridors, public input would be encouraged through the community meeting, the Planning & Zoning Commission public hearing and also the City Council public hearing.

Councilman Ellis felt the new district will serve the City well. He noted that if revisions are needed or something is not working out, City Council can amend the ordinance.

Mayor Worley explained why this ordinance does fit in with the City's smart growth policies.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved to adopt Ordinance No. 2973 (with the revisions outlined above by Mr. Green after the Thursday community meeting), with the following amendments: (1) to (f) (5) Setback Standards "2. For four story structures, a minimum side and rear setback of 40 feet shall be required, if adjacent to residential zoning."; (2) to (f) (12) (e) title change to "Variances. Requests for variances of the design and operational standards set forth in this subsection 12 may be granted by the Asheville Planning and Zoning Commission which is hereby designated to perform the duties of a board of adjustment for this purpose. Requests for variances shall be submitted to the Planning and Zoning Department and considered by the Planning and Zoning Commission at their next available regularly scheduled meeting."; (3) to amend the incentive table that the incentive for building square footage greater than 24,000 square feet have the same mixed use requirement as the height greater than 3 stories incentive with the addition of "AND building setbacks adjacent to residentially zoned properties are a minimum of 40 feet"; and (4) to amend the incentive table to include a new title "Existing Historic Structures" and to have all three incentives (density, building square footage and height) include the following language "Compatible adaptive reuse and/or additions to historic structures." This motion was seconded by Councilman Dunn.

Councilwoman Jones felt strongly that this was a unique opportunity to address the affordable housing problem. Since we are asking the community to make these great sacrifices of height and square footage, then we need to at least addressing the community need of affordable housing. Therefore, she moved to amend the main motion to insert, in the incentive table, the following language in both the building square footage incentive and the height incentive under residential: "In combination with: a minimum of 25 percent of the building gross square footage are residential units AND a minimum of 25 percent of the units are less than or equal to 700 square feet each AND 10 percent of the residential units are affordable AND building setbacks adjacent to residentially zoned properties are a minimum of 40 feet."

Mr. Shuford said that the best way to provide for long-term affordability is, as pointed out by Vice-Mayor Bellamy, the partnerships with the City. Another way is making sure that our Housing Trust Funds give great weight to projects that will be built in corridors. He felt that is a much better way of controlling the affordability issue for the long-term. In addition, he felt that a good way to deal with the affordability issue is providing that extra density and this ordinance does that.

After discussion, the motion made by Councilwoman Jones died for a lack of a second.

Vice-Mayor Bellamy said that this is a good place to improve density. Our corridors are transit oriented and need to be developed as such. This new district supports that need.

The motion made by Councilman Peterson and seconded by Councilman Dunn carried unanimously.

City Attorney Oast noted that since the vote for adoption of the ordinance was unanimously, if the protest petition had been valid, it would have been overcome.

At 8:21 p.m., Mayor Worley announced a short break.

ORDINANCE BOOK NO. 20 – PAGE 139

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD IDENTIFIED AS GIVENS ESTATE RETIREMENT COMMUNITY TO CONSTRUCT 59 SINGLE-FAMILY HOMES AND A 139-UNIT APARTMENT BUILDING

ORDINANCE NO. 2974 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD IDENTIFIED AS GIVENS ESTATE RETIREMENT COMMUNITY TO CONSTRUCT 59 SINGLE-FAMILY HOMES AND A 139-UNIT APARTMENT BUILDING

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:49 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Carter Pettibone, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the request to consider a Level III Conditional Use Permit to construct 59 single-family homes and a 139-unit apartment building as an expansion to the Givens Estates Retirement Community located at 2360 Sweeten Creek Road in the RM-16 Residential Multi-Family High Density District.

On August 30, 2002, the applicant, Givens Estates Retirement Community, submitted development plans for a Level III site plan review. The proposed project consists of 59 single-family cottages along with a 5 story, 139-unit apartment building (City Exhibit 3 – Location Map). The 59 homes, which will be accessed via 3 new private streets, will be almost entirely located on a 55-acre property (PIN No. 9655.07-58-3386) located directly north of the existing Givens parcel, while 3 existing residential buildings will be removed from the existing Givens site to make room for the new apartment building, which will straddle the property line between the existing and new parcels. The Technical Review Committee (TRC) reviewed the plans at its September 16, 2002, and recommended approval with conditions. Some of the TRC comments were addressed in revised plans submitted September 26, 2002. The Planning and Zoning Commission at their October 2, 2002, meeting voted to recommend approval of the plans with the conditions identified by the TRC.

Residential projects greater than 50 units is size are Level III projects, which are conditional uses in the RM-16 District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

The project site is located within the City limits on Sweeten Creek Road just north of the existing Givens Estates property. There is a mix of development types, land uses, and zoning in the area with residential subdivisions zoned RS-8 and RS-4 to the north, RM-16, Highway Business, Industrial, and Commercial Industrial zoning to the west across Sweeten Creek Road, and unzoned agricultural land to the east.

The site's access is from Sweeten Creek Road through the existing Givens' site. This intersection of the entrance drive and Sweeten Creek contains a stoplight, which is used to maintain an adequate traffic flow in the area. The existing streets within the complex are private streets, as will be the proposed streets. The existing Givens' site is also the terminus point for one of the City's bus lines, Route 30. Parking will be provided for the new apartment complex in the form of off-street parking lots located around the building.

The proposed apartment building will be five stories in height with the parking lot and main entrance level four stories tall expanding to five stories in the rear of the building. The applicant obtained a variance to allow the height of the building to extend six and a half (6.5) feet above the maximum 40 feet permitted by the RM-16 District in the Unified Development Ordinance (UDO). Detailed elevations will need to be submitted that demonstrate compliance with the granted variance.

The UDO requires 500 square feet of open space for every residential unit proposed (City Exhibit 3 – Site Plan). This would result in a total of 2.27 acres for reservation as open space for the new residential units. While the site plan shows large areas of open space, it does not specifically identify which areas are to be used to satisfy the requirement.

Buffering is not required along the boundaries of the site since the proposed number of units results in a low density that would be bordering existing low-density development to the north, vacant property to the west across Sweeten Creek, and unzoned agricultural land to the east. Landscaping is provided in and around the off-street parking areas serving the apartment building.

The UDO requires that new developments provide one large maturing tree (over 35 feet in height at maturity) for every 40 linear feet of property abutting a street. Any proposed street or street that is being realigned would need to lined with these street trees.

The UDO requires sidewalk installation along the frontage of all new streets. The applicant must provide these sidewalks or an alternative pedestrian walkway system as approved by the Engineering Department.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the UDO. City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project received conditional technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District (MSD), Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project must comply with all City standards in regards to maximum clearing and grading, erosion control, and maximum slope for streets. Development, the density of which is considerably less than permitted, is concentrated to the front of the site and is not proposed to the rear, which is significantly steeper and more heavily wooded. The project will also need to demonstrate compliance with the City's Hillside Development Standards for permitted density and clearing and grading.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The density of the single-family portion of the site is comparable to that of the single-family developments to the north of the site. The size of the tract of land also allows room for buffering to alleviate impacts of the size and height of the apartment building. Staff has determined that the additional traffic generated will not adversely impact of the existing road conditions or capacity. The development is also at a density that is significantly lower than what is permitted by the zoning requirements for the property.

4, That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The property is zoned RM-16, which has no structure size standards and the developer has obtained a variance to allow the height of the apartment building to exceed the maximum 40-foot height permitted by the UDO. The 5-story apartment building also sits in one of the lowest parts of the site and is surrounded by the single-family cottages located at higher elevations. These factors will help mask the apartment building's height and bulk from neighboring low density residential to the north. The density of the single-family cottages of the project is also similar to that of the single-family developments to the north.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The development will meet some of the City's Smart Growth policies for transportation through the provision of a transit stop and by preserving areas with steep slopes.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project received technical approval from the TRC, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The existing Givens site is served by a traffic signal at the intersection of the entrance road and Sweeten Creek. The site is also a terminus for one the City's bus lines and contains a designated a bus stop to serve the residents of the proposed expansion as well as the residents of the existing community. Because of this and the numbers of car trips that will likely be generated by the development, Engineering and Planning and Development Staff feel adequate capacity exists to serve the additional traffic generated by the expansion.

The plan for the expansion was reviewed by the TRC at it's September 16, 2002, meeting. The TRC identified a number of outstanding technical issues and recommended approval with the condition that these issues be addressed prior to final approval. Due to the timing between the TRC meeting and the Planning and Zoning Commission meeting, the applicant was unable to address all the conditions. At it's meeting, the Planning and Zoning Commission, by a vote of 6-0, also recommended approval subject to these conditions. At present, the applicant is working with the various City departments to address these outstanding conditions.

Since all the conditions have not been addressed at this time, City staff recommends approval with the following conditions:

- The applicant submit detailed plans for review by the TRC that address all conditions identified by the TRC at its September 16, 2002, meeting.
- Sidewalks are provided along all new streets within the project or an alternative pedestrian walkway system is designed and constructed to Engineering Department requirements.
- The site plan must demonstrate it meets the requirements for the Hillside Development Standards of the UDO for any portion of the site above 2220 feet in elevation and with an average slope of 15% or greater.
- The site plan clearly identifies areas to be set aside for permanent open space as required by the UDO.
- A transit shelter is located on the property to serve the residents using the City transit system.
- Elevations for the proposed apartment building are provided to insure compliance with the variance granted for building height.

Upon inquiry of Councilman Dunn, Mr. Pettibone said that the Sweeten Creek Road widening is on the N.C. Dept. of Transportation's Transportation Improvement Plan but is not funded and won't be funded for at least seven years. Even though the widening is on the TIP, the applicant is still required to either building the sidewalk along the frontage of the street or pay a fee in lieu of.

Mr. W. Louis Bissette, attorney representing the Givens Estates, spoke in support of the expansion plan. He said that where the property inside the development is not suitable for sidewalks, they have developed greenway trails. He said they are prepared to build the 600 feet section of sidewalk on Sweeten Creek Road that abuts the project, but he has talked with the N.C. Dept. of Transportation and they estimate another 7-8 years before the widening. He said that if a fee in lieu of arrangement would work for the City, he would be happy to consider that.

Mr. Ken Partin, Executive Director of Givens Estate, answered various questions from Council, some being, but are not limited to, are the units sold to individuals or does Givens Estates own them; does Givens Estate have any other long-range plans; could the walking trail system be tied into Ballentree Subdivision; and where is the transit shelter going to be located.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 9:10 p.m.

Councilman Ellis moved to adopt Ordinance No. 2974 to issue the conditional use permit for property located at 2360 Sweeten Creek Road identified as Givens Estate for a proposed 59 single-family cottages and a 137-unit apartment development, subject to the following conditions: (1) The applicant submit detailed plans for review by the TRC that address all conditions identified by the TRC at its September 16, 2002, meeting; (2) Sidewalks are provided along all new streets within the project or an alternative pedestrian walkway system is designed and constructed to Engineering Department requirements; (3) The site plan must demonstrate it meets the requirements for the Hillside Development Standards of the UDO for any portion of the site above 2220 feet in elevation and with an average slope of 15% or greater; (4) The site plan clearly identifies areas to be set aside for permanent open space as required by the UDO; (5) A transit shelter is located on the property to serve the residents using the City transit system; and (6) Elevations for the proposed apartment building are provided to insure compliance with the variance granted for building height. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 153

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE THRESHOLD FOR LEVEL II SITE PLAN REVIEW PROJECTS AND ALSO TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE NOTIFICATION REQUIREMENTS

ORDINANCE NO. 2975 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE THRESHOLD FOR LEVEL II SITE PLAN REVIEW PROJECTS

ORDINANCE NO. 2976 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE NOTIFICATION REQUIREMENTS

Upon request of Chief Planner Green, Mayor Worley said that the two public hearings would be combined but separate votes would be taken on the individual ordinance amendments.

Mayor Worley opened the public hearing at 9:14 p.m.

Regarding the amendment regarding the revision of the threshold for Level II site plan review projects, Chief Planner Gerald Green said the public hearing was advertised on November 1 and 8, 2002.

Several months ago, City Council adopted an ordinance amendment revising the Level II site plan threshold for residential projects. By increasing the range of residential projects identified as Level I site plan projects, this amendment eliminated Level II review for residential projects. Under the current standards, residential projects between 3 and 50 units are reviewed as Level I projects and residential developments with more than 50 units are reviewed as Level III projects. Neighborhood associations expressed concern that residential developments that could have impacts on neighborhoods, physical infrastructure, and quality of life were not subject to public meetings and discussion under the current standards.

In response to these concerns, staff worked with a focus group composed of representatives of the Coalition of Asheville Neighborhoods to develop an ordinance amendment that would assure projects of a size that could impact neighborhoods and/or the community as a whole were subject to public meetings and discussion. In addition to this goal, the focus group and City staff wanted to provide for speedy review of those residential projects that have little potential of impacting neighborhoods. In reviewing the existing standards, the focus group recognized that large non-residential uses permitted in residential districts, such as churches and schools, could impact the residential areas and should be subject to some level of public discussion.

The draft ordinance amendment presented to Council identifies the following as Level II site plan projects:

- Any manufactured housing rental community, camper/trailer park, or other residential development containing 20 to 50 individual dwelling units; and
- Any new non-residential use in a residential zoning district containing more than 10,000 square feet or the expansion of an existing non-residential use in a residential zoning district if the expansion contains more than 10,000 square feet.

As Level II site plan projects, these developments would be reviewed by the TRC (Technical Review Committee) in a public meeting. Notice of the TRC meeting would be provided to surrounding property owners and others as required by the City's public notification standards.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment revising the thresholds for Level II site plan projects. The Planning and Development staff recommends approval of the wording amendment.

Regarding the amendment to revise the notification requirements for public hearings, Mr. Green said that the public hearing was advertised on November 1 and 8, 2002.

The Planning and Development staff has been reviewing the current public hearing notification requirements in an effort to identify improvements. A focus group composed of representatives of the Coalition of Asheville Neighborhoods provided assistance with this task. The task force and staff developed the following goals to assist in developing recommendations:

- Provide improved notification of public hearings;
- Assure that people impacted by proposed projects are aware of the public hearing(s);
- Identify and implement cost-effective methods for notifying affected and interested citizens of public hearings; and
- Identify a variety of methods for notifying citizens of public hearings.

Using these goals as guidelines, the focus group and staff identified several methods for improving the public notifications processes used by the City to inform citizens of public hearings. The improvements in the notification process identified by the focus group include:

- Place a larger sign on sites proposed for rezoning, development, etc.;
- Include location and information about proposed projects on the department's web page;
- Continue to expand the department's list of neighborhood contacts and use this list to notify affected neighborhoods of proposed projects; and
- Decrease the area of notification for public hearings and other meetings requiring notification from 400 feet to 200 feet.

The only identified change that requires an amendment to the City's code is the final one regarding area of notification. The draft ordinance amendment making this change is presented with the Planning and Zoning Commission's unanimous recommendation for approval. An area of notification extending 200 feet from the affected property will assure that all property owners within the immediate area are notified of proposed projects. This change, in combination with the other notification improvements identified above, will ensure that all citizens with an interest in proposed development projects, rezonings, etc are notified of public hearings and other public meetings.

A minor change being included in this amendment is a statement that fees charged for CA's (Certificates of Appropriateness) are established by the City of Asheville Fees and Charges Manual. This change will bring the process for establishing fees for CA's into compliance with the adopted City policy.

The Planning and Zoning Commission voted 6 to 0 to recommend approval of the wording amendment revising the notification process for public hearings. The Planning and Development staff recommends approval of the wording amendment.

Mr. Green said that they have a list of 51 neighborhoods registered and Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods (CAN), said that they have an intern who will update the list and provide that list to the City.

Ms. Barber Melton, President of CAN, spoke in support of the amendment to the notification requirements. She said that neighborhoods are trying to be pro-active in working with the development community and they appreciate notification very early on. She felt that the process may need some revision in the future, but feels at this time, this new process will work.

Mr. Dick Washam felt that what has evolved out of several concerns a few months ago is a positive resolution. He felt this ordinance is a constructive step forward.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that he had no knowledge of these amendments and felt that perhaps only a select group of neighborhoods were involved in the process. It feels as if we are asking neighborhoods for their permission to have others move in beside them. He urged the Council to consult with the development community on these amendments if they have not already done so.

Mr. Green said that they did talk to a few developers and did a short presentation at the developer's forum, which at least 50 developers attended.

Mayor Worley closed the public hearing at 9:34 p.m.

Mayor Worley said that members of Council have previously received copies of the ordinances and they would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2975 to revise the thresholds for Level II site plan projects. This motion was seconded by Councilman Peterson and carried unanimously.

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Councilman Ellis moved for the adoption of Ordinance No. 2976 to revise the notification requirements. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote with Councilman Peterson voting "no".

Councilman Peterson said that he did not feel that we would be improving notification by sending out less notification.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2977 - ORDINANCE AMENDING THE CITY'S SOLICITATION ORDINANCE

ORDINANCE NO. 2978 – BUDGET AMENDMENT FOR A-HOPE TO PROVIDE SATURDAY HOURS AT THEIR DAY SHELTER

Police Chief Will Annarino said that this is the consideration of an amendment to the City's solicitation ordinance by (1) making it a class three misdemeanor to ask, beg or solicit funds for alms or contributions within certain areas within the City limits boundaries; and (2) making it a class three misdemeanor to urinate in public, sleep on public property and loiter with the intent to obstruct any public street, public highway, public sidewalk or other public place or building by impeding the free uninterrupted passage of vehicle traffic or pedestrians.

City staff has received numerous complaints from residents, visitors and merchants regarding the large amount of panhandling and soliciting occurring in Asheville. In addition, the Asheville Police Department has also witnessed a large increase in panhandling occurring in the City. City staff has determined that such activities are causing a public safety hazard by interfering with the free flow of pedestrian traffic on sidewalks; creating fear and anxiety for persons traveling downtown; and discouraging people from visiting Asheville's downtown and Biltmore Village. In an effort to insure the public safety of pedestrians in high traffic areas and to preserve a pleasant family friendly atmosphere in the downtown area and Biltmore Village, City staff recommends placing a limited ban on solicitation in specified areas based on the volume of pedestrian traffic as well as the impact the location has on tourism. Staff is proposing prohibiting solicitation in the following zones: ZONE 1 - Hilliard Avenue as the southern boundary south, French Broad Avenue as the western boundary, Cherry Street and Woodfin Avenue as the northern boundary and Woodfin and Valley Street as the western boundary and ZONE 2 – the entire Biltmore Village Historic District.

Staff is also proposing prohibiting solicitation throughout the City within a certain distance from bus stops, banks and automatic teller machines, entrances to buildings, and outdoor dining areas. The ordinance will also prohibit soliciting in the evening and prohibit a person from soliciting while under the influence of drugs or alcohol.

In an effort to reduce the amount of street nuisance type activities in Asheville, City staff is also recommending the ordinance prohibit relieving one's self on public, sleeping on public property and loitering that impedes pedestrian or vehicular traffic throughout the City.

Class 3 Misdemeanor – conviction on 1st offense results in a $50.00 fine. 2nd and subsequent convictions can result in fines up to $500.00.

Police Chief Annarino briefed Council on some random reports received over a one month period from the downtown area. An analysis reveals that 230 arrests have been made in the past two years under the current panhandling ordinance.

City staff recommends approval of the ordinance.

Upon inquiry of Councilman Dunn, Police Chief Annarino said that the area can be expanded in the future.

City Attorney Oast said that in response to a couple of concerns raised, he offered the following amendments to the proposed ordinance that will clarify some of the issues raised: (1) Section 11-5 (a) Definitions (1) be amended to read: "Ask, beg or solicit: includes, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of immediately collecting alms or contributions."; (2) Section 11-5 (a) Definitions (3) be amended to read: "Public Place means any street, alley, highway, parking lot, sidewalk, garage, park, plaza, building, ground, or other property owned or controlled by the City of Asheville, or any portion thereof."; (3) Section 11-5 (b) (1) be amended to read: "It shall be unlawful for any person to solicit in a public place at the following locations and times:"; (4) Section 11-5 (b) (1) (e) be amended to read: "No person shall solicit after dark, shall mean one-half hour after sunset until one-half hour before sunrise."; (5) Section 11-17 (b) be amended to read: It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle alone or in consort with others in a public place with the intent to:"; and (6) Section 11-17 (b) (2) be amended to read: "Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon or thereto."

Upon inquiry of Councilman Dunn, City Attorney Oast said that someone engaging in unwanted activity on private property is guilty of a trespass.

Vice-Mayor Bellamy said that she would like the ordinance amended if it prohibits the Salvation Army's Christmas kettle and other types of those activities.

The following residents spoke in support of the ordinance amendments for various reasons, some being, but are not limited to: will make the streets safe; these behaviors are not what people move to Asheville for; small businesses and pedestrians feel physically and financially threatened; if we continue to let these problems exist, we will threaten the viability of downtown which has taken over 25 years to occur; these are tools that will allow the Police Department to address panhandling; and constructive solutions must be found and the City must also be willing to help fund organizations like ABCCM and Hospitality House:

Mr. Fred English, Haw Creek resident
Mr. Mike McCrary, Asheville resident
Mr. W. Louis Bissette, Asheville resident
Mr. Doug Tate, speaking on behalf of the Asheville Downtown Association

The following residents spoke against the ordinance amendments for various reasons, some being, but are not limited to: adoption of the ordinance will not change for the better for the already disenfranchised and there be no less discrimination for the poor, homeless, mentally ill, or people of color; this will widen the door for selective enforcement and will increase police autonomy without increasing police accountability; criminalization of poverty; many do not have a choice but to make their homes on the street; sleeping and performing bodily functions are not chosen activities; we need policies that help people feel safe downtown and protect the viability of local businesses while dealing with the challenges in a constructive and humane way; the ordinance is wrong morally, wrong as a matter of policy and it violates the Constitution of the United States as an infringement on free speech and expressive conduct; there needs to be a strategy for eliminating the wide-spread street harassment of women; people in the community need to support initiatives to help get youth off the street; solutions need to be found that will not be so invasive and not on selectively chosen people; Council is adding one more burden to people who already have more than they can bear; this is institutional abuse; there have been no citizen or focus groups to craft the ordinance; this is an assault on human and civil liberty; adding more legislation is not going to deter criminals from this kind of activity; there needs to be more public restrooms, more room in the shelters, more affordable housing and more high paying jobs and the entire community needs to address this issue; lack of shelter capacity leads to more persons outside; ordinance should distinguish between intentionally disrespectful behavior and life-required bodily functions like sleeping, urination and defecation; state facilities should be held accountable for appropriate and effective discharge planning for persons discharged from various state and regional systems and institutions; more effective use of tax dollars would be to convince the District Attorney to prosecute the aggressive panhandlers and make an example of those folks; there should be solutions for poverty and homelessness rather than aggressiveness towards panhandlers; and this ordinance makes homelessness illegal:

Ms. Allie Morris
Mr. Shawn Gaynor, Asheville resident
Pastor Beth Duttera Newman of First Presbyterian Church and Chair of
Hospitality Board

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Mr. Bruce Elmore, representing the Western North Carolina ACLU
Mr. Bud Howell, Asheville resident
Ms. Crystal Watley
Mr. Frank Goldsmith
Ms. Melanie Shellor
Ms. Karen Van Ammon, Asheville resident and volunteer with Help-Mate
Mr. Alan Ditmore, Leicester resident
Mr. Jamie Thomason, resident on Wendover Road
Mr. Daniel Castell, Asheville resident
Mr. Christopher Fielden, Liberty Street resident
Ms. Martha Are, Executive Director of Hospitality House of Asheville
Mr. Jim Barrett
Minister Ukiah Morrison
Mr. Scott Dedman

Councilman Mumpower asked if our ordinance is legally defensible. Assistant City Attorney Curt Euler responded said that what we are proposing, in terms of the solicitation, is a valid time, place and manner restriction. We are not regulating the type of speech or singling out one group over another. We have significant government interest in that we want free flow of traffic, we want to promote our local merchants, and we want to promote tourism. The ordinance is narrowly tailored in that we are only restricting this ban to two limited areas where we are experiencing the most problems. Therefore, he felt we have a defensible ordinance.

When Councilman Mumpower asked if the City can amend the ordinance to address some inoculate activities, like charities, Mr. Euler said that if we amend our ordinance to allow those forms of activities, that is where we will get ourselves in the most constitutional trouble -- by allowing certain forms of solicitation to happen in this area, while banning others.

Councilman Mumpower believed that many of the people involved do actively pursue predatory, criminal and destructive behavior and activities and that should not be minimized or ignored at the expense of the common good. We have a responsibility to try to address that. He knows there are many in our community who are not only offended and irritated by these activities, but are frightened and intimated by the acts this ordinance is trying to address. He did not think that we should ignore the symptoms because we do not have the wherewithal to effectively fix the problem. We must attempt to do both. There is a good place being indifferent to a problem and indulging a problem and I believe that our staff has tried to make a reasonable effort to hit the mid-point.

Councilman Peterson felt that the provisions about sleeping on public property are overbroad. City Attorney Oast suggested the following amendment to Section 11-16 (a): "It shall be unlawful for any person to sleep outdoors on any of the streets, sidewalks or public parks in such a way, or in such a manner, as to interfere with pedestrian or vehicular traffic or permitted activities."

Councilman Peterson felt that in Section 11-17 (Loitering), (b) (2) was basically a duplication of (b) (1) and suggested (b) (2) be deleted entirely. City Attorney Oast agreed with this amendment.

Councilman Peterson had concerns expressed that if you drive the panhandlers out of town they will go to other areas of Asheville and why the ordinance is not City-wide. Mr. Euler explained that the downtown area probably has the most heavily pedestrian and vehicular traffic. That is different than other parts of the City and that is why staff is proposing the ban in a limited area to start out with. In the future if other areas grow and start to have those same types of characteristics, City Council can amend the ordinance and add those areas. But, based on the research, the two areas that fit the heavy pedestrian traffic, tourism and vehicular traffic were the Biltmore Village Historic District and downtown area.

Discussion surrounded street performers and whether they would be subject to the ordinance if they just played and had a suitcase open or a hat beside them. Mr. Euler responded this ordinance would prohibit that type of activity. Constitutionally he did not see how we could differentiate between a panhandler asking for money, a musician asking for money, or a charity asking for money. We are trying to have a consistent ordinance, which is no asking for money regardless of your motivation.

Vice-Mayor Bellamy felt a permitting process should be reviewed for a possible amendment to this ordinance at a future date. City Attorney Oast said that it would be possible to have that kind of process, but if we are regulating solicitation, we have to regulate it for anyone who solicits for any purpose. He would research other jurisdictions to see how they handle their permitting process in cases like this and report back to Council.

Upon inquiry of Councilman Jones about street musicians, City Attorney Oast explained that one of the difficulties encountered in ordinances of this type is that we can't, to the extent that solicitation does enjoy some First Amendment protections, regulate one kind of solicitation over another. That is why this regulation affects asking for money for one's self, for a charity or to the accompanying of a musical instrument. Musicians can play, but solicitations cannot be sought.

Councilman Ellis felt that that it's important to have street musicians downtown because they help make Asheville very special and diversified. Even though he is in favor of the ordinance to help the situation, he requested staff to see if there is some way to for this activity.

Councilman Peterson felt Section 11-5 (5) (d) should be clarified to read: "(d) Soliciting money from anyone who is waiting in line for any purpose."

Councilman Dunn spoke in support of the ordinance and did feel, like others, that this is a community problem. He felt that we do need to do more for the helpless, but there is a silent majority of people who are frightened and if City Council doesn't take a first step to try to address these problems, then nothing will happen. He also would like to see if there is a way to have street musicians, however, he does understand the Constitutional issue.

Councilman Jones is very committed and supportive of downtown Asheville with her presence and her pocketbook. There will always be a give and take between individual freedoms and corporate life. To adopt the ordinance is increased regulation of corporate behavior, but she believes that adoption will have an overall positive effect on the downtown district. We will incur the costs associated with enforcement, prosecution, possibly defense, selective enforcement and human costs. All people are of value and homeless people can't be sited away and pretend they are not part of our community. We must find solutions. She felt that the community has begun to understand the complexities of the problems and encouraged by the efforts and commitment of the Downtown Association, the Downtown Commission and the faith communities in those directions. She asked Council to support the following three acts in order to take this conversation to the next level and also support efforts in the community to address the root of homelessness: (1) commit to a conversation about public restrooms and how we can address this need. Specifically if we can ask the Director of Public Works and other appropriate City staff, to do a vast search of what has worked in other cities and other technology; (2) participate in Blue Ribbon Commission or the Social Issues Task Force, but not to necessarily talk about the need, but talk about the solutions and then commit to do something about it; and (3) as a beginning monetary start, to allocate from the Contingency Fund $20,000 to A-Hope to provide Saturday hours at their day shelter.

Vice-Mayor Bellamy supported the three acts requested by Councilman Jones. She said this is a difficult decision about our community and its future. We want everyone to have the opportunity to live in our community, which is a community of givers, but we have to set some rules and some boundaries.

Mayor Worley said this decision is not easy and needs to be a balanced decision. This balance is for the needs of those who are much less fortunate than we are and the safety and welfare of the rest of our citizenry, who are offended when people urinate in public, accosted or feel threatened. City Council is willing to seriously consider ways to find assistance for those in need. He said the Downtown Commission is forming a Social Issues Task Force and feels they would welcome others who would like to participate in that process.

Councilman Peterson moved to adopt Section 11-15 (Public Urination); Section 11-16 (Sleeping on Public Property) with the amendment to (a) as read by City Attorney Oast above; and Section 11-17 (Loitering) with the amendment to (b) as read by City Attorney Oast above and with the entire deletion of (b) (2). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Mumpower moved to adopt Section 11-5 with the amendments to (a) (1), (a) (3), (b) (1) and (b) (1) (e) as read by City Attorney Oast above, with the understanding that City staff will look for ways to possibly permit street musicians, charitable organizations, etc. so they will not be in violation of this ordinance. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote, with Councilman Peterson voting "no."

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Councilwoman Jones moved to (1) commit to a conversation about public restrooms and how we can address this need. Specifically if we can ask the Director of Public Works and other appropriate City staff, to do a vast search of what has worked in other cities and other technology; (2) participate in Blue Ribbon Commission or the Social Issues Task Force, but not to necessarily talk about the need, but talk about the solutions and then commit to do something about it; and (3) adopt Ordinance No. 2978 which will allocate from the Contingency Fund $20,000 to A-Hope to provide Saturday hours at their day shelter and revisit the appropriation again next Fiscal Year. This motion was seconded by Vice-Mayor Bellamy.

Councilman Dunn wondered if we should allocate the $20,000 now, or wait until a plan is in place perhaps by the Downtown Social Issues Task Force because they may say the best place to allocate the money is for public restrooms.

The motion made by Councilwoman Jones and seconded by Vice-Mayor Bellamy carried unanimously.

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VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 18-24, 2002: Rufus Kendall (Water), Steve McIntyre (Transit Services), William Sibbach (Transit Services), Louise McCauley (Water) and Christine Martin (Water).

The following claims were received during the period of October 25-31, 2002: Berlin Tire Center (Police) and Antonina Tsysan (Transit Services).

The following claims were received during the period of November 1-7, 2002: Donna Tolar (Streets), Carrols Corp. (Water), Jack Roberts (Sanitation) and Paul Campbell (Parking Services).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. William Wynn presented City Council with a petition containing approximately 1,298 signatures. Said petition read "On July 21 two rookie Asheville police officers topped Ismael Hassan, a local youth corrections officer, and his friend Khalid Saadiq, a former Asheville Police Department Officer, in front of Ismael's home for driving while black, in the South French Broad neighborhood. Without provocation the officers proceeded to arrest the two, in the process beating Ismael on the lawn of his residence, while he was in his corrections officers uniform. Help bring justice to this case by making the following demands: (1) Ismael and Khalid's charges be dropped; (2) A full independent investigation of the Asheville Police Department into this incident of racial profiling and police brutality; (3) An end to police brutality and racial profiling; and (4) That officers Breneman badge # 2170, and Maltby badge # 2162, be dismissed from the APD, and that Khalid and Ismael be given a public apology." City Manager Westbrook said that an internal investigation is being done and he would report back to City Council.

At 12:12 a.m., Councilman Dunn moved continue this meeting until Thursday, November 14, 2002, at 3:00 p.m. in the Council Chamber, to discuss the regional water renegotiations with Henderson County. This motion was seconded by Councilman Ellis and carried unanimously.

Thursday – November 14, 2002 - 3:00 p.m.
Council Chamber – City Hall

Continuation of Tuesday, November 12, 2002, City Council Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

Mayor Worley said that this is the continuation of the formal meeting of November 12, 2002, for the purpose of focusing on renegotiations with Henderson County, where the City's stands with those renegotiations and how to proceed in the future.

Mayor Worley reviewed with Council the background of the Regional Water Agreement with Henderson County. He then explained in some detail the current agreement difficulties, which include: (1) effort and intent to provide regional solution; (2) Bent Creek property; (3) American Freightways example – which is not consistent with the Agreement; and (4) other issues being the Henderson County "system" and the Hendersonville water distribution system.

Current discussions included an offer at formal renegotiation session to pay Henderson County $2 million and terminate the agreement. Informal discussions include (1) revise the agreement, pay $1 million plus $500,000 over period of time; (2) continue participating in Authority with one seat; (3) provide for needs of Henderson County; and (4) create Regional Infrastructure Council.

Henderson County's responses were to revise the agreement, pay $2 million, be allowed two seats on Water Authority, and create a Regional Infrastructure Council.

Guiding principles are the (1) commitment to regionalism – (a) water is a resource for entire region; and (b) all water producing/distributing entities need to be included; and (2) creation of Regional Infrastructure Council – needed regardless of outcome of discussions with Henderson County.

The following are three proposals to Henderson County:

Option 1
- Continue with present agreement
- Joint commitment to abide by agreement by all parties
- Provide for needs of Henderson County as per the present agreement
- Create Regional Infrastructure Council

Option 2
- Pay Henderson County $1.5 million
- Continue participating in Authority with one seat
- No "regional water lines" but all part of Water Authority system
- Provide for needs of Henderson County on same basis as all other customers
- Create Regional Infrastructure Council

Option 3
- Pay Henderson County $2 million and terminate agreement
- Provide for needs of Henderson County on same basis as all other customers
- Create Regional Infrastructure Council

In summary; he asked that we give Henderson County the option to accept any of the above proposals and to express hope and desire that they opt to continue participating by accepting Option 2.

Regardless of the outcome of Henderson County negotiations we are committed to provide water where needed, as needed on a regional basis. Also, we need to move to create a Regional Water Infrastructure Planning Council made up of all water producing, using, and distributing governmental entities in Buncombe County and Henderson Counties.

The regional approach mission is to plan water infrastructure in the region to provide for planning in the event of shortages, prevent duplication of scarce resources and promote cooperation.

In conclusion (1) Asheville wants to preserve and promote the spirit of regionalism that began in 1994; (2) Asheville recognizes that we are all neighbors in WNC and can only truly succeed by working together; and (3) many more areas where we can all benefit if we work together.

Mr. Mickey Mahaffey supported the Regional Water Infrastructure Planning Council proposal and hoped that the entire water agreement will be examined and that we truly have a regional approach.

Ms. Hazel Fobes said we must have a proper independent Water Authority and we do need regionalism.

Upon inquiry of Councilman Peterson, Mayor Worley said that the Bent Creek property was purchased in the mid-1980's with water revenues. He felt that if the City buys the property back and eventually sells it, the money should go back to the Water Department, thus benefiting all of the water customers.

Councilman Peterson said that we have an agreement with Henderson County to build regional water lines and there is an argument over what a regional water line is, but what obligation does the City have that the Asheville taxpayers should give Henderson County $1.5 or $2 million. Mayor Worley said that money would come from the Regional Water Authority's Water Fund and the benefit to the City would be that we would have the Bent Creek property.

Councilman Ellis said that there is a feeling in Henderson County that when the water processing plant was built in Henderson County, it took a lot of land off of the tax books and their citizens feel they deserve something for that.

Mayor Worley said that part of the agreement with Henderson County would be that they use the funds for sewer and/or waterline extensions. The indicated that they would spend most of it on sewer because that is their biggest need.

Upon inquiry of Vice-Mayor Bellamy, Mayor Worley said that 60% of the water customers are Asheville residents, 40% are Buncombe County residents and about less than 1% are Henderson County residents.

Mayor Worley said that the Regional Water Authority currently has a current Master Plan that, up until now, only covers only Asheville and Buncombe County. We are in the final stages of completing the Master Plan process for northern Henderson County and once that is complete, it will be incorporated into our Master Plan.

Councilman Ellis explained that City of Hendersonville has no desire to be a part of a Regional Agreement.

Councilman Dunn said that sometimes regionalism can be a problem in that you gain a lot by working together, but you lose control. We need to make sure that we remember that Asheville residents are our number one concern.

Councilman Peterson said that we have a regional Civic Center, which Asheville taxpayers pay the full cost and everyone else enjoys it. The regional approach shouldn't be that Asheville taxpayers pay for everyone else's development and infrastructure.

There was discussion about each of the three options and under what circumstances the Bent Creek property would revert back to the City of Asheville.

Councilman Peterson felt that if we provide water for Henderson County at the same rate, we will lock ourselves into the Sullivan Act. If it is our ultimate goal to have a true City Water Department and lower the rates, he felt this is going in the wrong direction.

Mayor Worley stressed that the agreement is not working for both parties. He asked for Council's guidance to allow him and Councilman Ellis to make a formal offer to Henderson County of Options 1, 2 or 3. He stated that there are still more negotiations to take place and the agreement would have to be thoroughly reviewed by City Council.

City Manager Westbrook said that since the agreement is not working, the proper way to reverse things is to back out of the second agreement (with Henderson County) first for several reasons, including financial pledges on bonds If, or when, that agreement is dissolved then the City can work with Buncombe County to renegotiate their contract.

Upon inquiry of Councilman Dunn, Finance Director Bill Schaefer said that our obligations under the current agreement with Henderson County causes great concern in the financial community and we are hesitant to go to market until the matter clears up.

City Manager Westbrook said that we are only using slightly over 50% over our treatment capacity and the more water we sell, the lower our overhead. We have a lot of capacity which is good for regionalism.

Councilman Ellis moved to authorize the Mayor to present the three options to Henderson County and let them decide what is in their best interest. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Peterson voting "no."

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 19, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

New Street Name of "Moser's Place"

Summary: The consideration of a resolution accepting the new proposed street name "Moser's Place."

Ron Moser Inc., owner of lots off of Maple Avenue, has petitioned the City of Asheville to accept the street name " Moser's Place." The new street will begin at Maple Avenue and end at the cul-de-sac on Moser's Place.

City staff recommends adoption of the resolution accepting the new street name.

New Street Names of "Chamberlain Drive," Longwood Lane," and "Landis Court"

Summary: The consideration of a resolution accepting the new proposed street names of "Chamberlain Drive," "Longwood Lane," and "Landis Court."

Bostic Development LLC, owner of lots off of New Leicester Highway, known as Westmont Commons, has petitioned the City of Asheville to accept the street names of "Chamberlain Drive," "Longwood Lane," and "Landis Court." The new streets will begin at New Leicester Highway and end on Chamberlain Drive. Longwood Lane, and Landis Court.

City staff recommends adoption of the resolution accepting the new street names.

Re-Designation of the State Development Zone

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone.

The State of North Carolina has designated certain census tracts in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas.

The current State Development Zone for Asheville will expire on December 31, 2002. Application for re-designation is due and, if approved, will take effect January 1, 2003, for a period of two years.

Pursuant to the state-mandated guidelines, City staff has determined the area for inclusion in the new Development Zone. The total zone must have a minimum of 20% population below the poverty level.

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Staff recommends approval of the resolution defining the State Development Zone to be effective January 1, 2003, through December 31, 2005.

Adoption of the Fiscal Year 2003-04 Budget Schedule

Summary: The consideration of a motion approving the Fiscal Year 2003/2004 budget schedule.

The proposed Fiscal Year 2003/2004 budget schedule identifies specific dates for completion of all phases of the budget process leading to adoption. Key phases of the budget process include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2003/2004 budget is scheduled for June 24, 2003.

City staff recommends City Council adopt the Fiscal Year 2003/2004 budget schedule.

Vice-Mayor Bellamy asked that consideration be given to the weekend of January 31-February 1 for the Annual Retreat. City Manager Westbrook said that the Retreat Committee would be meeting next week and they would take that request into consideration.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DOWNTOWN SOCIAL ISSUES TASK FORCE

Chair of the Downtown Commission Carol King said that over the past year, the Downtown Commission has brought in local expert on issues such as homelessness and had discussions about graffiti, loitering and the panhandling downtown. They have come to understand that these problems are very complex and that the state budget cuts to the mental health system, as well as many factors, are contributing to the increase of these problems in our center city.

As a result of their research and discussions, they propose the formation of a Downtown Social Issues Task Force that would bring together stakeholders from a broad range of interested organizations, to deal with these issues in a positive, coordinated, and comprehensive fashion. They have received a great amount of support and interest in this effort and have gathered several letters of support. She presented Council with a list of interested organizations that have been contacted that would be willing to work on such a Task Force. She invited Council members to be a part of the Task Force if they wish.

Ms. King said that a lot of research has been done nationwide on this issue and the Task Force will define the issues and then come up with well-researched and well thought-out solutions for Council consideration. She anticipated approximately six months before coming back to Council with the well-defined problem.

The Task Force will complement the legal tools provided by the recently adopted amendment to the solicitation ordinance.

Upon inquiry of Councilman Mumpower, Ms. King said that City resources needed would be primarily from the City Development Division.

Ms. King responded to various questions from Council regarding a mental health plan for our community and the possibility of merchants putting up boxes in their stores for the homeless.

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It was the consensus of Council to endorse the Downtown Social Issues Task Force and that the Asheville Downtown Commission take the lead in submitting to Council a suggested list of participants and a leader. Said Task Force can then brainstorm to define what they feel their charge is and then bring that information back to Council for their input and/or approval.

UPDATE ON METROPOLITAN PLANNING ORGANIZATION EXPANSION

Metropolitan Planning Organization Coordinator Dan Baechtold said that this is a presentation to City Council on the expansion of the Metropolitan Planning Organization (MPO).

Metropolitan Planning Organizations (MPOs) are part of a federal process to conduct local transportation planning in urbanized areas. An MPO is required in every urbanized area over 50,000 in population in order to receive federal funding for transportation. The MPO process is a partnership between local and state government to make decisions about transportation planning in urbanized areas and to meet planning requirements established by federal authorizing legislation for transportation funding.

The Asheville Area MPO is made up of two primary committees: a policy-making group of elected officials known as the Transportation Advisory Committee (TAC); and the Technical Coordinating Committee, made up of staff from various agencies. Councilwoman Holly Jones and Councilman Brian Peterson are the City of Asheville representatives on the TAC. The TAC is responsible for making decisions related to transportation plans and improvement priorities in the MPO area. The City of Asheville staff serves as the lead planning agency for the MPO, and receives federal funding to conduct transportation planning and administer the MPO.

Every ten years the MPO boundary must be redefined based on the results of the U.S. Census. In the spring of this year, the Federal Highway Administration and the North Carolina Dept. of Transportation directed the MPO to expand the boundary to include municipalities in Henderson and Haywood Counties based on the results of the 2000 Census. This change is part of an established federal process to redefine urban areas and MPO boundaries that occurs every ten years.

The MPO currently has eight member governments: Asheville, Buncombe County, Biltmore Forest, Black Mountain, Fletcher, Montreat, Weaverville, and Woodfin. At a minimum, eight new member governments will be added to the MPO based on the census results. They are: Haywood County, Clyde, Canton, Waynesville, Henderson County, Hendersonville, Laurel Park, and Flat Rock. In addition, the Town of Maggie Valley is likely to be added. The expansion will involve a restructuring of the MPO and the agreements that establish the MPO. There will be new members of the Transportation Advisory Committee and the Technical Coordinating Committee, a new voting structure, new procedures, and a new name for the MPO.

The North Carolina Dept. of Transportation has asked the MPO to proceed with expansion of the MPO according to the following schedule:

January 2003	-	Establish New MPO Boundary
July 2003	–	Adopt New Memorandum of Understanding (MOU)
August 2003	-	New TAC Members in Place

In order to meet the schedule outlined above, the Technical Coordinating Committee (TCC) established a working group of staff from all of the involved local governments to plan the MPO expansion. The committee cooperatively drew a draft boundary for the expanded MPO.

According to federal guidelines, the draft boundary must include all contiguous areas defined as urbanized, as well as any adjacent areas expected to be urban in the next 20 years.

All of the municipalities and counties in the expanded MPO area will be asked to comment on the draft boundary. The TCC will make adjustments to the boundary based on these comments. In January, the TAC will be asked to adopt the new boundary for the MPO.

No action is required from City Council at this time. City Council may choose to formally or informally provide input on the boundary or other MPO issues directly to the TAC or through the Asheville representatives on the TAC. In the spring of 2003, the Asheville City Council will be asked to sign a revised Memorandum of Understanding between all of the governments in the MPO. The MOU will establish voting procedures and membership of the TCC and TAC. The possibility of weighted voting based on population will receive a lot of discussion. Weighted voting on the TAC may be affected somewhat by the location of the MPO boundary. The process of establishing a new MOU will take place after the new boundary is established in January.

It should also be noted that the State of North Carolina is in the process of establishing Rural Planning Organizations (RPOs) for transportation all across the state. These RPOs will be responsible for transportation planning outside of the metropolitan areas. Currently there is a discussion between Buncombe, Madison, Transylvania and Haywood Counties to form an RPO in this region. Henderson County has also been offered the option to join the RPO. The MPO will work closely with the new RPO on the location of the boundary and other coordination issues.

Upon inquiry of Councilman Peterson, City Engineer Cathy Ball said that the lead planning agency is not being negotiated with this new Memorandum of Understanding.

Councilman Peterson lead the discussion of the draft boundary preferring that the boundary be kept tighter around the municipalities. He felt that having a tighter boundary would lend towards more intensive urbanized planning.

It was the consensus of Council that the boundary be tightened than what is proposed.

BUDGET AMENDMENT FOR FILM FESTIVAL IN NOVEMBER 2003

Mr. David Mitchell, Superintendent of Cultural Affairs, said that this is the consideration of a budget amendment, in the amount of $28,250, to the Parks and Recreation Festival Enterprise fund to allow for the production of the inaugural Asheville Film Festival.

In connection with the Asheville Film Commission, the Cultural Arts Division has been researching the implementation of a film festival for the Asheville area. This event will draw a national audience, have a positive economic impact to the area, and generate revenue for the enterprise fund. The Parks and Recreation Department is requesting an amendment of $28,250 to the Festival Enterprise Fund to begin planning and implementation of this event. Projected initial sponsorship sales of $28,250 will offset this cost by the close of the Fiscal Year 2002-03.

Mr. Mitchell then explained how the film industry directly supports caterers, restaurants, transportation, innkeepers, hotels, motels, pre-production, post-production, advertising, print and television business. Over the last four years, direct revenue from feature film industry totals $20,000,000.

The Asheville Parks and Recreation Department recommends approval of this request and the support of City Council in establishing the Asheville Film Festival.

Upon inquiry of Councilman Dunn, Director of Parks & Recreation Irby Brinson said that we need opportunities like this to make revenue for the Festival Fund to continue with other projects and to work down the in-direct costs.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Debora Holmes-Young as Chair to the ABC Board and to appoint Thomas R. Bell as a member.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Ray Sanow, Michael Rangel, Stephen Lutz and Diedra Smith to the Asheville Film Commission.

CLOSED SESSION

At 4:37 p.m., Councilman Peterson moved to go into closed session to establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a) (5). This motion was seconded by Councilman Dunn and carried unanimously.

At 5:25 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – November 26, 2002 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brian L. Peterson

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE PARKS AND RECREATION DEPARTMENT RECEIVING THE GOLD MEDAL AWARD FROM THE NATIONAL SPORTING GOODS ASSOCIATION AND THE NATIONAL RECREATION AND PARKS ASSOCIATION

Mr. Larry Zehnder, Regional Director of the National Recreation and Parks Association (NRPA), Southeast Region, presented Mayor Worley and Mr. Irby Brinson, Director of Parks and Recreation, with the Gold Medal Award. Mayor Worley then recognized Parks & Recreation Director Irby Brinson for receiving the Gold Medal Award from the National Sporting Goods Association (NSGA) and the NRPA on October 16, 2002. He said the Gold Medal is the most prestigious award given through a partnership with NRPA and NSGA's Sports Foundation to honor the nation's outstanding community parks and recreation agencies for excellence in the field of park and recreation management.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 12, 2002, AND THE WORKSESSION HELD ON NOVEMBER 19, 2002

B. RESOLUTION NO. 02-181 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "MOSER'S PLACE"

Summary: The consideration of a resolution accepting the new proposed street name "Moser's Place."

Ron Moser Inc., owner of lots off of Maple Avenue, has petitioned the City of Asheville to accept the street name " Moser's Place." The new street will begin at Maple Avenue and end at the cul-de-sac on Moser's Place.

City staff recommends adoption of the resolution accepting the new street name.

RESOLUTION BOOK NO. 27 – PAGE 280

C. RESOLUTION NO. 02-182 - RESOLUTION ACCEPTING THE NEW STREET NAMES OF "CHAMBERLAIN DRIVE," "LONGWOOD LANE," AND "LANDIS COURT" OFF NEW LEICESTER HIGHWAY

Summary: The consideration of a resolution accepting the new proposed street names of "Chamberlain Drive," "Longwood Lane," and "Landis Court."

Bostic Development LLC, owner of lots off of New Leicester Highway, known as Westmont Commons, has petitioned the City of Asheville to accept the street names of "Chamberlain Drive," "Longwood Lane," and "Landis Court." The new streets will begin at New Leicester Highway and end on Chamberlain Drive, Longwood Lane, and Landis Court.

City staff recommends adoption of the resolution accepting the new street names.

RESOLUTION BOOK NO. 27 – PAGE 281

D. RESOLUTION NO. 02-183 - RESOLUTION RE-DESIGNATING THE ASHEVILLE STATE DEVELOPMENT ZONE

Summary: The consideration of a resolution to re-designate the Asheville State Development Zone.

The State of North Carolina has designated certain census tracts in and around the City of Asheville as qualified for inclusion in a State Development Zone. Development zones were created to provide economic incentives to stimulate new investment and job creation in economically distressed urban areas.

The current State Development Zone for Asheville will expire on December 31, 2002. Application for re-designation is due and, if approved, will take effect January 1, 2003, for a period of two years.

Pursuant to the state-mandated guidelines, City staff has determined the area for inclusion in the new Development Zone. The total zone must have a minimum of 20% population below the poverty level.

Staff recommends approval of the resolution defining the State Development Zone to be effective January 1, 2003, through December 31, 2005.

RESOLUTION BOOK NO. 27 – PAGE 282

E. ORDINANCE NO. 2979 - BUDGET AMENDMENT FOR THE FILM FESTIVAL IN NOVEMBER OF 2003

Summary: The consideration of a budget amendment, in the amount of $28,250, to the Parks and Recreation Festival Enterprise fund to allow for the production of the inaugural Asheville Film Festival.

In connection with the Asheville Film Commission, the Cultural Arts Division has been researching the implementation of a film festival for the Asheville area. This event will draw a national audience, have a positive economic impact to the area, and generate revenue for the enterprise fund. The Parks and Recreation Department is requesting an amendment of $28,250 to the Festival Enterprise Fund to begin planning and implementation of this event. Projected initial sponsorship sales of $28,250 will offset this cost by the close of the Fiscal Year 2002-03.

The Asheville Parks and Recreation Department recommends approval of this request and the support of City Council in establishing the Asheville Film Festival.

ORDINANCE BOOK NO. 20 – PAGE 170

F. MOTION ADOPTING THE FISCALYEAR 2003-04 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2003/2004 budget schedule.

The proposed Fiscal Year 2003/2004 budget schedule identifies specific dates for completion of all phases of the budget process leading to adoption. Key phases of the budget process include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2003/2004 budget is scheduled for June 24, 2003.

City staff recommends City Council adopt the Fiscal Year 2003/2004 budget schedule.

G. RESOLUTION NO. 02-184 - RESOLUTION APPOINTING A CHAIR AND MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Summary: The term of Mr. Ralph Morris, as a member and Chair to the Alcoholic Beverage Control Board, expired on November 13, 2002.

On November 19, 2002, it was the consensus of City Council to have the City Clerk prepare the proper paperwork to (1) appoint Debora Holmes-Young as Chair to the ABC Board until her term expires, or until her successor has been appointed; and (2) appoint Thomas R. Bell to serve a three year term, term to expire November 13, 2005, or until his successor has been appointed.

Upon inquiry of Councilman Dunn, Vice-Mayor Bellamy explained that there was an ABC employee embezzling money from one of the stores and the issue has been addressed.

RESOLUTION BOOK NO. 27 – PAGE 283

H. RESOLUTION NO. 02-185 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSON

Summary: Pam Turner, Cindy Pomeroy, Kathleen Bobak and Guy Chancey have resigned as members of the Asheville Film Commission, thus leaving two unexpired terms until November 1, 2003, and two unexpired terms until November 1, 2004.

On November 19, 2002, City Council instructed the City Clerk to arrange the proper paperwork to appoint Ray Sanow and Michael Rangel to each serve until November 1, 2003, and to appoint Stephen Lutz and Diedra Smith to each serve until November 1, 2004. All appointments are until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 284

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN ORDINANCE DESIGNATING THE BYNUM HOUSE AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2980 - ORDINANCE TO DESIGNATE THE BYNUM HOUSE LOCATED AT 200 MACON AVENUE AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 5:18 p.m.

Interim Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to designate the Bynum House, located at 200 Macon Avenue, as a local historic landmark. This public hearing was advertised on November 15 and 22, 2002.

The Bynum House is located within the Grove Park Neighborhood, at 200 Macon Avenue, .7 miles Northeast of its intersection with Charlotte Street on a 5.7-acre tract of land. The boundaries of the proposed designated property, however, do not include the full tax parcel, but encompass a 1.17-acre parcel. The structure is located along the approach to the Grove Park Inn, nestled on a heavily wooded lot. The property backs up to the Grove Park Inn Country Club, which is located to the west and is surrounded by the Battle house to the north, Longchamps apartments, across the street to the east and single family housing to the south. The grounds slope away steeply from the house and the surrounding landscape had at one time been neglected. Recently, however, an effort has been made to reclaim some of the original landscape design features.

The Bynum House is an outstanding example of early 20th century Tudor Revival style architecture and survives nearly unchanged since its construction in 1923. Architect Ronald Greene designed the House for Curtis and Florence Bynum. Greene is best known for his commercial and civic structures, such as the Jackson Building on Pack Square, the Claxton School and the Longchamps apartments, to name a few. While the Bynum house is not a rare example of the Tudor Revival style in Asheville, the house is significant for its fine architecture, featuring a well-executed and detailed design and high degree of integrity. After nearly 80 years the interior finishes and treatment are consistent with the style of the house and much of the interior remains intact. It is also one of a few Tudor Revival style dwellings constructed of stone in the City.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. Currently the tax appraisal for the structure is $1,470, 800 and the entire 5.77 acre tract of land is appraised at $577,000. The approximate tax deferral is $4,684.

The ordinance designates the Bynum House a local historic landmark. The property included in the designation consists of the Bynum House and 1.17 acres. The designation includes, the exterior of the house, some interior details and landscape features. When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The Historic Resources Commission of Asheville and Buncombe County (HRC) by unanimous vote recommends to the Asheville City Council that the Bynum House be designated a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Upon inquiry of Councilman Dunn, Ms. Merten explained how someone could get his or her property designated as a local historic landmark.

Mayor Worley closed the public hearing at 5:29 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2980. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 172

B. PUBLIC HEARING TO CONSIDER AN ORDINANCE DESIGNATING THE GROVE PARK COUNTRY CLUB CLUBHOUSE AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 2981 - ORDINANCE TO DESIGNATE THE GROVE PARK COUNTRY CLUB CLUBHOUSE, LOCATED ON COUNTRY CLUB ROAD ON THE GROUNDS OF THE GROVE PARK GOLF COURSE, AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 5:30 p.m.

Interim Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to designate the Grove Park Country Club Clubhouse located on Country Club Road on the grounds of the Grove Park Golf Course, as a local historic landmark. This public hearing was advertised on November 15 and 22, 2002.

The Grove Park Country Club clubhouse is located on Country Club Road, .3 miles north of its intersection with Kimberly Avenue, on the grounds of the Grove Park Golf Course. The proposed designation encompasses 2.56 acres of the golf course parcel. The clubhouse is located on the north side of the golf course, overlooking the 18th green, and just southwest of the Grove Park Inn. The rolling terrain of the eighteen-hole golf course, with its manicured landscape, provides a fitting setting for the clubhouse.

The Grove Park Country Club Clubhouse is significant in the areas of social history, entertainment and recreation, and architecture. The structure was originally built for the Asheville Country Club and is a fine example of the work of New York architect, Harrie T. Lindeberg, one of the foremost architects of the Country House movement. The rambling Grove Park Clubhouse embodies the ideas of the country house on a slightly larger scale and the golf course serves as the landscaped park.

The organizational framework for country clubs, as they spread throughout the United States were based on the gentleman's city clubs of New England. Eventually there was a movement towards a suburban or county club in the 1870's. The typical country club offered its members sporting grounds for hunting, golf and tennis in a pleasant setting and as an exclusive retreat for the wealthiest members of society.

Though the Grove Park Country Club clubhouse was constructed in 1925, the origins of the Asheville Country Club, who erected the building, date back to 1894 with the organization of the Swannanoa Country Club. As an interest in golfing began to increase, the Club's original course in West Asheville was considered inconvenient, thus a new course was established in north Asheville. The new course also proved unsatisfactory, and in 1898 the Club leased 5 acres of land at the end of Charlotte Street from George W. Pack, for the construction of a new clubhouse. The original clubhouse was moved in 1908 to Edgemont Ave. About this time the golf course was expanded and the name of the Club was changed to the Asheville Country Club. The earlier clubhouse was also replaced with a new structure near the 12th tee of the present course. This clubhouse burned in the early 1920's, thus the present structure was commissioned for construction.

The Grove Park Inn maintained an interest in the golf course and financial health of the Club, contributing to the Club for the use of its facilities. The existence of the Club and golf course were important to the successful operation of the Inn. In 1976 the Grove Park Inn purchased the 100-acre golf course, clubhouse and pro-shop from the County Club of Asheville.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. The appraised value of the clubhouse is $4,053,200, which excludes the value of the land, golf course improvements and other detached structures. The approximate tax deferral is $11,957.

When a property is designated historic, restrictions are placed on the property. Any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings.

The ordinance designates the Grove Park Country Club Clubhouse a local historic landmark. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The Historic Resources Commission of Asheville and Buncombe County (HRC) by unanimous vote recommends to the Asheville City Council that the Grove Park Country Club Clubhouse be designated a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Upon inquiry of Councilman Mumpower, Ms. Merten explained that this has a social history associated with Asheville, which makes it primarily significant.

Mr. Christopher spoke about the many needs in Asheville and didn't think Asheville could afford to take it off the tax rolls.

Mr. David Holcombe, Interim Director of the Preservation Society, spoke about the future benefits of designating the Clubhouse as a local historic district.

Mayor Worley closed the public hearing at 5:42 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2981. This motion was seconded by Councilman Ellis.

Planning and Development Director Scott Shuford responded to Councilman Mumpower who did not think that all citizens should subsidize the loss of the property taxes.

Councilman Dunn did have concerns about taking the property off the tax rolls; however, he did feel that it would benefit the citizens of Asheville in the future.

The motion made by Vice-Mayor Bellamy and seconded by Councilman Ellis carried on a 5-1 vote with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 20 – PAGE 176

C. PUBLIC HERAING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 25 RALEIGH ROAD TO ALLOW FOR THE CONSTRUCTION OF A RESIDENTIAL TRIPLEX IN A RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2982 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 25 RALEIGH ROAD TO ALLOW FOR THE CONSTRUCTION OF A RESIDENTIAL TRIPLEX IN A RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:50 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Carter Pettibone, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a conditional use permit to allow for the construction of a residential triplex in a RS-8 Residential Single-Family High Density District at 25 Raleigh Road.

On August 30, 2002, the applicant, Henry Mitchell, submitted an application for a conditional use to construct a triplex in an RS-8 District (PIN No. 9657.12-76-6565) on a 0.37-acre piece of property at 25 Raleigh Road (City Exhibit 3 – Location Map). The proposed project consists of a 2,612 square foot, 3-unit residential building with two dwelling units located on the ground floor and one unit above. The Technical Review Committee (TRC) reviewed the plans at its September 16, 2002, and recommended approval with conditions. The applicant has worked with City staff to address these conditions.

Residential triplexes are permitted as conditional uses in the RS-8 District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

The parcel is located within the City limits at the intersection of Raleigh Road and Onteora Boulevard just north of Interstate 40. The predominant land use and zoning in the area are single-family homes on properties zoned RS-8.

Triplexes in single-family districts must be located a minimum of 300 feet from all other multi-family uses on the same side of the street. There are no multi-family uses located within 300 feet of the property in question along either Raleigh Road or Onteora Boulevard.

The Unified Development Ordinance (UDO) requires that the minimum lot area shall be 150 percent of that required for a single-family residential unit in the respective district. The parcel's 0.37 acre is nearly 300% of the RS-8's minimum lot size (1/8 of an acre).

The UDO requires parking be located in the rear and screened with vegetation from adjacent uses. Parking for the triplex will be in the rear of the lot and screened by a combination of existing and proposed trees and shrubs.

Triplexes are required to have a single front entrance and other entrances as required. Only one entrance is proposed on the building front facing Onteora Boulevard, which will become the front of the lot. Other entrances to the dwelling units are located on the other elevations.

The UDO requires that triplexes must meet the requirements of the North Carolina Building Code. The project has received conditional approval from the Building Safety Department and will need to fully comply with these requirements at the time of building permit application.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDP. City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project received conditional technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District (MSD), Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project must comply with all City standards in regards to maximum clearing and grading and erosion control. The site is also very level, which reduces the need to perform much clearing or grading. The location of the proposed building is in the center of the parcel in an area where a previous structure once stood and the site plan calls for a significant number of existing trees to be preserved and used to satisfy planting and buffering requirements. These factors help minimize the impact on the natural features of the site.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The UDO requirements and the physical design of the structure help to assure that the building fits within the single-family neighborhood surrounding it. Staff has also determined that the additional traffic generated will not adversely impact the existing road conditions or capacity.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   Within the surrounding neighborhood there is a range of different building footprint sizes. The footprint of the proposed building falls within this range. The proposed building is two stories in height as are some of the homes in the area, including the neighboring home to the north. The building also contains only one entrance on its front elevation, as required by the UDO and parking for the building is also located to the rear and will be screened by a mix of trees, shrubs, and fencing. These components help mask the multi-family nature of the structure. The actual density of the 0.37-acre parcel with 3 units on it translates to just over 8 dwelling units an acre, similar to what is permitted within the district.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The project will also help meet one of the City's smart growth policies, providing higher density residential infill development. The City's Comprehensive Plan indicates this area as planned for residential development and the proposed density of the project is similar to what is currently permitted in the district.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The project received technical approval from the Technical Review Committee, which includes representatives of the Water Resources Department, MSD, Engineering Department, the Fire Department, and Public Works Department.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The project was reviewed by the Engineering Department during the TRC process and it was determined that the existing roadway conditions and capacity were sufficient to handle any sort of increase generated by the proposed use.

The plan for the expansion was reviewed by the TRC at it's September 16, 2002, meeting. The TRC identified a number of unresolved technical issues and recommended approval with the condition that these issues be addressed prior to final approval. The applicant has addressed a majority of these conditions and is working with the various City departments to address those outstanding.

Since all the conditions have not been addressed at this time, staff recommends approval with the following conditions:

- The applicant works with Planning and Development staff to determine appropriate entrance features for access points to the building that will help the building further blend in with surrounding buildings;
- The proposed building is constructed according to the North Carolina Building Code for Commercial Structures; and
- The applicant obtains all applicable permits for water, sewer, driveway, stormwater, and erosion control provisions.

Mr. Henry Mitchell, applicant, spoke in support of the conditional use permit.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:02 p.m.

Councilman Ellis moved to adopt Ordinance No. 2982 to issue the conditional use permit for a triplex on property located at 25 Raleigh Road, subject to the following conditions: (1) The applicant works with Planning and Development staff to determine appropriate entrance features for access points to the building that will help the building further blend in with surrounding buildings; (2) The proposed building is constructed according to the North Carolina Building Code for Commercial Structures; and (3) The applicant obtains all applicable permits for water, sewer, driveway, stormwater, and erosion control provisions. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

It was the consensus of City Council to ask the Planning staff to begin the process of amending the Unified Development Ordinance to not require duplexes and triplexes obtain a conditional use permit.

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D. PUBLIC HEARING TO REZONE PROPERTY TWO PARCELS KNOWN AS BILTMORE PARK TOWN SQUARE EAST FROM RS-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO URBAN VILLAGE DISTRICT AND TO CONSIDER AN AMENDMENT TO THE BILTMORE PARK TOWN SQUARE MASTER PLAN

ORDINANCE NO. 2983- ORDINANCE TO REZONE TWO PARCELS KNOWN AS BILTMORE PARK TOWN SQUARE EAST FROM RS-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO URBAN VILLAGE DISTRICT

Mayor Worley opened the public hearing at 6:03 p.m.

Urban Designer Alan Glines said that this is the consideration of a request to rezone two parcels known as Biltmore Park Town Square East from RS-8 Residential Single-Family Medium Density District to Urban Village District and to consider an amendment to the Biltmore Park Town Square Master Plan. This public hearing was advertised on November 15 and 22, 2002.

On September 30, 2002, Biltmore Farms submitted a request to rezone two parcels from RS-8 to Urban Village in the City's extraterritorial jurisdiction area in the southern part of the City. In conjunction with this, an amendment is required for the Biltmore Park Town Square Urban Village Master Plan.

The rezoning consists of 2 parcels (PIN Nos. 9645.03-21-8311 and 9645.03-31-1212) totaling 11.68 acres. The property is currently zoned RS-8. Thirty single-family homes are proposed for this area of the urban village. In addition, three other areas are being further defined as a part of the Master Plan and will include 4 additional single-family homes and 10 live-work units in a duplex format (twin style housing). These latter areas are already zoned urban village district.

The area surrounding this parcel is zoned RS-4, RS-8 and Urban Village. The rezoning proposal area and the Master Plan amendment will be added to an already approved urban village containing 290 residential units, 350,000 gross square feet of commercial space, 200,000 square feet of office space and 150,000 square feet of other non-defined space.

The site, which is currently wooded, will include several acres of open space counting towards the open space requirements for the entire urban village project. The open space area will be made up of a park near the new housing area and will include a greenway connection that will buffer the existing residential areas in the 'Olmstead' sections of Biltmore Park

The Urban Village zoning is established to create mixed-use higher density development that is economically vital and pedestrian oriented. Urban Village guidelines encourage vibrant streetscapes and a full range of retail and office uses as well as a variety of housing types throughout the development area.

The Planning and Zoning Commission met on November 6, 2002, and voted 6-0 in favor of the rezoning request. Staff also supports the rezoning request and amendments to the project Master Plan.

Councilman Dunn asked about the status of the N.C. Dept. of Transportation widening of Long Shoals Road. Mayor Worley responded that they are in the process of seeking property now.

Mayor Worley closed the public hearing at 6:11 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2983 and to approve the amendment to the Biltmore Park Town Square Master Plan. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 185

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Henderson County Water Re-negotiations

Mayor Worley updated City Council by stating that the Henderson County Commissioners will defer the water agreement re-negotiations matter to the new Commission members, which will take office in December, 2002.

Violence on Women Worksession

At the request of Councilwoman Jones, it was the consensus of Council that a worksession be held in January, 2003, regarding violence on women. She asked for a presentation by the Police Department on what their statistics are with regard to this issue, e.g., sexual assault, domestic violence, and calls to convictions.

Claims

The following claims were received by the City of Asheville during the period of November 8-21, 2002: Scott Sirkin (Water), Ann Lowder (Water), Barbara Penland (Sanitation), Julio C. Lopez (Water), Robert Carr – Tops for Shoes (Water), 21 Haywood Street (Water), Asiana Grill Buffet (Water), Stanley Gamble (Transit Services), Malvern Hills Baptist Church (Sanitation), Robert L. Harbin (Water) and Michael Fisher (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mickey Mahaffey, representing Peacemakers, spoke about the recently adopted amended solicitation ordinance. He said that we desperately need adequate public restrooms downtown. He felt that the City should begin discussions with Buncombe County and social service agencies on some form of facility to take severely alcoholic people. In addition, he felt that police officers should, on a regular and consistent basis, have a presence in the 3-5 "hot spots" where most of the problems are occurring.

Mr. Christopher asked Council to stop the dehumanization of the poor and treat them like our neighbors.

Mr. Stewart David felt that the amended solicitation ordinance will be found unconstitutional and when the next ordinance is drafted, he hoped that Council allows community involvement.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:26 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 3, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman R. Carl Mumpower

ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that this is the presentation of the City of Asheville annual audit report for the Fiscal Year Ended June 30, 2002.

City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, N.C., to perform an audit of the City of Asheville for the fiscal year ended June 30, 2002, as required by North Carolina General Statute 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City is not modified by reservations or restrictions.)

Mr. Brian Broom, Director of Crisp, Hughes Evans LLP, gave a brief presentation of their findings. He said their report for the 2002 audit expresses and unqualified opinion (clean) on the fair representation of the general purpose financial statements in all material respects, in conformity with generally accepted accounting principles. The Local Government Commission recommends governmental entities maintain, at a minimum fund balance equal to 8% of expenditures. The City's fund balance for 2002 is about 16%.

Mr. Broom updated Council on the Governmental Accounting Standards Board's new reporting standard.

Mr. Schaefer answered various questions from Council regarding the financial report.

At the request of Councilwoman Jones, Mr. Schaefer said that he would provide her with monthly budget statements and talk with her regarding corporations of the City.

Councilman Dunn found it troublesome that there has only been an increase of $430,000 for streets and sidewalks in the past ten years.

BATTERY PARK PARKING GARAGE

City Engineer Cathy Ball said that the purpose of this presentation is to provide an overview to City Council on the status of the Parking Garage in the Battery Park area.

In 1998, the City of Asheville completed a Parking Study of the Central Business District, Biltmore Village and West Asheville areas. The study indicated that a parking garage was needed in the Battery Park area in order to meet the current, as well as future needs of the area. The original recommended location of the garage was on the existing BellSouth surface parking lot at the intersection of O.Henry Avenue and Haywood Street. It was determined early on that we were unable to acquire this property for various reasons. The second location was adjacent to the Battery Park Apartments. Over the past two and one-half years we have been in the process of acquiring the properties necessary to complete the parking deck.

This project is considered to be a public-private partnership both with parking and development opportunities.

During recent weeks we have received letters of intent or contracts for each of the properties needed to complete the project. The purpose of this presentation is to provide Council with the following information:

- General overview of the project;
- Schedule for completing the project; and,
- Overview of additional action needed by City Council to move forward on the project.

Money for this project was budgeted in the 1999-2000 Capital Projects Budget.

Ms. Ball then outlined the history of the parking study which study was completed in 1998. In 1999 the City contracted with Tessier Associates to purchase property needed for the garage and in 2000 the City contracted with Carl Walker to design the garage. The parking study recommended the parking garage be located on the parking lot adjacent to Battery Park Apartments. The original and current scope of the project is to construct a parking garage to meet the current and future needs of the area. After further review of the proposed site, it was determined that the site may have potential for some private development components to include parking spaces and that the project is a public/private venture.

Next steps include: (1) solicit public comment on the project by holding various public meetings - following public comment, City Council will be asked to approve final design concept; (2) complete the design of the project – requires Council to amend contract with Carl Walker to include expanded scope of work and some additional contracts for soil testing, etc.; (3) develop a Request for Proposals for private sector development component; (4) develop agreements with private sector partners for use of the parking garage – Council action will be needed; (5) close on properties – Council action will be needed; (6) complete final design of the parking deck; (7) contract with private sector for private components of the project – Council action will be needed; (8) bid project; (9) issue Certificates of Participation – Council action will be needed; (10) – award contract – Council action needed; (11) begin construction of parking garage and adjacent infrastructure; (12) complete construction of parking garage; (13) private sector to begin construction of private development component; and (14) private sector to complete construction.

Ms. Ball said that their goal is to begin construction in early fall of 2003 with an 18 month construction period.

Upon inquiry of Vice-Mayor Bellamy and Councilwoman Jones, Ms. Ball said that the City will look favorably to components of affordable housing and affordable housing will be strongly encouraged.

Ms. Ball then answered various questions from Council regarding the proposed parking garage.

Upon inquiry of Councilman Peterson, Ms. Ball said that when the matter comes back to Council, she would bring information showing usage of parking spaces based on the time of day.

It was the consensus of City Council to have staff proceed in soliciting public comment on the project. Following public comment, City Council will be asked to approve the final design concept.

INFORMAL UPDATE ON CIVIC CENTER

Ms. Lilian Fischer and Mr. Crawford Murphy showed City Council sketches of the Civic Center improvements and the Civic Center Arena renovation and upfit. They submitted revised numbers, which consisted of the Civic Center improvements being done in two phases - Phase 1 totaling $41,125,000 and Phase II totaling $38,600,000. They were not interested in participating in the improvements at the Civic Center, only showing Council the possibility of upgrading the facility for $41 million.

They then showed Council sketches of the Birdseye view toward the northeast performing arts center vision and development scheme and the interior study of the performing arts house. They presented Council with the following numbers for the proposed performing arts center. The facility itself totaled $27,000,000 (non-profit) and the development totaled $41,100,000 (for-profit) for a grand total of $68,100,000.

Ms. Fischer introduced Mr. Pittman, Vice-President of Skanska, who would perform the role of general contractor. Mr. Pittman said they are very pleased about working with Mr. Murphy and this exciting concept.

Ms. Fisher said that they would be meeting in the next two days with a group who will be advising them on the feasibility of raising the $27,000,000 locally from foundations, individuals, organizations, etc.

Mr. Murphy stated that the City's portion of the project would be the parking and infrastructure.

Ms. Fischer summarized by saying that they will be going to the private sector and they would like to have Council's concurrence that this is a viable option and would like to be encouraged to move forward.

MISCELLANEOUS

Discussion was initiated by Councilman Peterson regarding the Asheville-Buncombe Community Christian's Ministries' soup kitchen being in violation of the Unified Development Ordinance. Councilman Peterson said that he would bring the matter up again at the formal meeting next week in order to instruct the Planning staff to begin investigating a minor amendment to the Unified Development Ordinance for flexibility in allowing soup kitchens in specific districts. He said that the Planning & Development Director may also be able to give Council some options for achieving this goal.

CLOSED SESSION

At 4:50 p.m., Councilman Peterson moved to go into closed session in order to consult with an attorney employed by the City in order to preserve the attorney-client privilege between the City and its attorney. The parties to the lawsuit about which the Council expects to receive advice are: Carl and Janis Ricker, Asheville Board of Adjustment, Betty Donoho, County of Buncombe, and WNC Regional Air Pollution Control Agency. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 5:23 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:23 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 10, 2002 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF BUTCH KISIAH IN RECEIVING THE DISTINGUISHED SOCIETY FELLOW AWARD FROM THE NORTH CAROLINA RECREATION AND PARK SOCIETY

Mr. Tom Wells, former Deputy Director of the North Carolina Recreation and Park Society, and Chair of the Citations and Awards Committee, presented Mr. Butch Kisiah with the Society Fellow Award. The Fellow Award is the highest award the Society can bestow to one of its members for outstanding service and leadership.

On behalf of City Council, Mayor Worley congratulated Mr. Kisiah on receiving this very prestigious award.

B. PROCLAMATION PROCLAIMING DECEMBER 15, 2002, AS "BILL OF RIGHTS DAY"

Mayor Worley read the proclamation proclaiming December 15, 2002, as "Bill of Rights Day" in the City of Asheville.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 26, 2002, AND THE WORKSESSION HELD ON DECEMBER 3, 2002

B. RESOLUTION NO. 02-186 - RESOLUTION ADOPTING THE 2003 SCHEDULED CITY COUNCIL MEETINGS

RESOLUTION BOOK NO. 27 – PAGE 285

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution on the Consent Agenda and it would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR

Mayor Worley announced that the public hearing to consider rezoning properties identified on the Broadway Corridor would be rescheduled until January 14, 2003, due to failure of properly posting the properties.

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 26 FENNER AVENUE TO ALLOW THE CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2984 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 26 FENNER AVENUE TO ALLOW THE CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a conditional use permit for property located at 26 Fenner Avenue to allow for the construction of a duplex in an RS-8 Residential Single-Family High Density District.

On October 23, 2002, Bruce MacPhail of Hamilton-Cameron, LLC., submitted an application for a conditional use permit to allow a duplex conversion of an existing house in a single family zoning district in the north area of the City

The property is located at 26 Fenner Avenue (PIN No. 9640.18-30-5137) (City Exhibit 3 – Location Map). The property has an existing circa 1920 home that has been converted for use as a duplex (City Exhibit 3 – Site Plan and Photographs). This property and the surrounding area is zoned RS-8. The RS-8 single family residential district allows up to 8 single family units an acre.

As part of the conditional use permit requirements, the project must meet several conditions for duplexes found in section 7-16-2 (d) (5) of the Unified Development Ordinance (UDO):

- Duplexes must be located a minimum of 300 feet from all other multifamily uses (excluding dwellings with accessory apartments) on the same street in the single family district. **The property is located over 300 feet from other duplexes on the same street.**
- Minimum lot area shall be 125 percent of that required for a single family residential unit in the respective district. **The parcel is .26 acre and is well above the parcel requirement.**
- Parking shall be located in the rear and screened with vegetation from adjacent single-family uses. **The existing house has two driveway points and parking is located in front of the house. Parking will be required to be located at the rear of the structure.**
- The structure shall have a single front entrance and other entrances as required. **The parcel has a single front entrance and a secondary entrance at the side.**
- Requirements of the N.C. State Building Code shall be met. **The project has met building code requirements.**

City Council must take formal action as set forth in section 7-9-9 (c) (4) of the UDO and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met provided certain impacts are mitigated through site design modifications and off site road improvements.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposal was reviewed by the Technical Review Committee for compliance with technical standards of the City of Asheville.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The site has an existing house that will be used as a duplex. The proposed use is compatible with the site and surrounding neighborhood.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The duplex will blend into the neighborhood fabric. Values of neighboring properties are not expected to be injured.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed duplex is an existing building built around 1920. The house is in keeping with the character of the neighborhood.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

This proposed development supports the smart growth policies of affordable in-fill housing and a mix of housing types within a given neighborhood.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed duplex is located in an established neighborhood just off of Merrimon Avenue. The property has adequate infrastructure in place.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed duplex will not generate traffic problems.

The Technical Review Committee reviewed this project at their November 18, 2002, meeting and recommended that the project be forwarded to the City Council with a recommendation of approval with conditions, all of which have been met except for the parking location. Review by the Planning and Zoning Commission is not required for this use.

Mr. Bruce MacPhail, petitioner, said that if they had to put a driveway in the back of the property, it will cause more damage to the fabric of the neighborhood since the surrounding neighborhood has parking located in the front. The property has been a duplex before and he feels that there is adequate parking located on the property now, without having to relocate it in the rear of the lot. In addition, the parking slab (which would have to be extended to the back of the property) is very narrow and there is a steep grade to the back of the property, which will cause water run-off to the adjacent lot. He will lose the entire backyard and to build the parking at the rear will be a tremendous cost, thus driving the cost of the affordable apartments ($500 and $600) higher.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:34 p.m.

Discussion surrounding the parking in the rear of the property with Council realizing that a UDO text amendment would be the only way they could allow parking to be located elsewhere than in the rear of the property.

Mayor Worley said that the Planning staff has already been instructed to look at amending the UDO regarding duplexes and triplexes in residential districts and this is a good opportunity to look at a possible amendment to this standard as well.

Vice-Mayor Bellamy moved to adopt Ordinance No. 2984 to issue the conditional use permit for a duplex on property located at 26 Fenner Avenue. This motion was seconded by Councilman Dunn.

Planning & Development Director Scott Shuford generalized his comments (as he was not sworn in) by suggesting to Council that they could approve the conditional use permit subject to the parking being brought into compliance within 120 days. He explained that his department will be bringing back to Council an amendment to the UDO regarding duplexes and triplexes in residential districts within that 120 time period and Council then can then choose to amend the specific requirement regarding parking, thus relieving the applicant from that requirement.

Vice-Mayor Bellamy wished to amend her motion to issues the conditional use permit subject to the parking being brought into compliance within 120 days. Councilman Dunn did not agree with the amendment and withdrew his second. The amended motion by Vice-Mayor Bellamy was seconded by Councilman Mumpower.

Councilwoman Jones wanted to be sure that the Planning staff would not be crafting the ordinance amendment for one specific instance. Mr. Shuford agreed that they would be looking at the amendment from a reasonable standpoint.

The amended motion made by Vice-Mayor Bellamy and seconded by Councilman Mumpower carried on a 6-1 vote, with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 20 – PAGE 187

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

Unified Development Ordinance Text Amendment

As a result of discussion at the December 3, 2002, City Council worksession regarding the Asheville-Buncombe Community Christian's Ministries' (ABCCM) soup kitchen being in violation of the Unified Development Ordinance (UDO) and pursuant to Section 7-2-2 of the Code of Ordinances, Councilman Peterson moved to direct the Planning & Development staff to begin as soon as possible the process for a text amendment to Chapter 7 of the Code of Ordinances to allow greater flexibility in locating social service establishments that dispense dietary essentials to the needy in office/commercial districts. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Vice-Mayor Bellamy and Councilwoman Jones, Councilman Peterson explained this proposed amendment is not identifying a particular district, but identifying generic office/commercial districts and it's not just for this particular case, but also for similar circumstances throughout the City.

Councilman Peterson explained that there isn't anything listed in the UDO called soup kitchens. Staff assumes that a soup kitchen is an accessory use to a shelter, so they are only permitted where shelters are permitted, which is now in the Central Business District, Highway Business District, etc. He suggested we ask staff to get public comment and maybe have soup kitchens clarified or maybe clarify that it's not an accessory use. In the Office and Office II districts a permitted use includes civic, social service and fraternal facilities, so those are already permitted in pretty much all of the office/commercial districts and also restaurants are permitted as a use by right subject to special requirements. He felt we need to add a little flexibility to allow soup kitchens probably not as a blanket permit, but as a use by right subject to special requirements so there would be certain conditions that might have to be met, like kitchen facilities, or a certain size of the property, or parking. Staff should probably get public input about what some of those special requirements should be and meet with neighborhood leaders in various neighborhoods in the City.

Councilman Mumpower felt it might be more appropriate to informally explore the issues surrounding this matter and then make a determination on how Council should proceed.

City Manager Westbrook said that Council could instruct staff to investigate the issue further and bring back a report on what they feel is the best course of action.

Mayor Worley said that he felt all of Council was sympathetic with ABCCM and the mission that they serve. He felt that soup kitchens essentially prepare and serve food and should be on the same footing as restaurants, which are allowed, if they meet certain requirements, in several of the office business districts. He was not inclined to amend our ordinance for a special case for the situation that has arisen. He expected everyone to do their best to comply with our ordinances and meet the requirements of the ordinances. If we make such a change, we are making a change that would affect all similarly situated districts and we have the ordinance as it is for a reason.

Planning & Development Director Scott Shuford handed Council a memo dated December 10, 2002, which updated them on the current status of their investigation into the ABCCM soup kitchen. The following is his interpretation on how such a use (soup kitchen) should be permitted: Soup kitchens are ancillary uses associated with "shelters" as defined in the UDO. The UDO defines "shelter" as "a nonprofit, charitable, or religious organization providing boarding and/or lodging and ancillary services on its premises to primarily indigent, needy, homeless, or transient persons. He understood Councilman Peterson's motion to direct staff to do some basic research on that issue and expand that research broader than the case at hand, seek public input, develop an ordinance and take that ordinance through the public hearing process.

Councilman Dunn and Councilmen Ellis both would prefer more staff research on this matter before they would be prepared to vote on this motion.

Mr. Shuford said that this is an issue fairly complicated and it needs a more complex study of it. It is an issue that has some potential side effects that need to be addressed. There are ways to do that and we will bring those ideas forward for Council's consideration and then get further direction.

The following individuals spoke in support of an amendment to the UDO to allow the flexibility to allow soup kitchens in special districts:

Brother Christopher
Ms. Rachel Pope
Rev. Scott Rogers
Ms. Sharon Martin

In response to Councilwoman Jones, Rev. Rogers said that they have been operating the ABCCM soup kitchen at 24 Cumberland since October 11, 1985. Their primary mission is to give food to people.

The motion made by Councilman Peterson and seconded by Vice-Mayor Bellamy failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

It was the consensus of City Council to instruct the Planning staff to gather more information about the existing situation and in light of that, and in light of the overall needs of the City, to come back to Council with anything further that is recommended or needed in the way of a change. Said report should come back to Council at its January 21, 2003, worksession.

City Attorney Oast noted that just because Councilman Peterson's motion failed does not preclude Council from ultimately adopting the same language at a later date if appropriate.

VI. OTHER BUSINESS:

Mutual Aid Assistance

City Manager Westbrook advised City Council that, through the mutual aid assistance agreement, the Town of Hillsborough has requested, and the City of Asheville has sent, a

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kunkleboom truck and one operator from the City of Asheville to assist them in the cleaning up the effects of the December 5, 2002, ice storm.

Claims

The following claims were received by the City of Asheville during the period of November 22 – December 5, 2002: Ray Imhoff Ent. (Water), BellSouth (Water), Max Haner (Sanitation), Nancy Alenier (Water), N. C. Dept. of Transportation (Police) and Zambra (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Cecil Bothwell thanked the Mayor and Council for proclaiming December 15, 2002, as "Bill of Rights Day" in the City of Asheville.

Mr. Cliff Turner, owner of the Exxon Station by the Biltmore House, asked for Council's assistance in getting on the City's wrecker rotation list.

Brother Christopher urged Council not to discriminate against the poor.

Mr. Rachel Pope felt the poor should be respected too and was interested in the Downtown Social Issues Task Force.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:56 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 17, 2002 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

MINORITY BUSINESS PROGRAM ANNUAL REPORT

Ms. Brenda Mills, Director of the Office of Minority Affairs, presented Council with the Minority Business Program Annual Report for Fiscal Year 2001 - 2002.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, December 1999, December 2001 and October 2002, to clarify provisions of the Plan and to reduce the Minority Business Commission from thirteen members to eleven.

The Plan requires the Office of Minority Affairs to present to the City Council and County Commissioners an Annual Report on the effectiveness of implementation of the Plan. The Report shall include, but not be limited to: the number of minority businesses; percentage of minority businesses contracting with the County and City either as a prime contractor or as a subcontractor; percentage of overall reported contracts awarded to minority businesses; percentage of contractors complying with good faith efforts; and percentage of goals achieved and goals waived.

The Annual Report for Fiscal Year 2001 – 2002 has been reviewed by the Minority Business Commission and approved at its meeting on November 14, 2002.

Ms. Mills responded to various questions and comments from members of Council.

On behalf of City Council, Mayor Worley thanked Ms. Mills, her staff and the entire Minority Business Commission for their hard work on this important Commission.

RESOLUTION NO. 02-187 - RESOLUTION AUTHORIZING THE CITY TO PURSUE CREATION OF A CORPORATION FOR THE ADMINISTRATION OF ITS SELF-FUNDED HEALTH CARE BENEFIT PROGRAM

Mr. John Miall, Director of Risk Management, said that this is the consideration of a resolution authorizing the creation of a corporation for administration of group health plans.

Creation of a corporation will allow a buffer between the City of Asheville and group claims administration; allow for the recovery of portion of commissions paid by the City for aggregate and specific stop-loss coverage annually; and will allow a mechanism by which other entities may, if they choose, access medical care in the region through fee schedules negotiated by the corporation.

Approval shall be obtained from the State Insurance Commissioner's Office prior to initiation of operations.

Approval of this resolution will result in no expense to the City other than the legal costs of chartering a corporation and applicable fees for State filing, and licensure. Anticipated fees are budgeted in the current year health care budget.

Through the formation of this entity, the City will recapture some of its present health care costs on an annual basis. Other participating employers, if any, will be able to do the same with collective recoveries being retained by the corporation and used for the administration of claims and negotiation of future fees.

Further, the lack of competition among providers in the health care field in the community has resulted in an expensive and cumbersome process of messengering fee schedules to providers on an ongoing basis through provider owned PPO networks in the region. An employer-owned network, through the proposed corporation, will allow for quicker and more efficient establishment of fee schedules because the corporation created will not be provider-owned.

The City has enjoyed much success in the current environment with its health care system and the proposed corporation will allow other employers in the region to access fees through City negotiation with providers. The City will be in a leadership position to effect lower health care costs in the region and the corporation will be able to recover partial commissions for itself and ultimately for members participating through the corporation.

City staff recommends City Council adopt the resolution authorizing the creating of a corporation for administration of group health plans at its December 17, 2002, worksession.

Mr. Miall responded to various questions and comments from members of Council regarding Buncombe County's invitation to participate.

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Mumpower moved for the adoption of Resolution No. 02-187. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 286

WESTERN CAROLINIANS FOR CRIMINAL JUSTICE WOMEN AT RISK PROGRAM

Ms. Ellen Clarke, Executive Director of the Western Carolinians for Criminal Justice, and Ms. Brenda Carlton, Director of the Women at Risk Program, explained that the Women at Risk Program is a community-based treatment alternative for women at risk of going to jail or prison. They presented Council with a fact sheet of the Program and a list of services in the program. She reviewed with Council the weekly schedule for the Program and presented activity reports, referral sources, demographics data of clients served, their Fiscal Year 2001-02 operating budget and a cost analysis of the Program.

Ms. Clarke briefed Council on their capital campaign to purchase the building the program is located in at 218 Patton Avenue.

On behalf of City Council, Mayor Worley thanked Ms. Clark and Ms. Carleton for this very important program.

PUBLIC ART BOARD

Mr. Kenn Kotara, Chair of the Public Art Board, said that in September of 1999, the Public Art Board was established by Asheville City Council to oversee the education, maintenance, acquisition and deaccessioning of public art within the City of Asheville. The Public Art Board has worked tirelessly on the development of the Public Art Master Plan, which was approved August 28, 2001.

Mr. Kotara then updated City Council on the Public Art Board's accomplishments of the Board over the past year by saying that the W.C. Reid Mural project is a component of the Cultural Renaissance Program of the Parks & Recreation Department's Cultural Arts Division and is unique because it gave at-risk youth an opportunity to participate in a public art project of major significance. The Mural Project (1) showed at-risk youth they can be artistic and potentially become professional artists; (2) developed knowledge of and appreciation for art of the past and present and the interpretative impact it can have on the community; (3) taught youth about visual arts skills using math/graphing, tools and equipment, research and critiquing art work; (4) provided a strong sense of pride and self-esteem through the final display of their work; and (5) ultimately facilitated the increased understanding of the importance of public art and its place in preserving history in visual form.

Postcards from the Ledge is their annual fundraising project.

The first of three public arts projects in the West End/Clingman Avenue (WECAN) Art and Garden Project was a kinetic sculpture by artist Julia Burr and was installed in November of 2002. After installation, WECAN residents, friends, and business owners installed a garden of perennials enclosed by an evergreen hedge at the base of the sculpture. The garden, hedge and sculpture together emulate gardening traditions in the area and enhance the existing neighborhood sign. The two remaining projects, a signature neighborhood tile and sculptural bus shelter bench, will be installed this winter followed by an exhibit in spring of 2003.

The Public Art Board developed a task force with the Pack Square Conservancy Board and formed an agreement for preservation procedures, and incorporation and acquisition of public art works in the Pack Square Area.

The Public Art Board worked with the Mosaic Vortex and other artists to develop an arts program focusing on the creative work of "Underground Artist" in Asheville. And they have attended meetings of the Graffiti Board to dialogue about the challenges of graffiti in Asheville.

Mr. Kotara shared with Council future projects that the Board will be working on towards the implementation of the Master Plan.

On behalf of City Council, Mayor Worley thanked Mr. Kotara and the entire Public Art Board for their hard work and dedication to public art.

RESOLUTION NO. 02-188 - RESOLUTION ENTERING INTO A REGIONAL EARLY ACTION COMPACT FOR IMPROVING AIR QUALITY

Mr. Dan Baechtold, MPO Coordinator, said that this is the consideration of a resolution to enter into a regional Early Action Compact (EAC) for improving air quality.

The federal Clean Air Act sets standards for acceptable levels of air pollution in order to ensure public health. Monitoring stations throughout the region monitor the levels of pollutants in the air. Recent monitoring data in Buncombe County suggests that Buncombe will be in violation of the federal clean air standards for ozone pollution. Under the normal process, this means that the EPA will designate Buncombe County, and potentially surrounding counties, as a "non-attainment" area beginning in 2004.

A designation of "non-attainment" would mean that the area would be subject to additional restrictions for permitting new polluting industry and we would be required to prove that new transportation projects will conform with the State's plan to improve our air. The requirements placed on transportation planning are known as transportation "conformity." In addition, there may be a negative stigma associated with the non-attainment status, as it will put us on an official list of places with dirty air.

Local governments are considering an option that would delay or avoid "non-attainment" status. This option is known as an Early Action Compact (EAC). The EAC is a pro-active plan developed locally, with a goal of meeting clean air standards sooner than under non-attainment status. The EAC would be an agreement between local governments, the State, and EPA. This option requires a signed EAC agreement by December 31, 2002.

It remains somewhat unclear which local governments must sign by the December 31st deadline. At a minimum, any counties that would be a part of the non-attainment designation must sign the agreement. Since the extent of the non-attainment area is not known, all potential counties must sign; namely: Buncombe, Henderson, Madison, and Haywood. The EPA is also asking for the municipalities of Asheville and Hendersonville to sign the agreement, but it is not clear if the municipalities absolutely must sign by the December 31st deadline.

State and federal regulatory agencies are urging our area to enter into the EAC. The pros and cons of entering into the EAC are listed below:

Arguments for the EAC

- The EAC has the potential to improve air quality sooner than if we waited for non-attainment designation, which could mean cleaner air for citizens to breathe. The citizens most impacted by these pollutants are children and the elderly.
- Healthcare costs, emergency room visits, and lost productivity due to breathing problems carry a significant annual economic cost.
- The air quality improvements from the EAC could exceed the basic clean-air standards required by the EPA.
- Under non-attainment, we would have to prove that the entire transportation plan is in conformity with clean air standards, including the I-26 Connector project. Although delay of the connector project is not likely, it is possible under non-attainment.
- Provides some local control over air quality strategies, and puts forth a proactive approach to addressing the problem.
- The EAC keeps options open. Our region can always default to non-attainment designation.
- EAC avoids the stigma of being on the "dirty city" list with the related implications for tourism and business recruitment.
- Our region may be able to head off pollution problems associated with fine particulate matter. In the future, we may be designated as non-attainment for fine particle pollution.
- Funding to implement control strategies is limited under either scenario.

Arguments Against the EAC

- There is no funding source to develop the EAC plan for improving air quality. The EAC will require staff time and resources to develop the plan and collaborate with other local governments.

- There is no funding source to implement the strategies identified in the plan. Many of the strategies identified in the plan are likely to be the responsibility of the City of Asheville. So, this plan may require additional City resources to develop and implement the strategies.
- With no funding source, and a very limited time frame, it will be challenging to meet the goals of the EAC.
- The EAC is vulnerable to legal challenge because it is not specifically provided for in the Clean Air Act
- Environmental groups will seek ensure that the local plan meets or exceed the same stringent standards that would be applied under non-attainment – especially in the area of transportation conformity.
- Most of the strategies that will be effective in our area are specific to transportation, which means we are likely to include air quality modeling in our transportation planning with our without the EAC.
- Our area would not be available for federal CMAQ funds under the EAC. These funds could total up to 1 to 2 million dollars per year for transportation improvements. If all potential non-attainment areas in North Carolina enter into an EAC, it will guarantee that the $20 million in statewide CMAQ funds will be spent exclusively in Charlotte, Raleigh, and the Triad.
- Uncertainties exist. In contrast, non-attainment designation is well tested. It may be difficult to back out of a regional agreement if it does not work as expected.
- Our area may be designated as non-attainment for the pollutant "fine particulate matter" which is not addressed in the EAC.

In summary, the primary argument offered in favor of the EAC is that it avoids the regulatory requirements of non-attainment and has the potential to achieve clean air sooner. Also, if the EAC doesn't work, we will automatically revert to the "non-attainment" track. The prevailing argument in favor of the EAC seems to be that it is preferable to non-attainment and that we have "nothing to lose" by entering into the agreement. However, there are some potential costs and drawbacks associated with the EAC that need to be considered. Specifically, the EAC is a process that has no funding source. The development of the plan and implementation of the strategies in the plan would require staff time and resources. Entering into the EAC would also prevent us from receiving federal CMAQ funds, which, under "non-attainment" could provide up to 1 to 2 million dollars per year for transportation projects.

City staff recommends City Council consider a resolution to enter into an "Early Action Compact."

Mr. Baechtold responded to various questions and comments from Council.

Discussion surrounded how the strategies will be developed and enforcement of those strategies.

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Ellis moved for the adoption of Resolution No. 02-188. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilwoman Jones said that in the event everyone is not in agreement with the Compact, she hoped that City staff would still begin identifying our strategies.

RESOLUTION BOOK NO. 27 – PAGE 287

BOARDS/COMMISSIONS

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Dr. James Mullen to the Community Relations Council and to also arrange for interviews for the other vacancy on the Community Relations Council.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to (1) reappoint Chuck Pickering and William Byrne and to appoint Peter Alberice and J. Patrick Whalen to the Asheville Downtown Commission; (2) reappoint Lloyd Williams to the Firemen's Relief Fund; (3) reappoint Gerry Hardesty and Linda Giltz to the Greenway Commission; (4) reappoint Stacy Anderson and Ruth Chaet and appoint James Gardner Jr. to the Transit Commission; and (5) reappoint Kasty Latven and Peter Gentling and appoint Joseph Carney to the Tree Commission.

It was the consensus of Council to require all School Board candidates be City residents and that they live in the Asheville School District.

It was the consensus of Council to reduce the at-large membership, through attrition, on the Educational Access Channel Commission, from three members to two members.

It was the consensus of Council to instruct the City Attorney to prepare a brief educational meeting on the Open Meetings Law, etc. for all our Board and Commission members.

MISCELLANEOUS

It was the consensus of City Council to instruct the City Attorney to provide Council with a report in the near future regarding towing and parking in the downtown and Biltmore Village.

Councilman Dunn said that since we appoint members to the ABC Board, he asked for a report from the ABC Board on the details of the embezzling incident.

CLOSED SESSION

At 5:57 p.m., Councilman Mumpower moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Betty Donoho, County of Buncombe, Western North Carolina Air Pollution Control Agency, City of Asheville, and Buncombe County School Board. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 6:42 p.m., Councilman Peterson moved to come out of closed session. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 7, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Contribution from Irene and Dick Covington Foundation

Summary: The consideration of a resolution recognizing the contribution made by the Irene and Dick Covington Foundation that will result in the construction of a tennis museum and clubhouse at Aston Park.

In the early 1990's, a Foundation was established in honor of Irene and Dick Covington, both now deceased. The Covingtons contributed greatly to the growth of tennis in Asheville and Western North Carolina. The Foundation resulted in a total of $278,336.17, and the majority of this amount was derived from the sale of their estate. The goal of the Foundation was to develop a tennis clubhouse at Aston Park, which would benefit the tennis community and display the archives from Dick Covington's tennis career. The Foundation has been working with a local architect to develop plans, which were approved in September, 2002. The Foundation approved giving the above funds to Buncombe County who will oversee the construction of the proposed Aston Park Tennis Clubhouse. The County Commissioners have already approved a resolution accepting the funds and agree to maintain the building as long as Buncombe County has control of the Aston Park property. In the event the property is reverted back to the City of Asheville, all unused funds will be transferred to the City to continue development of the clubhouse or for perpetual maintenance. Buncombe County has agreed to construct the facility to meet the requirements of the Unified Development Ordinance, and the facility should be completed as early as July, 2004.

The Asheville Parks and Recreation Department requests City Council recognize the contribution made by the Irene and Dick Covington Foundation that will result in the construction of a tennis museum and clubhouse at Aston Park.

Parks and Recreation Director Irby Brinson responded to various questions from Vice-Mayor Bellamy regarding the construction of the tennis museum and clubhouse.

Budget Amendment for Reimbursement for Bulletproof Vests

Summary: The consideration of a budget amendment, in the amount of $11,362, to reimburse the Asheville Police Department for bulletproof vests from a grant by the U.S. Dept. of Justice, Bureau of Justice Assistance.

In July of 2002, with the approval of the City Manager, the Asheville Police Department applied for partial reimbursement for bulletproof vests through the Bureau of Justice Assistance. The Asheville Police Department was notified that it would receive the funds and, in September, received 50% ($11,362) of the funds it expended for bulletproof vests through the Bulletproof Vest Partnership Grant Act of 1998.

Staff recommends adoption of a budget ordinance amendment appropriating $11,362 to the Police Department budget.

Budget Amendment for Urban Trail

Summary: The consideration of a budget amendment, in the amount of $12,347.95, to appropriate additional donated funds for the maintenance and upkeep of the Urban Trail.

The Parks and Recreation Department has been responsible for the maintenance of the Urban Trail for a number of years. Periodically, funds are secured from interested donors to the Urban Trail. This budget amendment will appropriate additional revenue into an existing account, which will continue the maintenance and upkeep of the stations.

The Parks and Recreation Department requests City Council approval of a budget amendment for upkeep of the Urban Trail.

Grant for French Broad River Park IV

Summary: The consideration of a resolution authorizing the Mayor to apply for and enter into an agreement with the N.C. Dept. of Environment and Natural Resources to assist with the development of the French Broad River Park IV.

Funds are available through the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund, to assist with the development of parks and greenways. If awarded, grant funds will be used to assist with the next phase of construction at French Broad River Park IV.

French Broad River Park IV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The next phase includes a picnic pavilion, wetland interpretive/education area, river overlooks, a boat landing, trails and parking.

The Parks and Recreation Department, the Asheville Parks and Greenways Foundation and RiverLink are in partnership to implement a fundraising plan to raise approximately $800,000 to build the next phase of the park.

The Parks and Recreation Department is requesting $250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund, which requires a dollar for dollar cash match. The cash match is available through a partnership with RiverLink, and in funds allocated by the City of Asheville.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund to assist with the construction of the French Broad River Park IV.

Parks and Recreation Director Irby Brinson responded to questions from Councilman Mumpower regarding the dollar cash match.

Grant for Azalea Road Park Phase I

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources to assist with the development of Azalea Road Park Phase I.

Funds are available through the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities. If awarded, grant funds will be used to assist with the construction of the first phase of Azalea Road Park.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise $3 million to build the first phase of the park.

The Parks and Recreation Department is requesting $500,000 in grant funds from the Land, Water and Conservation Fund, which requires a dollar for dollar cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation, and the in-kind match is available in labor, equipment, and project management in the Parks and Recreation Department.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds with the Land, Water and Conservation Fund to assist with the construction of Azalea Road Park Phase I.

Parks and Recreation Director Irby Brinson answered various questions from Council.

Contract with Network Data Systems to Provide Security Services

Summary: The consideration of a resolution to approve a contract with Network Data Systems (NDS) to provide security services at the North Fork Water Treatment Facility.

The City of Asheville requires a security system at the North Fork Treatment Facility. Proposals for a security system were received on November 15, 2002, and NDS was the lowest bidder.

NDS's system will provide secure access to and from gated areas and buildings. It will also provide security outside of buildings and in parking areas through close-circuit cameras. The equipment installed and card entry system will be compatible with current system(s) used at Asheville City Hall, Water Resources Water Maintenance Facility, and the Mills River Water treatment Facility.

The contract will be completed within 45 days from notice to proceed and will not exceed $60,600.

City staff recommends approval of the contract with NDS to provide security services at the North Fork Facility.

Councilman Mumpower wondered if it would be a good idea to have a comprehensive presentation on terrorism, homeland security and related issues.

Councilman Peterson suggested a joint City/County meeting be arranged to discuss areas in which we are cooperating together on and where we can improve communication.

Financing for Upgrade of Existing Radio System Equipment

Summary: The consideration of a resolution authorizing the installment financing of the upgrade of existing radio system equipment.

In 1990 the City purchased and installed an 800 MHz radio system to serve as the City's primary mobile communications system. The existing radio equipment has been in service for approximately ten years. Maintenance is no longer possible on the radios being replaced due to the fact that the manufacturer, or any other sources, no longer makes replacement parts and the proprietary software programming is no longer supported by anyone. The City of Asheville Capital Improvement Plan 2001/03 to 2006/08 included authorization in Fiscal Year 02/03 for the installment purchase of replacement equipment for the City's 800 MHz Radio System.

The Finance Department sought proposals from ten firms to finance the purchase of the above listed equipment. Proposals were received from five firms, the best of which was submitted by SunTrust Leasing Corporation - - 2.63% for five years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and SunTrust Leasing Corporation for the purchase of the radio system and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

Finance Director Bill Schaefer responded to various questions from Councilman Dunn regarding enhancing the City's communication with Buncombe County.

Councilman Mumpower felt the issue of the two different communication systems should be placed on an upcoming worksession for discussion.

Support for Increased Congestion Mitigation Air Quality Funding and Revised Eligibility Criteria

Summary: The consideration of a resolution supporting increased Congestion Mitigation Air Quality (CMAQ) funding and revised program eligibility requirements.

At the December 17, 2002, meeting, Council adopted a resolution authorizing the City to enter into an Early Action Compact with other local governments in the Greater Asheville Basin to take voluntary steps to reduce pollution in an effort to delay or avoid designation by the EPA as a non-attainment area, which would trigger the imposition of mandatory pollution control measures.

At that meeting, it was suggested that Council should consider adopting a resolution supporting amendments to various laws that would make federal funding available to assist in the implementation of the voluntary measures emerging from the EAC. Currently, federal funding is only available after the non-attainment designation has been made. This resolution is similar to one adopted by the Central Texas Clean Air Coalition.

If Council approves of the resolution, its adoption is recommended.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

HOUSING TRUST FUND LOANS

Community Development Director Charlotte Caplan said that this is the consideration of a resolution allocating $587,000 in Housing Trust Fund loans for affordable housing development.

The City's 2003 budget included an appropriation of $500,000 for the Housing Trust Fund (HTF). In addition, there has been $87,000 in repayments received from prior years' loans. The application process for the third annual offering of HTF loans was opened on October 23, 2002, and seven applications were received by the November 27 deadline. The applications were evaluated by a panel of city and outside professional staff and then reviewed by the Housing and Community Development Committee. The HCD Committee has recommended funding six projects by five developers, as follows:

WNC Housing, Inc. (4 rental units for special needs)	$75,000
Ron Moser Inc. (21 units for sale)	$230,000
Neighborhood Housing Services (10 units for sale)	$150,000
Tim & Wendy Vorst (4 rental units in two projects)	$100,000
Villas at Cedar Hills, LLC (30 units for sale)	$32,000
Total	$587,000

Staff estimate that within two years of the loans closing, approximately $245,000 will be repaid to the trust fund.

This will be the third year of the HTF program.

City staff recommends City Council approve the HTF loans listed above.

Councilwoman Jones, Chair of the Housing & Community Development Committee, noted that these allocations reflect the balance of the different housing needs in Asheville.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ASHEVILLE SCHOOL BOARD

City Council narrowed the questions to be sent to eligible School Board candidates.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 14, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

At the request of Councilman Mumpower, Consent Agenda Items "E" and "F" were removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 10, 2002; THE WORKSESSION HELD ON DECEMBER 17, 2002; AND THE WORKSESSION HELD ON JANUARY 7, 2003

B. RESOLUTION NO. 03-1 - RESOLUTION RECOGNIZING THE CONTRIBUTION FROM THE IRENE AND DICK COVINGTON FOUNDATION

Summary: The consideration of a resolution recognizing the contribution made by the Irene and Dick Covington Foundation that will result in the construction of a tennis museum and clubhouse at Aston Park.

In the early 1990's, a Foundation was established in honor of Irene and Dick Covington, both now deceased. The Covingtons contributed greatly to the growth of tennis in Asheville and Western North Carolina. The Foundation resulted in a total of $278,336.17, and the majority of this amount was derived from the sale of their estate. The goal of the Foundation was to develop a tennis clubhouse at Aston Park, which would benefit the tennis community and display the archives from Dick Covington's tennis career. The Foundation has been working with a local architect to develop plans, which were approved in September, 2002. The Foundation approved giving the above funds to Buncombe County who will oversee the construction of the proposed Aston Park Tennis Clubhouse. The County Commissioners have already approved a resolution accepting the funds and agree to maintain the building as long as Buncombe County has control of the Aston Park property. In the event the property is reverted back to the City of Asheville, all unused funds will be transferred to the City to continue development of the clubhouse or for perpetual maintenance. Buncombe County has agreed to construct the facility to meet the requirements of the Unified Development Ordinance, and the facility should be completed as early as July, 2004.

The Asheville Parks and Recreation Department requests City Council recognize the contribution made by the Irene and Dick Covington Foundation that will result in the construction of a tennis museum and clubhouse at Aston Park.

RESOLUTION BOOK NO. 27 – PAGE 288

C. ORDINANCE NO. 2985 - BUDGET AMENDMENT FOR REIMBURSEMENT OF BULLETPROOF VESTS

Summary: The consideration of a budget amendment, in the amount of $11,362, to reimburse the Asheville Police Department for bulletproof vests from a grant by the U.S. Dept. of Justice, Bureau of Justice Assistance.

In July of 2002, with the approval of the City Manager, the Asheville Police Department applied for partial reimbursement for bulletproof vests through the Bureau of Justice Assistance. The Asheville Police Department was notified that it would receive the funds and, in September, received 50% ($11,362) of the funds it expended for bulletproof vests through the Bulletproof Vest Partnership Grant Act of 1998.

Staff recommends adoption of a budget ordinance amendment appropriating $11,362 to the Police Department budget.

ORDINANCE BOOK NO. 20 - PAGE 192

D. ORDINANCE NO. 2986 - BUDGET AMENDMENT FOR THE UPKEEP OF THE URBAN TRAIL

Summary: The consideration of a budget amendment, in the amount of $12,347.95, to appropriate additional donated funds for the maintenance and upkeep of the Urban Trail.

The Parks and Recreation Department has been responsible for the maintenance of the Urban Trail for a number of years. Periodically, funds are secured from interested donors to the Urban Trail. This budget amendment will appropriate additional revenue into an existing account, which will continue the maintenance and upkeep of the stations.

The Parks and Recreation Department requests City Council approval of a budget amendment for upkeep of the Urban Trail.

ORDINANCE BOOK NO. 20 – PAGE 194

E. RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK IV

This item was removed from the Consent Agenda for individual discussion.

F. RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE AZALEA ROAD PARK PHASE I

This item was removed from the Consent Agenda for individual discussion.

G. RESOLUTION NO. 03-2 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH NETWORK DATA SERVICES FOR SECURITY SERVICES AT THE NORTH FORK WATER TREATMENT FACILITY

Summary: The consideration of a resolution to approve a contract with Network Data Systems (NDS) to provide security services at the North Fork Water Treatment Facility.

The City of Asheville requires a security system at the North Fork Treatment Facility. Proposals for a security system were received on November 15, 2002, and NDS was the lowest bidder.

NDS's system will provide secure access to and from gated areas and buildings. It will also provide security outside of buildings and in parking areas through close-circuit cameras. The equipment installed and card entry system will be compatible with current system(s) used at Asheville City Hall, Water Resources Water Maintenance Facility, and the Mills River Water treatment Facility.

The contract will be completed within 45 days from notice to proceed and will not exceed $60,600.

City staff recommends approval of the contract with NDS to provide security services at the North Fork Facility.

RESOLUTION BOOK NO. 27 – PAGE 290

H. RESOLUTION NO. 03-3- RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN SUNTRUST LEASING CORPORATION AND THE CITY OF ASHEVILLE TO FINANCE THE UPGRADE OF EXISTING RADIO SYSTEM EQUIPMENT

Summary: The consideration of a resolution authorizing the installment financing of the upgrade of existing radio system equipment.

In 1990 the City purchased and installed an 800 MHz radio system to serve as the City's primary mobile communications system. The existing radio equipment has been in service for approximately ten years. Maintenance is no longer possible on the radios being replaced due to the fact that the manufacturer, or any other sources, no longer makes replacement parts and the proprietary software programming is no longer supported by anyone. The City of Asheville Capital Improvement Plan 2001/03 to 2006/08 included authorization in Fiscal Year 02/03 for the installment purchase of replacement equipment for the City's 800 MHz Radio System.

The Finance Department sought proposals from ten firms to finance the purchase of the above listed equipment. Proposals were received from five firms, the best of which was submitted by SunTrust Leasing Corporation - - 2.63% for five years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and SunTrust Leasing Corporation for the purchase of the radio system and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 27 – PAGE 291

I. RESOLUTION NO. 03-4 - RESOLUTION SUPPORTING INCREASED CONGESTION MITIGATION AIR QUALITY FUNDING AND REVISED ELIGIBILITY CRITERIA

Summary: The consideration of a resolution supporting increased Congestion Mitigation Air Quality (CMAQ) funding and revised program eligibility requirements.

At the December 17, 2002, meeting, Council adopted a resolution authorizing the City to enter into an Early Action Compact with other local governments in the Greater Asheville Basin to take voluntary steps to reduce pollution in an effort to delay or avoid designation by the EPA as a non-attainment area, which would trigger the imposition of mandatory pollution control measures.

At that meeting, it was suggested that Council should consider adopting a resolution supporting amendments to various laws that would make federal funding available to assist in the implementation of the voluntary measures emerging from the EAC. Currently, federal funding is only available after the non-attainment designation has been made. This resolution is similar to one adopted by the Central Texas Clean Air Coalition.

If Council approves of the resolution, its adoption is recommended.

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J. RESOLUTION NO. 03-5 - RESOLUTION APPROVING THE HOUSING TRUST FUND LOANS

Summary: The consideration of a resolution allocating $587,000 in Housing Trust Fund loans for affordable housing development.

The City's 2003 budget included an appropriation of $500,000 for the Housing Trust Fund (HTF). In addition, there has been $87,000 in repayments received from prior years' loans. The application process for the third annual offering of HTF loans was opened on October 23, 2002, and seven applications were received by the November 27 deadline. The applications were evaluated by a panel of city and outside professional staff and then reviewed by the Housing and Community Development Committee. The HCD Committee has recommended funding six projects by five developers, as follows:

WNC Housing, Inc. (4 rental units for special needs)	$75,000
Ron Moser Inc. (21 units for sale)	$230,000
Neighborhood Housing Services (10 units for sale)	$150,000
Tim & Wendy Vorst (4 rental units in two projects)	$100,000
Villas at Cedar Hills, LLC (30 units for sale)	$32,000
Total	$587,000

Staff estimates that within two years of the loans closing, approximately $245,000 will be repaid to the trust fund.

This will be the third year of the HTF program.

City staff recommends City Council approve the HTF loans listed above.

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K. RESOLUTION NO. 03-6 - RESOLUTION FIXING DATE OF A PUBLIC HEARING ON JANUARY 28, 2003, ON THE QUESTION OF THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS THE PISGAH VIEW ROAD AREA

RESOLUTION BOOK NO. 27 – PAGE 294

L. RESOLUTION NO. 03-7 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Summary: The terms of Chuck Pickering, William Byrne and Kim MacQueen expired on December 31, 2002. Mr. Pickering and Mr. Byrne have requested reappointment. Ms. MacQueen has resigned as a member of the Downtown Commission to take the President of the Downtown Association appointment.

Mr. Tim Fierle has resigned as a member from the Downtown Commission, thus leaving an unexpired term until December 31, 2003.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Mr. Pickering and Mr. Byrne to each serve an additional three year term respectfully, terms to expire December 31, 2005, or until their successors have been appointed; (2) appoint J. Patrick Whalen to serve a three year term, term to expire December 31, 2005, or until his successor has been appointed; and (3) appoint Peter Albence to serve the unexpired term of Mr. Fierle, term to expire December 31, 2003, or until his successor has been appointed.

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M. RESOLUTION NO. 03-8 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Lloyd Williams, as a member on the Firemen's Relief Fund Board of Trustees, expired on January 1, 2003.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Williams to serve an additional two year term, term to expire January 1, 2005, or until his successor has been appointed.

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N. RESOLUTION NO. 03-9 - RESOLUTION APPOINTING MEMBERS TO THE GREENWAY COMMISSION

Summary: The terms of Gerry Hardesty and Linda Giltz, as members on the Greenway Commission, expired on December 31, 2002.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Gerry Hardesty and Linda Giltz to each serve an additional three year term, terms to expire December 31, 2005, or until their successors have been appointed.

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O. RESOLUTION NO. 03-10 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT COMMISSION

Summary: The terms of Stacy Anderson, Ruth Chaet and Robert Potter, as members on the Asheville Transit Commission, expired on December 31, 2002.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Stacy Anderson and Ruth Chaet to each serve an additional two year term respectively, terms to expire December 31, 2004; and (2) to appoint Mr. James F. Garner Jr. to serve a two year term, term to expire December 31, 2004. All terms are until their successors have been appointed.

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P. RESOLUTION NO. 03-11 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Summary: The terms of Kasty Latven, Peter Gentling and Sofia Mannos, as members on the Asheville Tree Commission, expired on December 31, 2002.

On December 17, 2002, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Kasty Latven and Sofia Mannos to each serve an additional three year term respectively, terms to expire December 31, 2005; and (2) to appoint Joseph Carney to serve a three year term, term to expire December 31, 2005. All terms are until their successors have been appointed.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Ellis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

It was the consensus to deal with both resolutions at the same time.

RESOLUTION NO. 03-12 - RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE FRENCH BROAD RIVER PARK IV

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Mayor to apply for and enter into an agreement with the N.C. Dept. of Environment and Natural Resources to assist with the development of the French Broad River Park IV.

Funds are available through the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund, to assist with the development of parks and greenways. If awarded, grant funds will be used to assist with the next phase of construction at French Broad River Park IV.

French Broad River Park IV represents the City of Asheville's next phase of a major greenway and park system being developed along the French Broad River on Amboy Road. The next phase includes a picnic pavilion, wetland interpretive/education area, river overlooks, a boat landing, trails and parking.

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The Parks and Recreation Department, the Asheville Parks and Greenways Foundation and RiverLink are in partnership to implement a fundraising plan to raise approximately $800,000 to build the next phase of the park.

The Parks and Recreation Department is requesting $250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund, which requires a dollar for dollar cash match. The cash match is available through a partnership with RiverLink, and in funds allocated by the City of Asheville.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund to assist with the construction of the French Broad River Park IV.

When Councilman Mumpower asked how much City money is involved in the French Broad River Park IV grant, Mr. Brinson said that the match would be $185,000. He explained that the grant requires a $250,000 match but we currently have $25,000 from a grant that we have secured from Progress Energy and a $40,000 contribution from RiverLink. This resolution would give City staff the authority to proceed with the grant application. He said staff would be requesting the $185,000 as part of the budget process, with or without the grant, since we want to continue the development of that park. If Council decides at budget time not to allocate those funds we would go back and readjust that grant application based on the amount of dollars that we do have that are secured. In addition, staff is still looking at other opportunities to match the $250,000 with non-City money so that it gives us an opportunity during that period of time for applying for that grant to show where that match comes from.

Upon further inquiry of Councilman Mumpower regarding timing, Mr. Brinson said there are only two grant cycles for this particular grant and if we don't apply this cycle, we won't be able to apply until later, which will push us in trying to use the funds to complete the park in the fall of 2004. Again, he explained that the $185,000 match is flexible and we are only trying to keep our options open.

Mr. Brinson said that with the Azalea Road Park, the City is not committing any funds toward the match. That match would come from the $400,000 Tourism Development grant that the City will receive. Plus, we have another match from the Lewis Trust Fund that was established. He said the City has the option to use in-kind match, but we have enough cash already to make that match, so we would not necessarily have to use the in-kind. If we do use the in-kind, it allows us to use the flexibility of using that cash for other matches.

City Manager Westbrook said that the $185,000 match will be programmed for that year's budget in compliance with the Master Plan, which City Council approved. Regardless of whether the grant was there, we were going to try to do some work with $185,000 and Mr. Brinson has found a way, through a grant, to leverage that additional funding from the state. He felt it was good business to try to do that.

Councilman Mumpower felt that money we spend for parks and recreation are good dollars, however, his discomfort with this is a timing matter. He said Council just spent a difficult summer balancing our budget and we even raised taxes. He was a little uncomfortable with Council stepping forward this quickly in view of the recent budget crisis and the possible budget crisis next summer. He did understand we are trying to keep our options open and that the budget may look better in the summer. If the budget outlook is good, he will be happy to vote to approve the match, but if not, then he would be against spending money for the match because we have other priorities.

Upon inquiry of Councilman Peterson, Mr. Brinson said the French Broad River Park IV is without a doubt the most heavily used park.

Councilman Dunn was concerned about the lack of playground facilities at the Hall Fletcher School Park. Mr. Brinson said that over the past 4-5 years, there has been a concentration to upgrade playgrounds. He said the Hall Fletcher School Park is in our Capital Improvement Budget request and will be forwarded to Council through the budget process.

Upon inquiry of Councilwoman Jones, Mr. Brinson said that revenue brought in from the French Broad River Park was approximately $30,000-$40,000 last year from concessions and in-line hockey, which he hoped would grow. He also noted that expenditures for last year were approximately $30,000-$40,000.

Vice-Mayor Bellamy felt that that this is a long-term investment in that Council needs to invest in good venues for our children now than invest in police enforcement later.

Mr. Brinson said that the total cost to date, including the property, for the French Broad River Park is $2,135,000 and the City of Asheville has put in $200,000, which is less than 10% of that cost.

RESOLUTION NO. 03-13 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO ASSIST WITH THE DEVELOPMENT OF THE AZALEA ROAD PARK PHASE I

Summary: The consideration of a resolution to apply for and enter into an agreement with the N. C. Dept. of Environment and Natural Resources to assist with the development of Azalea Road Park Phase I.

Funds are available through the N. C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for funds through the Land, Water and Conservation Fund to assist with the development of outdoor recreation facilities. If awarded, grant funds will be used to assist with the construction of the first phase of Azalea Road Park.

Azalea Road Park represents the City of Asheville's first phase of a major greenway and park system being developed along the Swannanoa River on Azalea Road. This first phase will include the development of two fields of the four field soccer complex, restrooms, concession, kayak launch, two picnic shelters, a large playground, disc golf, fitness and greenway trails, river observation decks, restoration of the Thomas Wolfe cabin, and parking areas.

The Parks and Recreation Department, Western North Carolina Soccer Foundation and RiverLink are in partnership to implement an ambitious fundraising plan to raise $3 million to build the first phase of the park.

The Parks and Recreation Department is requesting $500,000 in grant funds from the Land, Water and Conservation Fund, which requires a dollar for dollar cash or in-kind match. The cash match is available through the Western North Carolina Soccer Foundation, and the in-kind match is available in labor, equipment, and project management in the Parks and Recreation Department.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds with the Land, Water and Conservation Fund to assist with the construction of Azalea Road Park Phase I.

Vice-Mayor Bellamy moved to approve Resolution No. 02-12 and Resolution No. 02-13. This motion was seconded by Councilwoman Jones.

Councilman Mumpower felt City staff does an excellent job of levering money. He hoped, and was encouraged to believe, that other departments will have the same opportunity and be equally creative in their efforts to maintain our streets, building new sidewalks, replace sidewalks that need replacement, keep police well-equipped and maintain our equipment.

The motion made by Vice-Mayor Bellamy and seconded by Councilwoman Jones carried unanimously.

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RESOLUTION BOOK NO. 27 – PAGE 302

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR

ORDINANANCE NO. 2987 - ORDINANCE TO REZONE PROPERTIES IDENTIFIED ON THE BROADWAY CORRIDOR SOUTH OF MAGNOLIA STREET

ORDINANCE NO. 2988 – ODINANCE TO REZONE PROPERTIES IDENTIFED ON THE BROADWAY CORRIDOR NORTH OF MAGNOLIA STREET

Mayor Worley said that this matter was tabled from the August 28, 2002, agenda. On December 10, 2002, the matter was rescheduled until this date due to failure of properly posting the properties to be rezoned along the Broadway corridor. This public hearing was advertised on January 3 and 10, 2003.

Mayor Worley opened the public hearing at 5:32 p.m.

City Attorney Oast said that a protest petition has been filed with respect to the rezoning portion of this request. The law requires that in the case of a valid protest petition, the rezoning can only pass by favorable vote of ¾ of the entire Council. In this case, however, after investigation by Urban Planner Carter Pettibone and himself, it is their determination that it is not a valid protest petition. He said that the reason is that, as calculated, they don't believe they have met the minimum 20% threshold of one of the qualifying areas you have to meet. In particular, when you have a case like this where you have a large irregularly shaped parcel, the law is unclear and some judgment calls had to be made. He did consult with attorneys at the Institute of Government, attorneys on his own staff, and reviewed similar situations from his own career on where to draw the lines to divide the areas. It was their belief that we applied what rules there are in a reasonable manner. Again, it is his opinion that the petition is not valid.

Upon inquiry of Councilman Peterson, City Attorney Oast used a copy of the corridor to explain how he made the calculations and how the lines for each area were drawn (which were done before he knew where the property owners were that had that signed the protest petition), noting that he followed property lines or extensions of zoning lines. If the area were considered as a whole, it would not qualify for a valid protest petition. And, in drawing the four lines, none of the four areas drawn met the percentages necessary for a valid protest petition.

When Councilman Peterson said that there was no clear state law on where the lines should be drawn, City Attorney Oast agreed that the lines could be drawn in a number of areas, but his lines were drawn in a reasonable way.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast explained why any lines were drawn at all.

Councilman Peterson explained why he felt the application of the law by City Attorney Oast that the total acreage of the entire lot that touches within 100 feet is included in the calculations is incorrect. He said that case law is that only that part of the property that is within 100 feet of the boundary of the zoning district that is to be changed should have been calculated. City Attorney Oast agreed that the law is not clear on that, but the way that he applied it is that it includes the area of the lot that is in within 100 feet, not just so much of it as is within the 100 feet.

Vice-Mayor Bellamy suggested that Council divide the rezoning area up into two areas and vote on them separately since it seems there is not a lot of dispute in rezoning the south area.

Ms. Betty Lawrence, attorney, said that the petitioners tried very hard to get an opinion from the City Attorney as to, in this situation with these irregular boundaries, what a side would be so that they would have some amount of clarity as to how many property owners they would need on the protest petition. She explained how the lines could have been drawn differently in order to have a valid protest petition. In addition, she agreed with Councilman Peterson in that only 100 feet of the boundary of the zoning district should have been calculated. She stated that she does have authorizations to withdraw the protest petition if there are changes made in the boundary.

Planning and Development Director Scott Shuford said that first, this zoning change would implement the development pattern proposed in the Broadway Corridor Plan that Council adopted last year. In addition, staff feels the zoning will help the implementation of the greenway project proposed for the west side of Broadway. The proposed zoning is consistent with the recommendations of the Sustainable Economic Development Task Force for missed use development and redevelopment. Finally, your smart growth policies would be implemented by this change in zoning, including the first three land use policies: (1) mixed use developments and buildings should be encouraged; (2) compatible, higher density commercial and residential infill development should be encouraged; and (3) new development should promote a sustainable land development pattern.

Secondly, the Broadway corridor's zoning over the past 6-7 years has impeded its redevelopment. In the single family zoned area north of Five Points, the only development has been a church, one of the few non-residential uses allowed in an RS-8 Residential Single-Family High Density District (RS-8) zoning. Virtually nothing has changed south of Five Points despite the suburban commercial zoning. Staff does not find the level of development activity in either area acceptable, given Council's charge to staff to create a smart growth development pattern that effectively and sustainably uses our resources. If we want the corridor to change, the zoning also needs to change. We have local developers waiting to build to the provisions of the Neighborhood Corridor District (NCD).

Mr. Shuford said that Broadway is a corridor having great potential to meet the future needs of our community. It is a critical link between downtown and UNC-Asheville. It is largely a "fresh palette," allowing the City to create a vision for future mixed-use development of the smart growth variety that Council has said it wants. Council and staff is asked daily to demonstrate our support for development that reverses the road-building and air quality impacts of a sprawl development pattern. Staff believes this proposed rezoning will be a step in the right direction to achieving these objectives.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone a 40.9-acre area located along Broadway Street from Community Business II (CB II) and RS-8 to NCD.

The Planning and Development Department has proposed the rezoning of 40.9 acres along Broadway Street to NCD as the next step in the Broadway Corridor Area planning process, following the development of the Broadway Corridor Action Plan and the adoption of the Neighborhood Corridor District as a new zoning district. Following the future zoning action steps outlined in the Corridor Plan of revising zoning standards to encourage mixed use development and identifying appropriate zoning designations to promote those mixed uses, Staff has identified an area for the implementation of this zoning district.

The proposed area is made up of 92 parcels and their associated rights-of-way. The area essentially runs one property deep along both sides of Broadway from I-240 north to its intersection with Magnolia Street, and also includes the two city blocks between Broadway and Marcellus south of Maxwell Street. The area then proceeds north along the eastern side of Broadway one lot deep until it reaches the southern edge of UNCA property. Along the western edge of Broadway north of Magnolia only eight lots near the intersection of Broadway and Cauble Street are included.

Several of the properties on the west side of Broadway north of Five Points were purposely not considered for the proposed rezoning area because they are to be used for the planned greenway along the creek to the west of Broadway. Staff also considered the impact of possible commercial vehicular traffic on the surrounding neighborhoods and limited the depth of the rezoning area to mainly one property deep along Broadway.

The existing land uses in the area include a variety of commercial uses and vacant properties and buildings in the southern portion of the proposed area, which is currently zoned CB II. North of the Five Points area in the RS-8 section, the majority of the properties are vacant, with a few residential homes, a church, and a gas station interspersed between. Over the past few years the City has seen little development activity in the corridor, but has recently received interest from various groups about possibilities for mixed-use redevelopment opportunities. In rezoning this area, staff believes the Broadway Corridor Plan's goals of providing a pedestrian friendly, mixed-use area that provides connection and neighborhood services to adjoining communities and a gateway to the Downtown area can be achieved.

The Planning and Zoning Commission voted 3-2 to recommend approval of the rezoning of the Broadway Corridor Area to NCD. The Planning and Development staff recommends approval as well.

Upon inquiry of Councilman Ellis, Urban Designer Alan Glines said that most of the property on the west side north of Five Points is dedicated to the greenway but about nine parcels could be developed in some fashion, hopefully to enhance the greenway.

Councilman Peterson noted that some gas lines are being installed on the east side of Broadway and wondered if that that been taken into account regarding what can be built on those lots. Mr. Pettibone said that a utility representative is on the Technical Review Committee and we are aware of that. He said the line might impact where the building would sit on the parcel and they might need a greater setback to accommodate the easements. Mr. Shuford agreed that if the gas lines are going in a right-of-way they have to get the appropriate encroachment agreement.

Councilman Peterson expressed concern of losing the existing housing stock on Broadway. He feared that the approximate nine houses on the east side of Broadway would be torn down to build commercial structures or commercial parking and that would intrude more into the residential areas.

Councilman Peterson also expressed concerned about shared parking outside the NCD. Mr. Shuford responded that residentially zoned areas may not be used to provide shared or remote parking spaces for this district, except that non-residential uses in residential districts may be used. For example, if there is a church nearby or some other non-residential use, the shared parking could occur, but it would not be allowed on general residential property.

After Mr. Pettibone said that the text of the wording amendment to establish the NCD was amended after it passed by the Planning & Zoning Commission, Councilman Mumpower asked if that would be an issue. It was the opinion of City Attorney Oast that there is no procedural issue, but it may be something Council would want to be aware of in their deliberations.

Mr. Shuford said that City staff recommends a zoning district that is continuous from downtown to UNC-Asheville. They feel it would be better for a lot of the different goals they were trying to achieve, e.g., transit supported density, neighborhood level services, encouraging a mixed of uses within buildings, encouraging mixed income residential, and more effectively using the infrastructure along that corridor. If Council wishes to separate the vote, or direct staff to look at a different zoning district, they would be happy to do that.

Upon inquiry of Councilman Ellis, Mr. Glines revised some of the standards of the NCD, particularly as they related to grocery stores and drive-throughs. He noted that drive-throughs would require a conditional use permit, which would have to come before City Council for approval.

The following individuals spoke in support of rezoning the entire area of Broadway for various reasons, some being, but are not limited to: strong link from UNC-Asheville to downtown; better front door for UNC-A to signify the important connection between our community and it's public university; foster expanded range of retail services easily accessible and walkable from UNC-Asheville; foster economic development for City; proposed development along Broadway will steer new growth in a part of town where people can walk or bike to jobs, services and school and which is served by public transportation; allow development at densities which can support viable public transportation; and, growth is taking place in the outlying areas in Buncombe County were people have to drive, so to reduce air pollution generated by cars is to redirect some of that growth into areas where people don't have to drive so much to meet daily needs:

Mr. Tom Byers, Executive Assistant to the Chancellor at UNC-Asheville
Mr. David Hill, Architect with Community Corridors, LLC
Mr. Brownie Newman, resident in Montford

The following individuals spoke in opposition of rezoning the entire area of Broadway for various reasons, some being, but are not limited to: difficult to make the area pedestrian friendly with the increased traffic volume; smart growth policies apply to more of a urban setting; south of Chestnut Street is commercial, but north of Chestnut Street is residential and should remain as residential; northern part of Broadway will never be pedestrian friendly due to the wide width of Broadway; more curb-cuts will be dangerous for pedestrians; there should be a buffer between the sidewalk and the traffic for pedestrians to feel safe; buildings in the NCD are not in scale with the residential area; commercial property does not carry as much tax burden as residential property; houses will be torn down for parking; drive-throughs are not pedestrian friendly; if the law regarding the protest petition is vague, it should be applied inclusively, not exclusively; Broadway will never be pedestrian friendly; proposed Health Adventure vision in area will affect the character of the Broadway development and not be affected by it; since you can't build over gas lines, the lots will have less buildable space on them; there are only a couple of buildable lots; homes will be torn down for commercial development; and, huge potential for 1/3 of mile north on Broadway with UNC-Asheville, Botanical Gardens, Health Adventure and the greenway:

Ms. Brandy Boggs, property owner on the south side of Broadway
Mr. Sammy Cox, resident on West Street
Mr. Peter Brezny, resident near the proposed rezoning
Ms. Mary Jo Brezny
Ms. Margaret Muller, resident in the area
Mr. Greg McCoy, resident on Chestnut Street
Ms. Veronika Gunter, resident on North Street
Ms. Amanda Rollins, resident on Monroe Place
Ms. Cynthia Long, resident on Magnolia
Mr. Mike Burton, resident on Mt. Clare
Mr. Bradley Taylor, resident near the proposed rezoning
Ms. Megan Gordon, property owner on Broadway
Ms. Betty Lawrence, attorney (presented portion of 8-27-96 City Council minutes)
Ms. Marilyn Hastings, resident on Stames Avenue

At 8:12 p.m., Mayor Worley closed the public hearing and announced a short recess.

At the request of Councilman Mumpower, Mr. Pettibone responded to questions related to building on small lots, buffer requirements, and side street parking,

Councilman Dunn asked what could be done if parking does become a problem on side streets. Mr. Glines said that the ordinance can be amended and staff can look at creative programs that other cities use.

Upon inquiry of Vice-Mayor Bellamy, Mr. Glines said that it's a goal for the community to have parks and greenways near residential areas to have eyes on the park and for their benefit as well.

Vice-Mayor Bellamy felt that the northern portion of Broadway, on the east side, has great potential for multi-family development but we need a higher density. She felt the best use of that land would be high density residential.

Mr. Shuford said that to rezone the northeast part of Broadway to RM-16 Residential Multi-Family High Density District (RM-16) is only marginally better than the existing RS-8. He explained that it is not a mixed-use district, it has none of the development incentives of the NCD, it has a suburban setback, and it has suburban parking requirements. He did not recommend RM-16 for that area. He suggested that since we don't have anything in our Code that would fit, Council could direct staff to create some sort of urban residential district with some of the site design characteristics that we tried to build in the NCD. He did caution Council that if there were an exclusively residential district near a university, you would see student housing being a potential component of that off-site. That has been a problem for some neighborhoods in North Carolina.

Vice-Mayor Bellamy stressed that we do need more affordable housing and a more variety of housing. We need higher density and more incentives for developments to put affordable units in their developments. She felt that you need residential development to use the commercial services that will be available.

Councilman Peterson felt that since commercial property is more valuable, it would push out the residential development. He felt residential will not be developed in a commercial area. Because the lots are so shallow between North Street and Hillside, that area might be appropriate for an RM-16 zone (with a variance), which would allow some townhouses to be built. There is already a fair amount of residential there now and in some ways we will lose that housing and will have no housing along that street at all.

Councilman Ellis explained why he felt that mixed development would be appropriate on the northeast side of Broadway.

Councilwoman Jones suggested that the Planning staff be directed to develop an urban residential district. In addition, she felt that the north section and the south section of Broadway should be voted on separately.

Councilman Peterson said that because there is some question about the validity of the protest petition, a lawsuit would stop all development for maybe three years. Since he didn't want Broadway sitting idle for another three years and if there was consensus to move forward on the south area of Five Points, he suggested Council vote on that portion. Then Council can either vote to rezone the northern section to NCB, decide to rezone it to RM-16, or we can send it back to Planning.

Councilman Mumpower felt to split the vote would be avoiding the complexity of a hard decision. He did have some hesitancy about rezoning the north end but feels that the entire corridor should be considered as a whole.

Councilman Dunn explained how he was familiar with this area and it has not changed much in many years. He felt that this rezoning will actually increase property values of adjoining properties, but it will take time.

Because Councilwoman Jones wanted to separate the rezonings into two areas, she moved to rezone to NCD from Five Points south to I-240. This motion was seconded by Vice-Mayor Bellamy.

There was some discussion about where to draw the boundary line on the southern portion, e.g., at Ocala Street/Woodrow Avenue area or at Magnolia Street.

City Attorney Oast said that if the protest petition is valid, it applies to the whole corridor and you can't rezone any part of it except by at least a 6-1 vote. As he understands Councilwoman Jones' motion is to, because there is some unanimity on the southern part, she is proposing to rezone that to put that out of the reach of a challenge based on the protest petition. He did feel that Council can separate these two and he doesn't think it would be subject to legal challenge for that reason.

At 9:30 p.m., Mayor Worley announced a short recess.

Councilwoman Jones moved to amend her motion to rezone to NCD the southern portion of Broadway from Magnolia Street south to I-240. This amended motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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Councilman Mumpower moved to rezone to NCD the rest of the proposed Broadway Corridor (northern portion of Broadway from Magnolia Street north). This motion was seconded by Councilman Dunn.

Mayor Worley said that he recalled the discussion back in 1986 in that it centered around the recognition that the then current zoning (some of which was commercial) was not suitable the

Broadway Corridor because it was developing and it needed to be developed in a mixed use or commercial/residential mixture. But, Council did not have the tools at the time to do it. Council recognized that and in late 1996 we were in the process of working on the UDO, which we adopted in the spring of 1997, and we knew that it would need staff study. We purposefully rezoned it residential temporarily at that point in time because we did not have the tools nor did staff devote the time to come up with the proper way to do it. Now we have the tools in place and staff had done their work. He also noted that since 1996 there has been no residential development along the Broadway Corridor, nor does he think it's likely to be any significant residential development if the property remained zoned residential. This rezoning is being innovative in the ways that we deal with development to encourage people to better utilize transportation methods, in particular alternative transportation methods. This type of concept fits right in where you increase the density relatively close to the central core of the city by encouraging more walkability and encouraging more dependency on public transportation.

The motion made by Councilman Mumpower and seconded by Councilman Dunn to rezone the rest of the Broadway Corridor to NCD carried on a 4-3 vote with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

City Attorney Oast said that because the ordinance requires an affirmative vote of 2/3 members of Council, a second reading would need to be held at Council's next meeting. Councilwoman Jones noted that she will not be at the next formal meeting on January 28, 2003, and asked if the second reading could be held at the January 21, 2003, worksession. The City Attorney advised that would be appropriate and it was the consensus to hold the second reading at the January 21, 2003, City Council worksession.

ORDINANCE BOOK NO. 20 – PAGE 199

B. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONINGS FOR A SPLIT ZONED 8.84 PARCEL LOCATED AT 1875 HENDERSONVILLE ROAD FROM OFFICE BUSINESS DISTRICT AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE (5.22 ACRE PORTION DIRECTLY BEHIND THE INGLES PLAZA) AND OFFICE BUSINESS DISTRICT/CONDITIONAL USE (3.62 ACRE PORTION TOWARDS THE REAR OF THE PARCEL), AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR THE EXPANSION OF A SHOPPING PLAZA

ORDINANCE NO. 2989 - ORDINANCE REZONING AN 8.84 PARCEL LOCATED ON 1875 HENDERSONVILLE ROAD FROM OFFICE BUSINESS DISTRICT AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE (5.22 ACRE PORTION DIRECTLY BEHIND THE INGLES PLAZA) AND OFFICE BUSINESS DISTRICT/CONDITIONAL USE (3.62 ACRE PORTION TOWARDS THE REAR OF THE PARCEL)

ORDINANCE NO. 2990 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW FOR THE EXPANSION OF A SHOPPING PLAZA

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 10:00 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a request to rezone an 8.84 parcel located on 1875 Hendersonville Road from Office Business District and RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Use (5.22 acre portion directly behind the Ingles Plaza) and Office Business District/Conditional Use (3.62 acre portion towards the rear of the parcel), and issuance of a conditional use permit to allow for the expansion of a shopping plaza and general buffer areas for the office/business portion of the proposed development

On November 1, 2002, John Spake of Spake Realty, agent for Ingles Markets submitted a request to rezone a split zoned parcel from Office Business (OB) and RM-6 Residential Multi-Family Low Density District to Highway Business (HB)/Conditional Use and Office Business (OB)/Conditional Use in the south area of the City.

The conditional use rezoning request is for a parcel known as 1875 Hendersonville Road (PIN No. 9655.09-15-0411) totaling 8.84 acres. The property is located directly behind the Ingles Plaza on Hendersonville Road (City Exhibit 3 – Location Map). The conditional use component of this application will be a site master plan that shows the expansion of the shopping center and some general buffer areas for the office/ business portion of the proposal. The parcel is split zoned at present and is divided nearly evenly between OB and RM-6. The 5.22 acre portion of property directly behind the existing Ingles Plaza acres is proposed to be rezoned to Highway Business District/Conditional Use. The remaining 3.62 acre portion towards the rear of the parcel is proposed to be rezoned Office Business District/ Conditional Use (City Exhibit 3 – Site Plan.

As proposed, the Highway Business portion of the parcel will be the location of the expansion of the Ingles store. Buffer areas and setbacks will be developed per landscape requirements. The areas of the existing parking will be brought up to current standards in the Unified Development Ordinance (UDO) for landscaping and pedestrian access. The exact uses in the Office Business portion of the lot are not determined at this time but will incorporate a landscape buffer adjacent to the rear property line in excess of UDO requirements per the request of the developer. Other landscape buffers for this portion of the proposal will follow the guidelines in the UDO. Access to the Office Business area of the lot will come from Hendersonville Road. The developer has worked with the neighborhood to establish buffer and site design conditions that will make the Office Business portion of the site better fit with surrounding residential development.

The back half of the site is currently undeveloped. Most of the trees at the front area of this portion of the site were logged in the past. There are existing trees at the rear section of the property.

The Highway Business District is established to provide a full range of large scale commercial activities along major thoroughfares. The RM-6 Residential Multi-Family Low Density District is established to provide low density single and multifamily projects that provide a transition between single family and multifamily districts. It is appropriate for areas where environmental constraints and infrastructure limit development potential. The Office Business District is established to reserve an area for the development of office uses and related support uses. This district will reserve areas for medium scale offices and a limited range of business uses and may serve as a transition area between commercial and residential areas. Residential density equals 12 units per acre.

The parcel lies just behind the Hendersonville Road commercial corridor. Access to the property is from Hendersonville Road. Other neighboring parcels in the vicinity fronting on Hendersonville Road are zoned Highway Business. Neighboring parcels to the south of the subject parcel are zoned Office Business. Parcels to the west and north are zoned a variety of residential categories: RM-6 Residential Multi-Family Low Density District, RS-4 Residential Single-Family Medium Density District, and RS-2 Residential Single-Family Low Density District. As stated before, the Highway Business portion of the lot will allow the expansion of the Ingles center on Hendersonville Road. The area of Office Business will provide a buffer between large scale commercial activities on Hendersonville Road and residential areas.

The Technical Review Committee (TRC) met on November 18, 2002, and recommended the conditional use rezoning approach as a way to ensure the compatibility of the proposal.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met provided certain impacts are mitigated through site design modifications and off site road improvements.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

If developed as proposed and conditioned, the development will create no public health or safety problems as determined by TRC review.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The development of the front area of the 5.22 acre portion of the parcel for use by the grocery store will require substantial soil and substrate removal. This excavation can be mitigated by the planting of buffer trees and shrubs according to landscape ordinance requirements. The rear portion of the parcel that will be used for the Office Business uses will not require extensive grading and will also maintain a developer-proposed undisturbed 50' rear landscape buffer from the residential uses. Side buffers setbacks will be up to 25 feet (as determined by requirements of the UDO) and will also be undisturbed save for future points of cross-access if any.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The property is located just off of the Hendersonville Road commercial thoroughfare. Access to the parcel will come from Hendersonville Road eliminating any possibility of residential cut-through access. In addition landscape buffering by commercial uses along residential uses will protect neighborhoods. If developed as proposed and conditioned, the project will not injure the value of adjoining or abutting property.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The commercial expansion and the Office Business uses will be in keeping with development patterns found in the adjacent area. This also follows an existing pattern of development for Hendersonville Road and will be in harmony with the scale, coverage and character of the area.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

This proposed development is in keeping with patterns already established in this area and with the large scale mixed commercial uses as identified in the proposed Asheville 2025 Comprehensive Plan.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed development site is located along a major thoroughfare for the City of Asheville and has adequate infrastructure services.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed development at final completion will represent a net gain of approximately 15,000 square feet or retail space in the shopping plaza. This is because existing retail space will be replaced by the larger store. Traffic impacts will be reviewed at final site plan submittal but are not expected to create undue traffic congestion or create traffic hazards. As proposed, the use and access to the 8.84 acre parcel will come from Hendersonville Road and will effectively remove one curb cut from use on Hendersonville Road.

Two separate actions are required by the UDO for conditional use rezoning approval: (1) Council must vote to rezone of the parcel; and (2) Council must vote to approve the project master plan as a conditional use.

The Planning and Zoning Commission voted 5-0 at their December 19, 2002, meeting to recommend approval of the rezoning and conditional use permit with the following conditions. Staff also recommends approval with these conditions.

1. Traffic issues will be fully reviewed at the time of detail site plan submittal. The City Traffic Engineer may recommend a traffic study to include signal timing issues and lane configurations and other issues to be determined upon review.
2. The Office Business zoned area of the parcel should share a driveway with the Ingles shopping plaza to connect to the signalized intersection.
3. No additional driveways will be approved for the project.
4. The Highway Business zoned portion of the parcel will be required to be combined with the existing shopping plaza parcel.
5. The site areas included in the conditional use proposal shall bring the development into compliance with the UDO requirements for landscaping, parking and pedestrian access issues.
6. For the Office Business portion of the project, there shall be no grading or clearing in the landscape bufferyard (where required) in order to protect existing trees. In addition a

minimum of a 'C' buffer will be required adjacent to neighboring residential properties. Future cross-access between Office Business parcels may require driveway connections through the bufferyard. The Highway Business uses will incorporate a landscape bufferyard as required by the UDO.

7. In the Office Business portion of the project, air conditioning units will be located on the ground level; natural building materials will be used to construct any buildings (metal or vinyl siding are not approved materials); buildings will feature residential styled roof pitches; and evergreen plant materials (trees and/or shrubs) will be added to the buffer area adjacent to the residential areas.

Councilman Peterson questioned if the property owner agrees to the 50 foot buffer at the back of the parcel, why it wasn't included as a condition. He felt it was important to include that as a condition since it is the only part that is adjacent to existing residential. Mr. Glines said that it is included on the site plan. City Attorney Oast further noted that we incorporate the site plan into the conditional use permit instead of listing all the conditions on the plan.

Councilman Peterson felt this action was unusual to issue a conditional use permit on the back portion of the property when there is no plan for what will be on that portion of the parcel. Mr. Glines explained that when conditions are listed on the site plan then that is enough to be a conditional use, along with the uses that are allowed as part of the Office Business District. Planning & Development Director further explained in this case we have a developer suggested condition with regard to building height, building style, building materials and that has been communicated to the surrounding neighbors in a fashion that makes them feel comfortable. The neighbors will have a chance to see this when it goes to the Technical Review Committee for a Level II approval for anything that is built on that rear portion. He felt the impacts are covered by the conditions and the site design.

Mr. Glines responded to questions from Councilman Peterson about what would happen to the buffer areas if there a future cross access between the Office Business parcels.

Councilman Peterson was concerned that City Council is not standing firm when they say they want to protect residential districts because in this proposed rezoning Council is rezoning a residential district to office uses.

Mr. John Spake, with Spake Real Estate representing Ingles Markets, spoke in support of the conditional use permit.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 10:20 p.m.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2989 to rezone an 8.84 parcel located on 1875 Hendersonville Road from Office Business District and RM-6 Residential Multi-Family Low Density District to Highway Business District/Conditional Use (5.22 acre portion directly behind the Ingles Plaza) and Office Business District/Conditional Use (3.62 acre portion towards the rear of the parcel). This motion was seconded by Councilman Ellis and carried unanimously.

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Vice-Mayor Bellamy moved to adopt Ordinance No. 2990 to issue the conditional use permit to property located on 1875 Hendersonville Road to allow for the expansion of a shopping plaza, subject to the following conditions with the understanding that the master plan will be incorporated into the permit: (1) Traffic issues will be fully reviewed at the time of detail site plan submittal. The City Traffic Engineer may recommend a traffic study to include signal timing issues and lane configurations and other issues to be determined upon review; (2) The Office Business zoned area of the parcel should share a driveway with the Ingles shopping plaza to connect to the signalized intersection; (3) No additional driveways will be approved for the project; (4) The Highway Business zoned portion of the parcel will be required to be combined with the existing shopping plaza parcel; (5) The site areas included in the conditional use proposal shall bring the development into compliance with the UDO requirements for landscaping, parking and pedestrian access issues; (6) For the Office Business portion of the project, there shall be no grading or clearing in the landscape bufferyard (where required) in order to protect existing trees. In addition a minimum of a 'C' buffer will be required adjacent to neighboring residential properties. Future cross-access between Office Business parcels may require driveway connections through the bufferyard. The Highway Business uses will incorporate a landscape bufferyard as required by the UDO; and (7) In the Office Business portion of the project, air conditioning units will be located on the ground level; natural building materials will be used to construct any buildings (metal or vinyl siding are not approved materials); buildings will feature residential styled roof pitches; and evergreen plant materials (trees and/or shrubs) will be added to the buffer area adjacent to the residential areas. This motion was seconded by Councilman Dunn and carried unanimously.

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When Vice-Mayor Bellamy advised Mr. Spake of the deplorable conditions of the Ingles Market on Tunnel Road near the Wal-Mart site, Mr. Spake said that Ingles is well aware of the problems with that store. He said if the existing Wal-Mart moves into their new Super Center on Swannanoa River Road, they hope to move Ingles into the Wal-Mart building.

IV. UNFINISHED BUSINESS:

Councilman Mumpower said that City staff made a strong effort to come up with a plan that worked for as many people as possible. The neighborhoods participated in good fashion and brought their issues to the table and got as much as they could. Then, however, the next step seems to be to come to City Council and get as much as you can, and then if that doesn't work take legal steps and get as much as you can. His concern is that that kind of process doesn't allow cooperative resolution and partnership to help us get to a good place together. It's get what you want using whatever means you can and if every time we start getting neighborhoods and staff and developers together, everyone reserves the right to tromp that process. He has concerns about that and would be interested to see how we might create some initiative around that to see if we can avoid that process in the future.

V. NEW BUSINESS:

A. RESOLUTION NO. 03-14 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Bellamy said that the terms of Kathryn Liss and Cynthia Janes, as members on the Asheville-Buncombe Community Relations Council, expired on December 31, 2002.

On December 17, 2002, City Council instructed the City Clerk to arrange the proper paperwork to appoint Dr. James Mullen to serve a three year term, term to expire December 31, 2005, or until his successor has been appointed.

Also on December 17, 2002, City Council instructed the City Clerk to arrange for interviews for Michael Burkhead, Jennifer Simpson-Oliver and Robert Glenn. Ms. Simpson-Oliver withdrew her name from consideration.

Mr. Burkhead received 7 votes and Mr. Glenn received 0 votes. Therefore, Dr. James Mullen and Mr. Michael Burkhead were appointed to each serve a three year term respectively, terms to expire December 31, 2005, or until their successor have been appointed.

City Council noted that they were very impressed with Mr. Glenn's interview and suggested he apply for another board or commission that he may be interested in.

RESOLUTION BOOK NO. 27 – PAGE 303

VI. OTHER BUSINESS:

Pledge of Allegiance

Councilman Dunn suggested that at the beginning of the meeting that we invite the veterans in the room to lead the meeting in the pledge of allegiance.

Claims

The following claims were received by the City of Asheville during the period of December 6-12, 2002: BellSouth (Water), Richard Smith (Streets), Brenda Graham (Water), Grove Park Inn (Transit Services) and Brett Joiner (Water).

The following claims were received by the City of Asheville during the period of December 13-19, 2002: Helmut Lindemann (Fire), Jim Henderson (Sanitation) and Patsy O'Donnell (Fire).

The following claims were received by the City of Asheville during the period of December 20, 2002 – January 2, 2003: BellSouth (Water), BellSouth (Water) and Don Frank (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City has obtained a copy of a Complaint filed on December 11, 2002, which is described as follows: Timothy Burdine v. Asheville Transit Authority and Asheville City Coach Lines, Inc. The nature of the proceeding is a former employee of transit company is seeking damages under the Americans with Disabilities Act. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English spoke against installing red light cameras at intersections.

Mr. Peter Dawes hoped that the City and the County would work together to find a way to communicate better with the radio system. Mayor Worley stated that he will be meeting with the Chair of the County Commissioners and that is one item for discussion.

Mr. Veronika Gunter hoped that City Council will provide sidewalks to the side streets of neighborhoods that connect to Broadway and follow-through on other ideas discussed with regard to the Broadway Corridor, including mass transit, bike traffic and pedestrian traffic.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:43 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 21, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Amendment to 2003 City Council Meeting Schedule

Summary: Staff recommends to Council that they amend the City Council 2003 meeting schedule to delete the first worksession of each month and meet on the second, third and fourth Tuesday of the month, with the worksession being held on the third Tuesday.

For some time the City Manager and the Mayor have been discussing the possibility of altering the Council's worksession schedule. We currently meet every week of the month, and when a month has a fifth Tuesday, we have a community meeting. Staff proposes that Council delete the first worksession of each month and meet only the second, third and fourth weeks of each month, with the worksession being the third week. This would give us three meetings per month, and in months with five weeks, we would still have a community meeting. The worksession on the third week would function as it does currently, with that information being discussed at the formal Council meeting on the fourth week. Both the City Clerk and the City Attorney have reviewed the idea and do not find any problems. In fact, the City Clerk feels that it might work more smoothly in that public hearings where there are going to be large numbers of people and a long public hearing could be held on the second meeting of the month which may better facilitate space and time needs.

City staff recommends City Council amend their 2003 regular meeting schedule to delete the first worksession of each month.

Councilman Peterson was opposed with the deletion of the first worksession because he felt that City Council doesn't get enough informal briefings from staff as a whole Council. Cutting that in half is not the direction he would like to see Council go in. He felt it was worthwhile to continue having that first worksession because deleting it would tend to have Council less informed. He also preferred two short worksessions to one long worksession.

Councilman Ellis spoke in favor of deleting the one worksession in that Council has many obligations and freeing up one evening would allow them to attend a different meeting.

City Manager Westbrook said that the free Tuesday would allow Council to have an additional day to schedule a special item. In addition, after researching eight other cities in North Carolina, we find that most only have two meetings per month. City staff is always available to Council by phone or to set up a meeting.

Mayor Worley felt that deleting one worksession a month would allow staff to be more efficient with their time. It is incumbent upon Council to contact staff with questions if they need clarification. In addition he felt that deleting one worksession might help City Council to develop practices for better use of their time.

Councilwoman Jones suggested that the first worksession remain and that the development of that agenda be rotated amongst Council members.

Councilman Peterson suggested that the first worksession be devoted to having groups or boards come in to brief Council.

Councilman Mumpower felt the staff access is good, but was concerned about limiting discussions at a worksession with the entire Council. He felt that structure with the agenda is important and that's the Mayor's responsibility. He suggested this matter be remanded back to the Mayor and staff to take into consideration Council's comments.

It was the consensus of Council to not take this forward to the next formal meeting, but to ask for suggestions from Council for better or innovative ways of addressing this issue.

Contract for Chestnut Street Sidewalk Replacement

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dee Williams and Company Inc., to install sidewalks located along Chestnut Street in Asheville, North Carolina.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along Chestnut Street between Broadway Avenue and Merrimon Avenue. In accordance with N.C. Gen. Stat. Sec. 143-131, informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Candler Concrete Works Inc	0	Yes	Yes	$137,388.00
Land O Sky Concrete				$195,000.00
Precision Contracting	100	Yes	Yes	$ 91,876.00
Dee Williams and Company Inc.	100	Yes	Yes	$ 80,949.59

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Dee Williams and Company Inc. to install sidewalks along Chestnut Street.

Utility Agreement with the N.C. Dept. of Transportation and Budget Amendment

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line on NC 191 from the Parkway to Sardis Road and consideration of a budget amendment to provide $1,320,266 in funding for this project.

The Water Resources Department operates a 6-inch water main along NC 191 (Brevard Road) from Sardis Road to the Blue Ridge Parkway under the policies of the Regional Water Authority, which is owned by the City of Asheville. According to the 1996 Master Plan, this line needs to be upgraded to a 24-inch line. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT and the City staff agreed to relocate the 6-inch water line and upgrade it to a 24-inch main to meet the requirements of the 1996 Master Plan. The NCDOT has estimated the construction cost of this relocation at $1,200,242. An additional 10% needs to be added to include contingency and inspections, so the total amount that needs to be budgeted is $1,320,266.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City of Asheville upon completion of the project. The City will not have to pay for this until the project is completed, which is estimated at least 2 years. The City will make three equal annual principle installments. Funding will be included in the Fiscal Year 2004/05 budget.

City staff recommends City Council approve a resolution authorizing the Mayor to execute a Utility Agreement with NCDOT and a budget amendment to provide funding for the NC191 relocation project.

Upon inquiry of Vice-Mayor Bellamy, City Manager Westbrook explained betterment vs. non-betterment costs.

Budget Amendment to Water Bond Fund (Water 29 Fund) for N.C. Dept. of Transportation US 74 Phase I Relocation Project

Summary: The consideration of a budget amendment to reprogram funds to increase funding for N.C. Dept. of Transportation (NCDOT) US 74 Phase I relocation project.

There is currently $1,108,600 in 2001 Revenue Bonds budgeted in the 29 Fund (Water Bond Fund) for US 74 Phase I. The total cost of the project including construction, engineering, and inspections is $1,579,869, which results in a shortfall of $471,269.

There are several projects that are being funded with 2001 Revenue Bonds that came in under budget, so these excess funds will be reprogrammed as follows to provide adequate funding for US 74 Phase I: Bee Tree Crossing decreased $17,515, Biltmore Viaduct decreased $66,300, US 74 Phase II decreased $220,694, Master Plan Improvements decreased $22,929, and Bee Tree Spillway decreased $143,831. The total amount of funds to be reprogrammed is $471,269.

Staff recommends that City Council approve a budget amendment to reprogram funds to increase funding for NCDOT US 74 Phase I relocation project.

Federal Representation Services

Summary: The consideration of a resolution granting authority to issue a Request for Proposals soliciting federal representation services for the City of Asheville; and, approval of a budget amendment, in the amount of $30,000, to cover anticipated costs for associated fees for the remainder of Fiscal Year 2002-03.

A growing trend among local governments seeking increased federal funding to support major local projects is to position those projects within federal appropriations bills. The practice is referred to as "earmarking". Earmarking is growing in popularity because, as a funding source, it differs from grants in several important ways. First, the amount of money available through earmarks can, potentially, be significantly greater than that available through grants. Second, grants may have eligibility criteria that can limit access to the program, particularly by small urban areas like Asheville whose demographic and economic statistics reflect a relatively prosperous area. As example, City staff recently identified 14 state and federal grant programs for which Asheville did not qualify. Further, with both approaches may come the requirement of matching funds. The amount and source of matching funds can be less of an issue with earmarks with the additional benefit of the return being, potentially, much greater.

A third distinction between the two approaches is the process used for obtaining funds. Earmarks are obtained directly through the appropriations process whereas a grant is secured indirectly, via a competitive process, through a federal agency program or other federally funded source. While earmarking is, in some ways, a simpler approach than grants, in that it avoids lengthy forms and bureaucratic processes, it is also more complex. Securing funds for a specific multi-million dollar local project within a larger appropriations bill requires knowledge and familiarity with the "technical mechanics" of the federal appropriations process, the agencies and their personnel involved, diligent and persistent project tracking, and, most importantly, a relationship with Members of Congress and their staff.

Often, though not always, lobbyists are retained for this purpose – to work within the system to position communities to more readily succeed within the earmarking process and, to represent that and other interests of their client within the federal system. Those other interests could include technical assistance with grants as well as expertise with legislative and regulatory matters.

A recent local example of a project receiving earmarked federal funds (without a lobbyist involved) would be Congressman Charles Taylor's securing $4.3 million to help build a regional fiber optic network – an infrastructure project deemed critical for advancing the region's ability to retain and attract high technology businesses. A recent North Carolina example where a lobbyist has been successfully employed is in Brunswick County. There, a group of local governments called the Brunswick Beaches Consortium, using a Washington D.C. based lobbyist, in concert with their Congressman, secured $58 million for North Carolina beaches, the Wilmington Port, and Intracoastal Waterway projects through the House Appropriation Committee on Energy and Water.

Whether a lobbyist is used or not, the involvement of the district representative and staff in support of an appropriation are critical for success.

That said, entities interested in aggressively pursuing earmarking as part of a consistent long-term strategy typically do retain representation. Raleigh and Greenville are two examples of North Carolina municipalities that have recently contracted with a lobbying firm and are pursuing this strategy.

In the year 2000, the Office of Management and Budget reported nearly 6200 earmarked projects. For 2001, another group that tracks federal spending identified over 6300 projects for that budget year. The trend continues to grow among state and local governments seeking help for major public investments in infrastructure, community and economic development, housing, environmental and transportation related projects.

City staff recommends authorization for issuing the Request for Proposal for Federal Representation Services and a corresponding budget amendment to cover the estimated fees associated for the service for the remainder of Fiscal Year 2002-03.

Councilman Mumpower said that the concept makes sense, but felt that since City Council is now making efforts to open up communication with other resources, we should first explore those options, especially since we will be setting ourselves up to possibly funding the lobbyist for three years at an approximate $250,000 cost.

Councilman Dunn lead the discussion about communication with Congressman Taylor and it was his understanding that Congressman Taylor doesn't want the City to get a lobbyist. He wants us to submit to him a menu of projects from the City and County to see what he can do for us. Economic Development Director Mac Williams felt that a lobbyist would enhance the City's ability to communicate with Congressman Taylor on what we need and the best way to do it.

Since Congressman Taylor's staff is not available to scour the various sources and agencies for funding opportunities, the lobbyist can help us do that research. He agreed that good communication with Congressman Taylor is a key and vital component of the entire process. He felt that employing a lobbyist is to make our relationship with Congressman Taylor's office more effective.

Councilman Mumpower said it was his understanding that Congressman Taylor's office doesn't work strongly with a lobbyist but that the Congressman's staff would take a facilitator roll on Congressman Taylor's behalf.

Mayor Worley said that earmarking is important and that it's the prevalent way of obtaining federal money. We know what our needs are but what we don't know is where these needs fit in on the intricate federal budget process. He got no indication from Congressman Taylor that the City should not hire a lobbyist, but he was clear that he wants to be a direct conduct for us during the budget process. He felt that hiring a lobbyist would compliment the relationship with Congressman Taylor, not threaten it.

It was the consensus of Council to have this item as new business on the next formal meeting agenda.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda, if not otherwise instructed.

WNC HISTORICAL ASSOCIATION ACHIEVEMENT AWARD

Mr. Stephen Jones, President of the WNC Historical Association, spoke about the importance of the Asheville-Buncombe Historic Resources Commission and presented Ms. Martha Fullington, Chair of the Commission, an achievement award.

On behalf of City Council, Mayor Worley agreed that the Asheville-Buncombe Historic Resources Commission has done an outstanding job and this recognition proves that.

UPDATE ON THE FEASIBILITY STUDY OF TRAFFIC SIGNAL SYSTEM

City Engineer Cathy Ball said that this presentation is provided as an update on the feasibility study for the Traffic Signal System in the City of Asheville, which includes both City owned and maintained signals as well as N. C. Dept. of Transportation (NCDOT) signals and which study evaluates Intelligent Transportation Systems (ITS), which can reduce traffic congestion.

Asheville has benefited from coordinated traffic signal control for a little more than 30 years. Installed in the late 1960s, the first coordinated system was confined to the heart of the Central Business District (CBD). Connected by hardwire cable, the controllers' capabilities were very limited by current standards, but the system served the City well for nearly 20 years. Computerized traffic signal control was introduced to Asheville in 1988. Like its predecessor, the existing system is essentially a CBD system controlling the signals at 45 intersections. Additionally, the NCDOT operates three arterial signal systems within the Asheville city limits.

HNTB was retained by the NCDOT to conduct a Traffic Signal System Feasibility Study for the City of Asheville. The purpose of the study was to evaluate the existing computerized traffic signal systems being operated in Asheville both by the City and the NCDOT. The study was to also make recommendations concerning the eventual replacement of the City's system and the feasibility of consolidating all the various, smaller systems into one. Additionally the study evaluated the need for expansion of the traffic control system to include the entire urbanized area.

Staff will be requesting funds to pay for the City's portion of the upgrades in the Fiscal Year 2004 Capital Improvement Budget, which portion will be approximately 15-20% of $13 Million. The funds for the project will be requested over a three-year period.

Mr. Bo Winstead, with HNTB North Carolina who is under contract with the NCDOT to prepare the study, summarized the feasibility study into nine major tasks which: analyzed existing traffic conditions, inventoried and analyzed existing traffic signal equipment, defined traffic control system configuration needs, defined control system functional requirements, reviewed alternative candidate systems, defined communications needs for the candidate systems, reviewed communications alternatives, developed detailed cost estimates for the candidate systems and performed a Congestion Mitigation and Air Quality funding analysis, and developed an implementation plan. He then explained the development of the candidate system configurations, the candidate system evaluation, the design and construction cost estimates and outlined the anticipated benefits, which include reduced travel time and lower fuel consumption.

Mr. Winstead said a final report was prepared, which detailed the results of the Signal System Feasibility Study and which presented a recommended plan for proceeding with the detailed design and implementation of the system.

The candidate system recommended for implementation is System C, the Distributed Control System, with a capacity to control up to 500 intersections. It is anticipated that system design will require approximately 15 months. Following design, the NCDOT will advertise and award the contract for system implementation and provide construction administration with assistance from the City. The City's responsibility in the implementation phase will include participation in tests of all equipment and an active role in inspecting equipment installations. The City must play a key role in the coordination of the contractor's activities with utilities and with other City agencies.

The recommended system will use a combination of local intersection controllers with internal communications, a master computer system located at the traffic control center, and a communications network of fiber optic cable. The master computer will store all coordinated signal timing patterns, which will be downloaded to the local controllers for implementation. The master computer will instruct the local controllers as to which timing pattern should be implemented for each of the various control sections. Control sections will be easily configured by system operators to achieve optimum timing strategies totally independent of fiber optic cable routes and communications channel assignments. Timing plan changes will be implemented either on a time of day basis or on a traffic responsive basis to accommodate unpredictable variations in traffic flow. The master computer system will continuously monitor the operation of all intersections once each second and immediately report any detected malfunctions to system operators.

At some point prior to the completion of a new system, the City and NCDOT will need to reach an agreement on how the system and its signals will be maintained. It is recommended that the City assume total responsibility for all signals interconnected to the proposed system, including any outside the City limits.

Based on an ideal ratio of 35 traffic signals for each technician, the City would need approximately six technicians to maintain 220 signalized intersections. It is recommended that at least initially, these six technicians consist partially of permanent City staff and the remainder to be electrical contractor employees. Using contract employees will give the City the opportunity to better manage costs as maintenance needs fluctuate.

To help offset the City's added costs for maintaining some 220 traffic signals is the NCDOT's long-standing policy of reimbursing municipalities for costs associated with signal maintenance on state-system roadways. The reimbursement rates have recently been revised to more closely represent current costs and became effective October 1, 2002.

Timing plan development work is a crucial element of any traffic signal system; so crucial in fact, that the NCDOT requires regular timing plan refinements by all municipalities receiving funds for system maintenance. The City could have this work performed in-house by either the Operations Manager or one of the System Operator/Technicians, or choose to have the work performed by a private engineering firm.

Mr. Winstead and Ms. Ball answered various questions from Council, some being, but are not limited to: who will monitor the system, what will the cameras be used for, does the City have a dedicated maintenance schedule, are there any percentages available for reducing air pollution, what is the percentage of total cost for camera equipment, and is there a timeframe for installation.

Councilman Mumpower suggested that at the next update the numbers be translated into percentages on all figures.

Mr. Dan Baechtold, Metropolitan Planning Organization Coordinator, responded to various questions from Councilman Peterson about how this project fits in with the Transportation Improvement Plan.

Councilwoman Jones requested that the Capital Improvement Process be reviewed separately during the budget deliberations.

Mayor Worley said that no action is needed by City Council for this update.

ORDINANCE NO. 2988 – ORDINANCE TO REZONE PROPERTY ON THE BROADWAY CORRIDOR NORTH OF MAGNOLIA STREET TO NEIGHBORHOOD CORRIDOR DISTRICT

City Attorney Oast said that because this ordinance failed to pass by 2/3 of the City Council at it's first reading (which was held on January 14, 2003), a second reading is required.

Vice-Mayor Bellamy moved to waive the rules and proceed to take formal action at this meeting. This motion was seconded by Councilman Ellis and carried unanimously.

The second and final reading of Ordinance No. 2988 to rezone property on the Broadway Corridor north of Magnolia Street to Neighborhood Corridor District carried on a 4-3 vote with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE 199

DOWNTOWN SOCIAL ISSUES TASK FORCE

Councilman Ellis, liaison to the Downtown Commission, said that at the January Downtown Commission meeting, they put together a list of proposed members of the Downtown Social Issues Taskforce as requested by City Council. The goal of this group will be to look at the issues, do any necessary research and develop a comprehensive plan to address the full range of social problems in downtown Asheville. The Commission's intent is to have representation from the full spectrum of affected parties.

He presented City Council with the following proposed members: K. Ray Bailey, A-B Technical College; Phyllis Fiscus, Asheville Area Chamber of Commerce; Jim Ellis, Asheville City Council, Holly Jones, Asheville City Council; Kim MacQueen, Asheville Downtown Association; Dwight Butner, Asheville Downtown Association (also Restaurateur); Appointee from Asheville First; Larry Thompson, Blue Ridge Mental Health; David Gantt, Buncombe County Commissioners; Mary Geitner; Downtown Business; Pat Whalen; Downtown Commission; Bill Byrne; Downtown Commission; Richard Fort, Downtown Commission; Mike McCreary; Downtown Resident, Jessica Brower, Downtown Resident; Patricia Kaufman, District Court Judge; Al Williams; Asst. District Attorney; Appointee from Eagle Market Streets Development Corp.; Pete Peery; First Presbyterian Church; Martha Are; Homeless Coalition/Hospitality House; Appointee from Malaprops; Breana Leslie, Mosaic Vortex; Rodney Swink, NC Office of Urban Development (to serve as a resource); Jim Van Hekke, Pavilion International Drug Treatment Center; Jim Mullen or Appointee from UNC-Asheville; Doug Orr or Appointee from Warren Wilson College; Vic Howard, Western Carolina Rescue Mission; and Mickey Mahaffey. With staff support from: Asheville Police Department, City Development Office and City of Asheville Legal Division.

Councilman Ellis said that Mr. Pat Whalen has volunteered to chair the first few meetings until the Task Force appoints a chair.

After discussion of additional members, it was the consensus of Council to send back to the Downtown Commission a strong recommendation to include an appointee from the affordable housing community, an appointee from Asheville-Buncombe Community Christian Ministry, two representatives from the homeless community (by asking Martha Are and Vic Howard), and a representative from the Council of Independent Business Owners.

Councilwoman Jones stressed that when Council changes a group that they understand that City Council has full authority to make other changes and recommendations to their final outcome.

Councilwoman Jones also recommended that the entire Task Force could be subdivided into sub-groups to work on different issues, like panhandling, or sleeping on public property.

Councilman Ellis said that the Task Force will be setting up their own guidelines and was sure that other individuals not on the Task Force would be called into service as different needs arise.

Councilman Ellis said that Commission intends for the Task Force to begin meeting, possibly in February, and that he would report back to Council on when an update report will be forthcoming from the Task Force.

BOARDS/COMMISSIONS

It was the consensus of City Council to have the Mayor write a letter to each of the four members whose terms on the Board of Adjustment expire on January 21, 2003, to ask if they would be willing to serve an additional 90 days until we have a clearer picture on how the proposed joint planning area will affect the Board of Adjustment and its makeup.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) appoint Angela Heitter, John E. Cram and Keith Hargrove to the Asheville-Buncombe Historic Resources Commission; and (2) reappoint Cathy Ball to the Metropolitan Sewerage District Board.

MISCELLANEOUS

Councilman Dunn said that the firefighters have asked to make a presentation at City Council's retreat on the firefighters supplemental pension. City Manager Westbrook said that it would be up to Council if they wanted it on the retreat agenda, but he would prefer to see the material first. After discussion, Councilman Dunn asked that the City Clerk review the minutes of the past year to find out the status of the firefighters' actuarial study because he recalled that the City Manager was instructed to have the study performed. City Manager Westbrook didn't recall being instructed to have the study performed and that it was his understanding that it would be brought up as part of the upcoming budget process and that the cost for the study was between $1,000 to $5,000. It was the consensus of Council to review the minutes for clarification. Also, it was the consensus of Council to instruct the firefighters to submit any information or presentation material to the City Manager first so he will be prepared to respond to Council's questions.

Councilwoman Jones said that she would be absent from the January 28, 2003, City Council formal meeting.

CLOSED SESSION

At 6:02 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Betty Donoho, County of Buncombe, Western North Carolina Air Pollution Control Agency, City of Asheville, and Buncombe County Schools. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Ellis and carried unanimously.

At 6:20 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ADJOURNMENT

Mayor Worley adjourned the meeting at 6:20 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 28, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Diana Hollis Jones

INVOCATION

Councilman Mumpower gave the invocation.

ADDITION TO THE AGENDA

Councilman Mumpower asked that the Housing Authority funding issue be added under "Other Business."

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 14, 2003, AND THE WORKSESSION HELD ON JANUARY 21, 2003

B. RESOLUTION NO. 03-15 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DEE WILLIAMS AND COMPANY INC. FOR THE CHESTNUT STREET SIDEWALK REPLACEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dee Williams and Company Inc., to install sidewalks located along Chestnut Street in Asheville, North Carolina.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along Chestnut Street between Broadway Avenue and Merrimon Avenue. In accordance with N.C. Gen. Stat. Sec. 143-131, informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Candler Concrete Works Inc	0	Yes	Yes	$137,388.00
Land O Sky Concrete				$195,000.00
Precision Contracting	100	Yes	Yes	$ 91,876.00
Dee Williams and Company Inc.	100	Yes	Yes	$ 80,949.59

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Dee Williams and Company Inc. to install sidewalks along Chestnut Street.

RESOLUTION BOOK NO. 27 – PAGE 304

C. RESOLUTION NO. 03-16 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RELOCATE A WATER LINE ON NC 191 FROM THE PARKWAY TO SARDIS ROAD

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line on NC 191 from the Parkway to Sardis Road and consideration of a budget amendment to provide $1,320,266 in funding for this project.

The Water Resources Department operates a 6-inch water main along NC 191 (Brevard Road) from Sardis Road to the Blue Ridge Parkway under the policies of the Regional Water Authority, which is owned by the City of Asheville. According to the 1996 Master Plan, this line needs to be upgraded to a 24-inch line. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT and the City staff agreed to relocate the 6-inch water line and upgrade it to a 24-inch main to meet the requirements of the 1996 Master Plan. The NCDOT has estimated the construction cost of this relocation at $1,200,242. An additional 10% needs to be added to include contingency and inspections, so the total amount that needs to be budgeted is $1,320,266.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City of Asheville upon completion of the project. The City will not have to pay for this until the project is completed, which is estimated at least 2 years. The City will make three equal annual principle installments. Funding will be included in the Fiscal Year 2004/05 budget.

City staff recommends City Council approve a resolution authorizing the Mayor to execute a Utility Agreement with NCDOT and a budget amendment to provide funding for the NC191 relocation project.

RESOLUTION BOOK NO. 27 – PAGE 305

D. ORDINANCE NO. 2991 - BUDGET AMENDMENT AMENDING THE WATER MAJOR CAPITAL PROJECTS FUND (WATER 35 FUND) TO PROVIDE FUNDING FOR THE WATER LINE ON NC 191 FROM THE PARKWAY TO SARDIS ROAD

Summary: See Consent Agenda Item "D" above.

ORDINANCE BOOK NO. 20 – PAGE 209

E. ORDINANCE NO. 2992 - BUDGET AMENDMENT TO THE WATER BOND FUND (WATER 29 FUND) FOR N.C. DEPT. OF TRANSPORTATION US 74 PHASE I RELOCATION PROJECT

Summary: The consideration of a budget amendment to reprogram funds to increase funding for N.C. Dept. of Transportation (NCDOT) US 74 Phase I relocation project.

There is currently $1,108,600 in 2001 Revenue Bonds budgeted in the 29 Fund (Water Bond Fund) for US 74 Phase I. The total cost of the project including construction, engineering, and inspections is $1,579,869, which results in a shortfall of $471,269.

There are several projects that are being funded with 2001 Revenue Bonds that came in under budget, so these excess funds will be reprogrammed as follows to provide adequate funding for US 74 Phase I: Bee Tree Crossing decreased $17,515, Biltmore Viaduct decreased $66,300, US 74 Phase II decreased $220,694, Master Plan Improvements decreased $22,929, and Bee Tree Spillway decreased $143,831. The total amount of funds to be reprogrammed is $471,269.

Staff recommends that City Council approve a budget amendment to reprogram funds to increase funding for NCDOT US 74 Phase I relocation project.

ORDINANCE BOOK NO. 20 – PAGE 211

F. RESOLUTION NO. 03-17 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: The consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of Jody Kuhne and Fred Eggerton, as members on the Asheville-Buncombe Historic Commission, expired on July 1, 2002. In addition, Laurie Tollman has resigned her position, thus leaving an unexpired term until July 1, 2004.

On January 21 2003, it was the consensus of City Council (1) to appoint Angela Heitter and John E. Cram to each serve until July 1, 2005, or until their successors have been appointed; and (2) to appoint Keith Hargrove to serve the unexpired term until July 1, 2004, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 306

G. RESOLUTION NO. 03-18 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The consideration of appointing a member to the Metropolitan Sewerage District Board to serve a three year term.

The term of Cathy Ball, as a member on the Metropolitan Sewerage District Board, expired on January 19, 2003.

On January 21, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Cathy Ball to serve a thee year term, term to expire January 19, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 307

H. RESOLUTION NO. 03-19 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 11, 2003, ON AMENDMENT TO CONTRACT FOR PURCHASE OF ROYAL PINES PROPERTY

Summary: The consideration of a resolution setting a public hearing on February 11, 2003, for proposed amendment to installment purchase contract for Royal Pines property.

Back in 1999, the City received an opportunity to acquire the Royal Pines Pool and Park properties from Jake Rusher, the man who had owned and operated the facility for many years.

Mr. Rusher wished for the property to be used as a park, and agreed to provide some financial incentives if the City would purchase the Royal Pines property subject to this restriction.

For legal reasons, it was necessary to involve a third party in this transaction, and the Trust for Public Land (herein "TPL"), a park land acquisition and conservation organization that the City had worked with extensively on other acquisitions, became that third party. Essentially, Mr. Rusher has conveyed the property to TPL, and TPL holds title to the property for the benefit of the City. The City is paying for the property pursuant to an installment contract, and the purchase will be complete in 2004, at which time the City will acquire title to the property. The total purchase price was $925,000. The City is responsible for maintenance, upkeep and taxes on the property while this contract is in operation.

Recently, the City has been presented with an opportunity, working through TPL, to acquire some property adjacent to the Royal Pines property that will provide for a better configuration of the park lands. In exchange for that acquisition, the City proposes to convey some of the Royal Pines property not needed for the park to the owner of an adjacent shopping center which needs the property for parking.

The appraised value of the Somerville Parcel is $93,500; the appraised value of the Park Outparcel is $127,000. The difference of $33,500 is proposed to be credited against the City's remaining obligation in its contract to purchase the Royal Pines Property, less one half the cost (estimated at $12,500) of repairing a collapsed storm drain on the Park Outparcel.

In sum, this transaction would give the City a better configuration for its park, enable the adjacent shopping center to expand its parking, and reduce the overall cost to the City.

Even though TPL holds title to the property, since the City will ultimately be the owner, we have suggested that we amend our installment contract with TPL to allow for this transaction, following 10 days notice and a public hearing as required by law for secured transactions involving land. This was the process followed when we entered into the contract in 1999.

The action needed from Council at this time is to establish the date for the public hearing, which we recommend for your February 11 meeting. Provided Council approves this transaction, we will amend our contract, and TPL will proceed with the closing, which must occur on or before February 28.

If Council wishes to set the date for the public hearing on this proposed amendment, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 27 – PAGE 308

I. RESOLUTION NO. 03-20 – RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE GOVERNOR'S CRIME COMMISSION FOR A MOBILE DATA TERMINALS GRANT TO IMPROVE FIRE OPERATIONS

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Department of Crime Control and Public Safety for funds through Governor's Crime Commission to assist with the purchase and installation of Mobile Data Terminals for Asheville Fire Rescue.

Mobile Data Computers are a useful tool for public safety agencies for many reasons. In North Carolina, several public safety agencies use them to interface with the State's Criminal Justice Data Information Network. They will help Asheville Fire Rescue operate more efficiently by allowing them to write incident reports on the scene and by enabling them to download pre-emergency plans on their way to an emergency call. This will improve the safety of the fire personnel and will help reduce the property damage of structures involved.

Asheville Fire Rescue is requesting $120,000 in grants from the Governor's Crime Commission for twenty Mobile Data Terminals. The grant requires a $2,000 match per terminal, or $40,000 total. The match is available from the Fiscal Year 2003-2004 Operating Budget of Asheville Fire Rescue.

The Fire Rescue Department recommends the City to apply for and enter into an agreement for grant funds to assist with the purchase and installation of Mobile Data Computers.

RESOLUTION BOOK NO. 27 – 309

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO INITIALLY ZONING RECENTLY ANNEXED PROPERTY KNOWN AS THE ARDEN AREA RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, INDUSTRIAL DISTRICT, INSTITUTIONAL DISTRICT AND HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2993 - ORDINANCE ZONING THE RECENTLY ANNEXED PROPERTY KNOWN AS THE ARDEN AREA RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT, INDUSTRIAL DISTRICT, INSTITUTIONAL DISTRICT AND HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:05 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance establishing the initial zoning of the area known as the Arden Annexation Area to RS-8 Residential Single-Family High Density District, Community Business II District, Institutional District, Highway Business District, Industrial District, and Commercial Industrial District. This public hearing was advertised on January 17 and 24, 2003.

The Arden Annexation Area, which consists of 128.3 acres and 114 properties, was annexed by the City on June 30, 2002. The area is one bounded by Royal Pine Drive to the north, Sweeten Creek Road to the east, Buck Shoals Road to the south, and Hendersonville Road to the west. The area is located south of existing zoned City limits.

Currently, there is Highway Business zoning to the north of the area along Hendersonville Road and within pockets of individual parcels further south along Hendersonville Road. RS 4, RM 8, and RM 16 constitute the remainder of the southern portion of the existing zoned City jurisdiction.

Land uses in the area include single-family residential in the northern part of the area, a variety of commercial uses along Hendersonville Road, a place of worship and commercial uses along the northern section of Sweeten Creek Road and a mix of industrial and commercial uses to the south along Sweeten Creek Road.

The Planning and Development Staff recommends approval of the proposed initial zoning for the area for a number of reasons. In the northern section of the annexation area the RS-8 District provides for the smaller lot single-family residential development, while Commercial Business II allows the smaller scale commercial uses located at the intersection of Royal Pine Drive and Sweeten Creek Road as well as the commercial properties that follow south down Sweeten Creek Road. Commercial Business II also provides a good fit for the smaller commercial properties along Hendersonville Road, especially for those long but shallow properties toward the south of the area that would benefit from the reduced front and rear setbacks that CB II allows compared to other commercial districts. Highway Business would allow the continuance and possible expansion of commercial businesses for two parcels near the intersection of Hendersonville Road and Sycamore Drive.

The Institutional District would allow the existing place of worship located on the 7.5-acre parcel on Sweeten Creek to continue and expand as needed while the proposed Commercial Industrial zoning on the parcel to the west and south would allow for the continuation and expansion of the variety of commercial and industrial uses presently located on it. Further south, Industrial zoning is proposed for six parcels, which either contain uses permitted in the Industrial District or are large parcels that are wholly or mostly vacant, providing promising tracts for future industrial development. The remaining parcels located at the southeastern section of the annexation area are proposed to be zoned Commercial Industrial, which would accommodate the current mix of commercial and industrial uses which include a gas station/convenience store, an office, mini-storage, and warehousing.

The Planning and Zoning Commission voted 5-0 to recommend approval of the proposed initial zoning for the Arden Annexation Area to RS-8 Residential Single-Family High Density District, Community Business II District, Institutional District, Highway Business District, Industrial District, and Commercial Industrial District. The Planning and Development staff also recommends the initial zoning.

Mr. Karl Koon spoke in support of the initial zoning to the Highway Business District.

Mayor Worley closed the public hearing at 5:12 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 2993. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 214

B. PUBLIC HEARING RELATIVE TO INITIALLY ZONING RECENTLY ANNEXED PROPERTY KNOWN AS REYNOLDS MOUNTAIN AS RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 2994 - ORDINANCE ZONING THE RECENTLY ANNEXED PROPERTY KNOWN AS REYNOLDS MOUNTAIN AS RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:13 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance establishing the initial zoning of the unzoned portions of the area known as the Reynolds Mountain Annexation Area to RS-2 Residential Single-Family Low Density District. This public hearing was advertised on January 17 and 24, 2003.

The unzoned portions of the Reynolds Mountain Annexation Area, which consist of 10.75 acres and 27 lots or portions of lots, were annexed by the City on June 30, 2002. The areas are located directly north of existing zoned properties that comprise the Reynolds Mountain Subdivision.

The remainder of the Reynolds Mountain annexation area is zoned RS 2 and is currently being developed as a residential subdivision. Properties to the north are unzoned parcels that are under Buncombe County jurisdiction.

RS-2 reflects the existing zoning to the south that comprises the zoned portion of the Reynolds Mountain Subdivision and allows for the further development of the subdivision as planned. The existing RS-2 zoning boundary corresponds to previous property lines that existed prior to the subdivision of parcels for the Reynolds Mountain development. RS-2 zoning would fill in the unzoned portion of the development that was annexed to the City earlier this year.

The Planning and Zoning Commission voted 5-0 to recommend approval of the proposed initial zoning for unzoned portions of the Reynolds Mountain Annexation Area to RS-2 Residential Single-Family Low Density District. The Planning and Development staff also recommends establishing the initial zoning of RS-2 for the unzoned portions of the Reynolds Mountain Annexation Area.

When Councilman Dunn inquired about the ridge law, City Attorney Oast said that he would provide Council with a report regarding the Mountain Ridge Protection Act and how it applies to Asheville. Planning & Development Director explained the hillside development ordinance.

Mr. Fred English was disappointed in the development on Reynolds Mountain.

Mayor Worley closed the public hearing at 5:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 2994. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 217

C. PUBLIC HEARING RELATIVE TO INITIALLY ZONING RECENTLY ANNEXED PROPERTY KNOWN AS THE BEST INNS ON TUNNEL ROAD AS HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 2995 - ORDINANCE ZONING THE RECENTLY ANNEXED PROPERTY KNOWN AS THE BEST INNS ON TUNNEL ROAD AS HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:22 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance establishing the initial zoning of the area known as the Best Inns Annexation Area to Highway Business District. This public hearing was advertised on January 17 and 24, 2003.

The Best Inns Annexation Area, which consists of a 4.3-acre property, was annexed by the City on June 30, 2002. The area is located directly east and south of existing zoned properties at the intersection of Tunnel Road (US 70) and Porter Cove Road.

Surrounding zoning includes Highway Business zoning to the north across Tunnel Road/US 70 and River District to the west across Porter Cove Road. Unzoned properties in Buncombe County's jurisdiction are located to the east and south. The property is currently used as a lodging facility/motel.

The Planning and Development staff recommends Highway Business zoning for the annexation area because it allows for the continuation and possible expansion of the existing lodging facility and mirrors the existing zoning across US 70, which accommodates similar automobile-oriented commercial uses.

The Planning and Zoning Commission voted 5-0 to recommend approval of the proposed initial zoning for the Best Inns Annexation Area to Highway Business District. The Planning and Development staff also recommends establishing the initial zoning of Highway Business District for the Best Inns Annexation Area.

Mayor Worley closed the public hearing at 5:23 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 2995. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 220

D. PUBLIC HEARING RELATIVE TO ANNEXING PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS THE PISGAH VIEW ROAD AREA

ORDINANCE NO. 2996 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ANNEXATION OF PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS THE PISGAH VIEW ROAD AREA

Mayor Worley opened the public hearing at 5:23 p.m.

The consideration of an ordinance extending the corporate limits to include property located east of Pisgah View Road and identified as the Pisgah View Road Area. This public hearing was advertised on January 17, 2003.

The applicant, Lynda Rerych, has submitted an annexation petition for the Pisgah View Road Area, which is located on the eastern side of Pisgah View Road near the intersection of Pisgah View Road and Deaverview Road. This area is contiguous to the existing corporate limits, being bordered to the south by the city.

The area proposed for annexation consists of 8.624 acres and is currently mostly undeveloped except for a house located in the northwest corner of the area along Pisgah View Road. The area is a portion of 9.806-acre property that is owned by the applicant, 1.182 acres of which are already located within the corporate limits. This area is within the extraterritorial jurisdiction and currently zoned RM-8 Residential Multi-Family Medium Density District.

City services will begin on the effective date of the ordinance. The effective date of the ordinance will be May 28, 2003, per the applicant's request.

City staff recommends City Council adopt an ordinance annexing property located east of Pisgah View Road and identified as the Pisgah View Road Area.

Mayor Worley closed the public hearing at 5:25 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2996. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 222

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-21 - RESOLUTION GRANTING AUTHORITY TO ISSUE A REQUEST FOR PROPOSALS SOLICTIING FEDERAL REPRESENTATIVE SERVICES

ORDINANCE NO. 2997 - BUDGET AMENDMENT FOR FEDERAL REPRESENTATION SERVICES

Economic Development Director Mac Williams said that this is the consideration of a resolution granting authority to issue a Request for Proposals soliciting federal representation services for the City of Asheville; and, approval of a budget amendment, in the amount of $30,000, to cover anticipated costs for associated fees for the remainder of Fiscal Year 2002-03.

A growing trend among local governments seeking increased federal funding to support major local projects is to position those projects within federal appropriations bills. The practice is referred to as "earmarking". Earmarking is growing in popularity because, as a funding source, it differs from grants in several important ways. First, the amount of money available through earmarks can, potentially, be significantly greater than that available through grants. Second, grants may have eligibility criteria that can limit access to the program, particularly by small urban areas like Asheville whose demographic and economic statistics reflect a relatively prosperous area. As example, City staff recently identified 14 state and federal grant programs for which Asheville did not qualify. Further, with both approaches may come the requirement of matching funds. The amount and source of matching funds can be less of an issue with earmarks with the additional benefit of the return being, potentially, much greater.

A third distinction between the two approaches is the process used for obtaining funds. Earmarks are obtained directly through the appropriations process whereas a grant is secured indirectly, via a competitive process, through a federal agency program or other federally funded source. While earmarking is, in some ways, a simpler approach than grants, in that it avoids lengthy forms and bureaucratic processes, it is also more complex. Securing funds for a specific multi-million dollar local project within a larger appropriations bill requires knowledge and familiarity with the "technical mechanics" of the federal appropriations process, the agencies and their personnel involved, diligent and persistent project tracking, and, most importantly, a relationship with Members of Congress and their staff.

Often, though not always, lobbyists are retained for this purpose – to work within the system to position communities to more readily succeed within the earmarking process and, to represent that and other interests of their client within the federal system. Those other interests could include technical assistance with grants as well as expertise with legislative and regulatory matters.

A recent local example of a project receiving earmarked federal funds (without a lobbyist involved) would be Congressman Charles Taylor's securing $4.3 million to help build a regional fiber optic network – an infrastructure project deemed critical for advancing the region's ability to retain and attract high technology businesses. A recent North Carolina example where a lobbyist has been successfully employed is in Brunswick County. There, a group of local governments called the Brunswick Beaches Consortium, using a Washington D.C. based lobbyist, in concert with their Congressman, secured $58 million for North Carolina beaches, the Wilmington Port, and Intracoastal Waterway projects through the House Appropriation Committee on Energy and Water.

Whether a lobbyist is used or not, the involvement of the district representative and staff in support of an appropriation are critical for success.

That said, entities interested in aggressively pursuing earmarking as part of a consistent long-term strategy typically do retain representation. Raleigh and Greenville are two examples of North Carolina municipalities that have recently contracted with a lobbying firm and are pursuing this strategy.

In the year 2000, the Office of Management and Budget reported nearly 6200 earmarked projects. For 2001, another group that tracks federal spending identified over 6300 projects for that budget year. The trend continues to grow among state and local governments seeking help for major public investments in infrastructure, community and economic development, housing, environmental and transportation related projects.

City staff recommends authorization for issuing the Request for Proposal for Federal Representation Services and a corresponding budget amendment to cover the estimated fees associated for the service for the remainder of Fiscal Year 2002-03.

Councilman Ellis felt that a lobbyist is more in line of a research analyst which can provide us with information that we can go to our representatives with to make sure Asheville gets its share of the federal dollars available. He felt that even though there was no guaranteed potential return that we do guarantee ourselves a better chance at success.

Mayor Worley envisions not pure lobbyist efforts because we have a good and growing relationship with Congressman Taylor. He does not envision using any federal representation services to lobby our Congressman because Council will do that, and Council needs to have the information to say this is where something fits in the federal budget and this is our need that fits in that budget. He felt we can't ask Congressman Taylor's staff to do that heavy-duty research for us. The Congressman and his staff is very receptive for us to bring specific things to them and we can help them by finding those things that best fit the federal/national priority. He felt this investment will bring returns many times over.

Mr. Williams felt hiring a lobbyist will certainly not replace Council's personal contact with Congressman Taylor but will just better prepare Council for when they do meet with him. The lobbyist can also help us with the relationships of other congressmen and senators that have a part to play in getting something approved.

Upon inquiry of Councilman Peterson, Mr. Williams explained that trend that is moving away from straight grant programs to more earmarking. He said that Asheville is challenged to get access to typical grant funds. He felt that this strategy is more gaining in popularity is that the amount of money from a grant, relative to the need that the money is needed for, is small. Asheville has needs that require more significant funding more quickly. The earmarking fund of funds tend to address a higher level of needs.

Councilman Peterson asked if the lobbyist we hire can guide us on applying for grants too. Mr. Williams said we can ask them to provide that service as well. What they will do for us is what we ask them to do in the contract. The level of service that we have will be a direct result of what you want to include in the proposal and that would be what we ask them to price their service for.

Mr. Williams pointed out an instance in Napa Valley, California, where earmarking of funds for a flood control project resulted in $140 Million in private investment.

When Councilman Mumpower asked if there were any downsides to hiring a lobbyist, Mr. Williams said that we can obtain earmarking of funds without a lobbyist and while a lobbyist significantly increases our ability to be successful, a lobbyist cannot guarantee anything.

Upon inquiry of Councilman Mumpower, City Manager said the $30,000 for the remainder of this fiscal year will come from General Fund Contingency. Along those lines, Mr. Williams said that this is a three-year recommendation so we can establish a relationship with a lobbyist and for the lobbyist to understand our needs and begin to work our needs into the federal agenda for appropriate sources, and also to judge whether the approach is an effective approach and whether or not results are substantial enough to do it. Cost estimates for the coming year are between $60-100,000 but he stressed this will be a Council decision each year, not a three-year commitment.

Mr. Fred English felt that City Council did not need to hire a lobbyist, but just to communicate with Congressman Taylor.

Mr. Edwin Crisp, resident in Malvern Hills, spoke in opposition of the City hiring a lobbyist.

Ms. Lynda Rerych spoke in support of the City hiring a lobbyist in that there is money available and we need knowledgeable people to speak on our behalf. Congressman Taylor will also be advocating for us as well.

When Councilman Peterson asked if our funds would be used campaign contributions or passed onto the elected officials in some way, Mr. Williams responded that they would be for a contract that is written to provide specific services and specific deliverables. He couldn't image that that would be part of what we would expect our funding to be supporting.

When Vice-Mayor Bellamy asked about benchmarks, Mr. Williams said Council can set their own benchmarks. He said that in working in consultation with the lobbyist, it will be determined what our needs are, what the potentials are, what to expect and then to set a goal for achieving that.

Vice-Mayor Bellamy asked what a feasible timeframe would be to reassess this issue. Mr. Williams said that in most contracts there is a reporting process set up where the vendor is required to come in at intervals during the term of the contract and provide progress reports. Also, the way a contract is structured is that there are certain activities that they need to arrange with us and those kinds of things are all benchmarks that we can use to determine if the relationship is a good one and if they are being effective on our behalf.

Upon inquiry of Vice-Mayor Bellamy, Mr. Williams said there is no predetermined agreement with anyone to work with any specific firm or individual at this point. This action will allow a Request for Proposals to be sent out. Then we will receive responses and then select some firms or individuals for interviews and eventual hire. The timeframe for the federal appropriations process is already underway and time to be effective in this cycle is pressed.

Vice-Mayor Bellamy felt the City needed to hire someone who has experience, who has knowledge in our subject areas, who has experience with cities our size, and who has proven results.

Councilman Mumpower asked if we can contract with a firm to specifically address one need, which would result in a much lower cost factor. Mr. Williams said that is possible and it will be left up to Council to make that determination. Whether our agenda is a single issue or more, our Request for Proposals will be multi-faceted to gage what their broad capabilities are.

Councilman Ellis moved to adopt Resolution No. 03-21. This motion was seconded by Vice-Mayor Bellamy.

Councilman Peterson said that we do need to look at this also in a regional approach.

City Manager Westbrook said that one of the things staff hopes is to be able to talk with our representatives, both congressmen and a lobbyist, about what all our needs are and then let them help us select what may line up with federal priorities. One of the needs that we hope that lines up strong is economic development. He doesn't feel like we, as an area, receive what may other areas that have hired lobbyists, in term of economic development, have received. We have so many attributes in Asheville that would tend to lead that way. We are a hub city for the area, we have challenges in terrain, and we have a river that runs through the center of the City. We have many of the things that those types of programs are designed to boost economic development and take the negative and turn it around.

Councilman Peterson would like to see Council explore the option of putting street car lines back down Haywood Road going out to west Asheville and maybe other areas. Public transit, road improvements, technology and infrastructure are some of the areas that a great deal of federal funds have gone to and we aren't getting our share of that.

Councilman Dunn said that he could not support the motion at this time. He felt that Congressman Taylor is a "heavy-hitter" and he can do a lot for us. He felt we didn't need to hire someone to tell us what our needs are when we have two Economic Development Commissions, the Chamber of Commerce, the Land-of-Sky Regional Council, UNC-Asheville and Western Carolina, etc. He felt we needed to get those groups involved to help us develop a menu of items and take that list to Congressman Taylor first. Then he can review it and give us his advice. He felt strongly that that is the first thing Council should do before hiring a lobbyist. Then, after that, he may be willing to support hiring a lobbyist. But, he felt it was unrealistic for us to get millions of dollars from the federal government, especially when our economy is struggling. He said Buncombe County had a lobbyist but fired him because all they needed to do was meet with Congressman Taylor and he obtained several million dollars for them. He felt spending $300,000 was too much when we can't even pave streets in Haw Creek. He felt that if Council does allocate this money, then something else in the budget needs to be cut.

Councilman Mumpower felt this is a hazy issue. He does understanding timing is an issue. He likes the idea of supporting positive staff initiatives and he likes the idea of the City being pro-active. He understands that hiring an advocate for us can help us get grants and get earmarked funds. However, we are talking about $200-250,000. He felt this is a fairly distasteful system as it circumvents our existing system. That's why we have representatives and why we have tne system of government that we have. Just because this is the way the system works doesn't mean it's a good system. He said that he is struggling with the pragmatics of it and the principal aspect of it. He also felt Council was getting the "cart before the horse" in that we just recently opened the door for a closer relationship with Congressman Taylor and he has responded in good and encouraging fashion. We have not opened those doors with our two senators and those are the people we elected to represent us. He wished we had more time to stimulate those relationships before we add on another layer. We have a responsibility to be careful with people's money and he has a personal concern that we do everything we can to increase people's confidence in City government.

Vice-Mayor Bellamy felt the City should work on a dual track, which is continue to work with Congressman Taylor and hire a lobbyist. We may not like the way the system works, but earmarking is how the government is running their business now. Since grants are becoming scarce, we need to find creative ways to meet housing needs, etc.

When Councilman Dunn asked if we would be contacting Congressman Taylor, Mr. Williams said that as has been the case through this entire process, we are very sensitive to Congressman Taylor and his needs. We want to work with him in a way that he is comfortable with and happy with. It's very important that the lobbyist has a good relationship with Congressman Taylor and members of his staff.

Upon inquiry of Councilman Dunn, City Manager Westbrook said that City staff will send out the Request for Proposals; get the responses back; try to evaluate those on behalf of the Council; interview the firms, along with those on Council who want to be a part of it; and then make a recommendation to Council on who to award the contract to. We will be paying a sum of money to a firm for a specific service.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

The motion made by Councilman Ellis and seconded by Vice-Mayor Bellamy carried on a 4-2 vote, with Mayor Worley, Vice-Mayor Bellamy, Councilman Ellis and Councilman Peterson voting "yes" and Councilman Dunn and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 27 – PAGE 310

Councilman Ellis moved for the adoption of Ordinance No. 2997. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Councilman Dunn, Mr. Williams explained that the $30,000 is the contract amount usually paid in monthly installments.

The motion made by Councilman Ellis and seconded by Vice-Mayor Bellamy carried on a 4-2 vote, with Mayor Worley, Vice-Mayor Bellamy, Councilman Ellis and Councilman Peterson voting "yes" and Councilman Dunn and Councilman Mumpower voting "no."

VI. OTHER BUSINESS:

Housing Authority

At the request of Councilman Mumpower and by Council consensus, Mayor Worley said that he would write a letter to our representatives supporting a $3.3 million appropriation from the federal government to the Housing Authority. It was Vice-Mayor Bellamy understanding that the Housing Authority has been contacted to say that they will receive 90% of the requested amount.

City Employee Commendations

Councilman Ellis read a letter from Becky Anderson, Director of Handmade in America, commending the City's sidewalk crew that has been working on the sidewalks on Central Avenue. In addition, words of praise were given to police officers, street crews, waterline repair crews, firefighters, and sanitation workers.

Claims

The following claims were received by the City of Asheville during the period of January 3-16, 2003: Ruth Farmer (Streets), Hobart Whitman (Water), Jeremy Ballard (Water), Jordan Lance (Water), Catherine Taylor (Water), Michael C. Clymer (Water), Robert Jones (Water), Bernard Cumings (Water), Fidelity Risk Sol. (Water), Betty B. Williams (Water) and Robert Davis (Water).

The following claims were received by the City of Asheville during the period of January 17 – 23, 2003: William J. Brown (Water), James H. Finley (Water), Joyce Boone (Water), Laura Samal (Water) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City filed a Complaint on January 8, 2003, which is generally described as follows: City of Asheville v. Beers Construction Co. of Winston-Salem, Inc. The nature of the proceeding is money owed for damage to water line. This matter will be handled in-house.

The City was served with a Petition for Certiorari on January 14, 2003, which is generally described as follows: Texas Roadhouse Holdings, LLC, Paul M. Young v. City of Asheville. The nature of the proceeding is to reverse the ruling by the Board of Adjustment related to remote parking provisions under Section 7-11-1 (e) (2) of the UDO. This matter will be handled in-house.

The City filed the following lawsuit on January 15, 2003, which is generally described as follows: City of Asheville v. Bernard Coates and Katheryn Coats. The nature of the proceeding is violation of Section 7-18-2 of the UDO regarding mandatory injunction to cease operating a lumber/salvage yard as a nonconforming use; order of abatement; money owed for civil penalties; and lien on property. This matter will be handled in-house.

The City was served with a Petition for Certiorari on January 21, 2003, which is generally described as follows: CC&J Enterprises Inc. and James O. Efland, President v. City of Asheville and the Board of Adjustment. The nature of the proceeding is to review the decision of the Board of Adjustment.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Avram Friedman, Executive Director of The Canary Coalition, presented City Council with a packet of information and said that City Council voted unanimously on July 10, 2001, in support of the passage of the North Carolina's Clean Smokestacks Act, but the Clean Smokestacks Act is now in danger of being severely undermined. He asked City Council to adopt a resolution to intervene in favor of a Petition for Review, in the federal Court of Appeals, District of Columbia, against the recent decision by the EPA to revise the New Source Review provision of the Clean Air Act. Ten states and many municipalities have now joined this lawsuit and the deadline for joining the lawsuit is January 30, 2003. He said an independent Petition for Review can be filed as late as March 3, 2003. The addition of Asheville and hopefully the State of North Carolina, would enhance the chances of success against this damaging EPA decision. Vice-Mayor Bellamy felt that it was very important to continue the initiative and doesn't want to see Council's direction be lessened in any way. City Attorney Oast said that he would try to find out what the State of North Carolina is doing since it is a state law.

Mr. Fred English spoke against using red light cameras at intersections.

Mr. Christopher Fielden, representing Community Supported Development, shared with Council several observations regarding the old Sayles Bleacheries site where the proposed Riverbend Marketplace development is to be built. In summary, he felt the Unified Development Ordinance (UDO) has been violated. They requested an immediate halt to all work on all phases of the project until the appropriate City departments have evaluated the activity on this site and assured the public that all applicable articles of the UDO are being enforced. Mayor Worley briefly responded that after a site visit with the City Engineer, he was assured that the developer is in compliance with the conditional use permit issue.

Ms. Betty Lawrence, Asheville resident, congratulated Mayor Worley on being named to Governor Easley's new Transportation Demand Management Committee, which will look for ways to use transportation to improve air quality.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:20 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

310.

Friday – January 31, 2003
Saturday – February 1, 2003
City Council Annual Retreat Kellogg Center, Hendersonville, N.C.

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Friday, January 31, 2003

Update on Fiscal Year 2002-03 Goals and Objectives – On each of the Council's goals for 2002-03, City Manager Westbrook explained the actions that have been taken to date.

Budget/Financial Forecasts

Finance Director Bill Schaefer updated City Council on the available and minimum fund balance.

Budget Director Ben Durant updated City Council on the State budget. He then explained the major revenue categories, which consisted of property tax; sales tax; intergovernmental revenue; licenses and permits; charges for service; and investment earnings. He then reviewed the General Fund revenue projection summary. Budget issues for Council consideration include: health insurance expenses, two fire stations, property insurance, additional retirement benefits for firefighters, transportation signal feasibility improvements and 1% to 401k.

After City Council discussion, City Manager Westbrook was asked to give Council more information on the budget issues including cost estimates. He explained that the options would be the additional retirement benefits for firefighters and the 1% to the 401k. He explained that during the budget process he would be able to give Council the cost estimates.

Update on Comprehensive Plan

Planning & Development Director Scott Shuford updated City Council on the City Plan 2025. After reviewing the background, he then explained the demographic changes.

Land use and transportation issues include (1) Asheville has tripled in land area over the past 50 years; (2) Asheville's density (persons per square mile) has decreased by 50% over the past 50 years; and (3) we have moved from an urban development pattern to a suburban development pattern. The costs associated with a suburban development pattern are that it's expensive to serve, has environmental problems and encounters convenience costs. A house that costs $150,000 in Asheville can be purchased for $116,000 in Greensboro according to a Coldwell Banker study.

He explained how mass transit requires 8-16 units per acre for efficient service, how Asheville's development pattern forces reliance on the automobile, that NC DOT projects that 80% of the traffic on the new I-26 Connector will be local traffic, and that there is a huge pressure on arterials and interstates. Current development patterns are not sustainable and we need to seek opportunities to recover an urban development pattern.

Land use ideas include (1) incorporate "green building" concepts; (2) preserve open space, historic resources; (3) promote affordable housing; (4) more urban villages; (5) higher density/greater zoning flexibility; and (6) coordinate land planning with Buncombe County.

Transportation ideas include: (1) missed use development pattern; (2) transit; (3) synchronize traffic signals; (4) walkable and bikeable infrastructure; and (5) construct I-26 Connector consistent with community recommendations.

He then reviewed the economic trends in Asheville. Economic development ideas include (1) high tech workforce; (2) reserve industrial land; (3) better use of our educational institutions; (4) develop and improve standards for new economy: arts and crafts; low impact; (5) use quality of life to attract/retain business; (6) regional industrial development; (7) more innovation in "branding" – creating an image for Asheville; (8) create a "wired" community and affordable (high speed internet access) band with focusing on grass-roots e-business; and (9) support local businesses.

Air quality ideas include (1) high density, mixed use, walkable communities; (2) regional cooperation to reduce air pollution; (3) lobby for solutions to air quality problems; (4) develop, improve and enforce industry standards for air pollution; (5) promote mass transit; (6) City fleet use alternative fuels; and (7) green building techniques.

Water quality ideas include: (1) City to continue to work with RiverLink to develop/implement master plan; (2) regional cooperation to reduce water pollution; (3) develop, improve and enforce industry standards for water pollution; (4) improved stormwater management regulations; and (5) green building techniques.

Mr. Shuford then explained smart growth. Long range planning includes transformation of commercial corridors; transit-supported density; walkable and bikeable; tax equity; strong neighborhoods; parks, open space and conservation areas; compatible, high quality infill development; strong Center City; flexible development regulations; improved intergovernmental coordination; effective City services; regional economy; development in character with community; compact urban form; clean air and water; skill-based entrepreneurial economy; green building tools and incentives; effective public participation; affordable housing; preservation of historic and natural resources; and connected, efficient and attractive streets.

Throughout the presentation, City Council discussed the importance of a comprehensive plan and the need for neighborhood and commercial involvement.

Update on Metropolitan Planning Organization/Transportation Management Area Issues

Metropolitan Planning Organization (MPO) Coordinator Dan Baechtold updated City Council on the federal mandate to expand the Metropolitan Planning Organization for transportation.

The Transportation Advisory Committee plans to adopt an expanded MPO boundary at their regularly scheduled meeting in February. The new MPO will include all of the municipalities in Buncombe, Henderson and Haywood Counties, as well as portions of unincorporated areas in each county. This change is part of an established federal process to redefine urban areas and MPO boundaries. Every ten years the MPO boundary must be redefined based on the results of the U.S. census. At their meeting on January 16th, will determine a recommended boundary and enter into a one-month comment period. At the time of the writing of this staff report, the draft boundary has not been determined. However, copies of the draft boundary will be available by the time of the City Council retreat.

The new MPO will consist of 17 local governments. After the new boundary is adopted, MPO staff and the TAC will work on adoption of a new Memorandum of Understanding (MOU) to be signed by all of the local governments. The MOU will establish the membership and voting procedures for the committees that make up the MPO. The TAC hopes to have a new MOU adopted by August of 2003. One of the major issues to be worked out in the MOU is the issue of weighted voting. Many of the larger MPOs across the state use weighted voting to give a larger voice to the jurisdictions that have the highest population. Currently, there is no such weighting in the voting procedures. Our current system gives one vote per representative on the TAC. The City of Asheville has two representatives on the TAC for a total of two votes. Under a weighted voting scenario, the City of Asheville representatives would receive increased voting power based on the City's proportion of the total population of the MPO.

The MPO process is a partnership between local and state government to make decisions about transportation planning in urbanized areas and to meet planning requirements established by the federal government. The MPO is responsible for development of a long-range transportation plan. From that plan, the MPO determines a list of priority transportation needs, known as the Priority Needs List. The list is then submitted to the NCDOT for their consideration as they develop the State Transportation Improvement Program (TIP). The MPO also adopts a local TIP that must match exactly with the State version. This dual approval process essentially gives the MPO veto power over state TIP decisions. This process of determining priority needs and developing a draft TIP must now be coordinated among 17 member governments. It will be critical to come up with a process that is fair to all of the local governments involved in the new MPO.

As a related issue to the MPO expansion, our area now has a Rural Planning Organization (RPO) for transportation. On January 15th the State of North Carolina chartered a new RPO in our area that includes Buncombe, Haywood, Madison, and Transylvania Counties. Henderson County declined to join the RPO. In Buncombe and Haywood the RPO, will be responsible for transportation planning outside of the MPO area. The MPO will work closely with the RPO to coordinate transportation planning in our region.

The role of the Asheville City Council in this process will be to provide feedback to the committees developing the boundary and the Memorandum of Understanding. The Asheville City Council currently has two members on the Transportation Advisory Committee: Brian Peterson and Holly Jones. The Asheville City staff currently has five members on the Technical Coordinating Committee. These committees will adopt the draft boundary and will coordinate development of the MOU. The Asheville City Council will be asked to sign the new Memorandum of Understanding in the summer of 2003. The first drafts of the new MOU will be circulated in the spring of this year.

Red Light Cameras

Police Chief Will Annarino discussed the need to install red light cameras at intersections as well as strategies for building General Assembly support. He explained how the intersection photo enforcement works. He also explained Charlotte's Safelight Program.

Advantages of the program would be to significantly reduce the number of traffic intersection crashes and injuries; police resources can be deployed to other areas of concern since cameras monitor the assigned intersections 24 hours a day; and if private vendors are used, no initial investment by Asheville taxpayers will be required.

Concerns include that it's an invasion of privacy, need more police involvement, money-making scheme, and that it will not change driving habits.

Police Chief Annarino explained the costs of the program.

In summary, photo enforcement is not a supplemental tool for law enforcement agencies; has proven successful in over 7 states and the District of Columbia, and cities such as Charlotte;

19 cities in North Carolina have enabling legislation; does not tax the resources of criminal courts; provides additional revenue source for traffic calming initiatives; no start-up costs incurred by the City; proven track record in reducing the number of accidents at traffic intersections; and statewide legislation endorsed by the N.C. League of Municipalities and the NC Dept. of Transportation.

After a lengthy City Council discussion on the information presented, the following additional information was requested (1) a report on potential cut-through traffic; (2) information on why people run red lights; and (3) crash data at intersections.

Update on Civic Center

Mayor Worley reviewed with Council the background of the Civic Center Task Force. Early on in the process, it was decided by the Task Force to retain Hunter Interests, a consulting firm from Annapolis, Maryland. Over several years they produced several reports along with a final summary report. In summary, Hunter Interests concluded (1) strong recommendation that the arena function stay in downtown Asheville; (2) if arena and convention/conference components are phased, arena portion should be developed first; and (3) a new arena downtown is preferable to a renovated one but issue of funding is typically the key impediment. They added that, while there is a clear strong market for the Civic Center, it is not clear if sufficient support from the residents or hospitality industry to realize the necessary funding mechanisms.

After the Hunter Interests conclusions were made, the Tourism Development Authority commissioned The Highland Group of Atlanta, Georgia, to research potential demand for a convention/conference facility. They concluded: (1) Civic Center, as a multi-purpose facility, is obsolete; (2) adequate convention facilities presently exist; (3) Performing Arts should be downtown; and (4) incubate other potential users of Civic Center like crafts, heritage, and Asheville's culture.

The Task Force then began an extensive review of potential sites for an arena and out of 25-30 being considered, three possible sites were focused on: existing location, beside City Hall on the south side; and UNC-Asheville campus. Since the structural feasibility and limitations at the existing Civic Center were not known, the Task Force recommended, and City Council approved, the issuance of a Request for Proposals to determine whether the existing arena could be feasibly upgraded to a modern facility. Heery International was selected for this task.

Heery concluded: (1) original design of arena was more voluminous than normal and "state of the arts" improvements could be added; (2) arena was structurally sound and could support the substantial renovation; (3) the cost of renovating the Arena would be less than the cost of new construction; and (4) Thomas Wolfe Auditorium was not a good candidate for renovation and the performing arts function should be moved out of the Civic Center. Their recommendations were: (1) keep and extensively renovate the existing arena providing high quality seating for sporting events and greater revenue generating capabilities; (2) renovate the Thomas Wolfe Auditorium into a "Great Hall" for banquets, receptions, exhibition space and other multi-use functions; and (3) build a new Performing Arts Center.

In the fall of 2001, Heery was commissioned to develop a conceptual design, a program for renovating the arena, converting the Thomas Wolfe Auditorium and building a new performing arts center and a business plan. Their results were (1) comprehensive plan for Arena, Great Hall and Performing Arts Center encompassing a "campus" extending down to Lexington Avenue; (2) a total estimated cost of $115 million, the largest component of which was the Performing Arts Center. Construction costs were estimated as follows: Arena - $27.2 Million; Thomas Wolfe (conversion to Great Hall) - $7.6 Million; and Performing Arts Center - $34.7 million.

As in the Hunter interest study, Heery concluded that funding would be a major issue. They identified revenue sources to include a prepared food and beverage tax and, potentially, an occupancy tax. They further divided the overall project into five smaller, yet individually complete projects. The funding mechanism and project(s) timeline, however, was left to the decision of City Council.

In July of 2003, City Council decided to delay until this retreat in order to (1) allow Council members the opportunity to study the reports in detail; (2) allow continued investigation of alternatives, including alternative sites and funding; and (3) allow development of other community initiatives. We know that (1) the Civic Center continues to age. Recent cosmetic improvements are nice but do not solve the programming deficiencies of a 29 year old building; (2) we are concerned about the cost and ability to pay for it; (3) desirable alternative sites are not available; and (4) there is an apparently viable movement to develop a Performing Arts Center at another location.

Important consideration for a decision include: financially sound, feasible within the context of community goals and needs, timing as it relates to our ability to secure a funding source, supportable by an informed community, and part of an overall regional economic strategy.

Mayor Worley proposed and explained each of the following: (1) seek a funding source from the legislative; (2) move forward with the Arena at the present location; (3) support community efforts to develop a Performing Arts Center at alternative locations; (4) seek alternative development of the Civic Center "campus" tied to a regional strategy; and (5) retain flexibility to adjust depending on subsequent community developments.

We can go no further without a funding source which will provide for actual design and construction drawings; and establishment of a budget and our financial limitations. The legislature is in "long session" which is traditionally the best time for a local bill to provide a funding source. Waiting now means at least a 2-year additional delay. The best funding source is a prepared food and beverage tax.

He requested Council (1) authorize a request to the legislature to approve a prepared food and beverage tax for the Civic Center; (2) approve (subject to funding) the engagement of an architectural firm to begin actual design and construction drawings of the Arena at the present site; and (3) commit to working with the community to develop the additional components and the methods of financing.

At the request of Councilman Peterson, Mayor Worley said that he would provide him with a copy of the Hunter Interests report and the Highland Group report.

Councilman Mumpower suggested a complete package be prepared and presented to the County in hopes of working with them on the parking component of the Performing Arts Center.

Discussion surrounding asking the legislature for a 1-cent or 2-cent food and beverage tax and/or the possibility of an occupancy tax. Vice-Mayor Bellamy felt that some portion of the tax should go into affordable housing.

Mayor Worley said that the City will wait until they get a definite proposal regarding the Performing Arts Center. However, it was the consensus of Council to conceptually support infrastructure and a portion of the parking.

After further Council discussion, it was the consensus of Council to request 1-cent food and beverage tax, but to explore the option of requesting 2-cents. A request for some portion of that revenue going to affordable housing or possibly the parking deck will be researched.

Economic Development

Economic Development Director Mac Williams updated City Council on the City's efforts to produce economic development through job creation, educational opportunities and other initiatives.

He explained the objectives of moving forward on the following goals: build and enhance "quality of place"; City's role beyond regulatory process; continuous improvement of development process; new development tools for new strategies; foster small business/entrepreneur development; and marketing. One new development tool in particular was that he asked that "tax increment financing" be added to Council's legislative agenda.

He concluded by saying that economic development is a process. The vision is in the right place, we are doing the right things, and there is a need for commitment over time.

City Council discussed economic development in the City as a whole and the role of the City's Economic Development Division vs. the role of other agencies promoting economic development for Asheville.

Update on Infrastructure

There was a discussion of the current condition of streets, sidewalks, waterlines and other infrastructure.

Update on Water Authority

Councilman Ellis briefed Council on the progress of the current Water Agreement negotiations.

At 4:50 p.m., Mayor Worley announced the meeting would continue the following morning, February 1, 2003, at 8:00 a.m.

Saturday, February 1, 2003

Joint Planning Agency and Other Legislative Issues

Planning & Development Director Scott Shuford said that the agreement between the City and Buncombe County should be coming to Council in April of 2003.

City Attorney Bob Oast reviewed with Council a summary of legislation that would be of interest to cities from the 2002 Session.

After Council discussion, City Attorney Oast said that he would bring to Council the following items for the legislative agenda: (1) the red light cameras; (2) reducing the Housing Authority terms from 5 to 3 years; (3) non-better relocation costs; and (4) a food and beverage tax.

Public Service Answering Point Update

Police Chief Will Annarino explained in detail the advantages and disadvantages of the current 911 "ringdown" vs. the proposed 911 resolution of establishing the City of Asheville as the area's public service answering point for emergency communications within the City of Asheville.

Councilman Dunn felt that the City and County should have a combined communication system.

As a result of Council discussion, Councilman Peterson suggested transferring the two Buncombe County Emergency Medical Services (EMS) Units that are located in the City to the City of Asheville so that there will be hardly any hand-offs.

Councilman Mumpower was not convinced that the City has done everything it could to cement the relationship with Buncombe County. If the City and County can't reach an agreement on something as important as public safety, then how can we come together on other initiatives? He felt there were other options to pursue.

After further discussion, it was the consensus of City Council to invite EMS Director Jerry Vehaun and/or Buncombe County Manager Wanda Green to Council's March 4, 2003, worksession for a further discussion on this matter.

Council Goal Setting Process

Regarding the Civic Center and after City Council discussion, it was the consensus of Council to talk with the legislators about the potential uses of a food and beverage tax; to add the 1-cent food and beverage tax to the legislative agenda; to move forward on the Arena (depending on funding); and regarding the Performing Arts Center, to conceptually support infrastructure and a portion of the parking.

After each member of City Council stated their goals and their reasons why their goals were important, City Council tentatively agreed upon the following Fiscal Year 2003-04 Goals:

1) Ease Unified Development Ordinance process for residential and commercial
2) Invest in infrastructure (include businesses/property owner) in neighborhoods and business corridor – improve process
3) Clean water/clean air – support riverway as it relates to transportation to include oxidation of buses
4) Affordable housing stock – cost of building houses – reduce as much as possible
5) Fund social security for firefighters

City Manager Westbrook assured Council that even though a goal did not make the top five that they all would be worked on.

Adjournment

Mayor Worley adjourned the meeting at 12:00 Noon.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 4, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Reimbursement of Expenses related to the Battery Park Parking Deck

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of a parking facility in the vicinity of Battery Park from the proceeds of financing.

City Council has previously directed staff to initiate action to obtain options to acquire land, retain real property and financial advisors, and contract for the design of a parking deck in the vicinity of Battery Park. City Council has also previously passed budget amendments authorizing expenditures for the project, with the supporting revenues to be provided from the proceeds of a Certificates of Participation (COPs) issue. The current project schedule calls for the COPs to be issued in the spring of 2003. However, some project expenses have already been incurred. U.S. Treasury regulations require that, if the City intends to reimburse itself from the proceeds of a tax exempt financing for certain project expenses, which were paid prior to the closing date of the financing, it must adopt a resolution evidencing that intent. The resolution of intent may cover expenses paid by the City during the period beginning sixty days prior to adoption of the resolution of intent and ending on the day of issue of the financing. The resolution indicates the City's intent to reimburse itself accordingly.

City staff recommends Council adopt the resolution.

Upon Vice-Mayor Bellamy, Finance Director Bill Schaefer said that he would provide City Council with more information on what the eligible expenses are for reimbursement from the financing.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

DOMESTIC VIOLENCE

Pursuant to a request from Councilwoman Jones, Police Chief Annarino said that N. C. General Statute sec. 50-B specifically directs law enforcement in North Carolina to "Protect the Victim" in any situation where domestic violence has occurred or is suspected.

Consistent with State Law, the Asheville Police Department responds to and investigates all domestic violence related offenses occurring within the corporate boundaries of the City of Asheville and maintains statistical data relating to such occurrences.

Police Department procedures in handling reported domestic violence cases are guided by written department policy and reinforced through yearly in-service training. The department maintains a "pro-arrest" policy and works closely with local referral agencies and the District Attorney's office to ensure the prosecution of offenders.

Police Chief Annarino then reviewed with Council reported domestic assaults, rape incident reports, and simple and aggravated assaults from 1998 to 2002.

Police Chief Annarino responded to various questions/comments from Council, some being but are not limited to: are sexual assaults being reported; is there any reasons why there has been an increase in sexual assaults; is there any correlation in violent crimes and the down-turn of the economy; where do most sexual assaults occur; and is there any reasons why 2000 crimes were high.

Upon inquiry of Vice-Mayor Bellamy, Police Chief Annarino said that he would provide City Council with additional information specifically regarding the downtown vs. citywide. He also noted that Helpmate is a very important agency that provides the Police Department with suggestions and ideas on an on-going basis and also with their overall review of their domestic violence policy.

Councilwoman Jones said that we need to help support the Asheville Police Department, who is working closely with Helpmate, in this most important issue. She noted that a lot of the harassment against women is not necessarily by panhandlers, but people in cars.

Vice-Mayor Bellamy said that the City needs to promote neighborhood block grants so neighbors get to know each other. She felt we needed to look at what can be done now to eliminate crime in the future, e.g., investing more in our children and in our schools. She felt that Council needed to be updated on this public safety issue, similar to the updates they receive on the Unified Development Ordinance.

Councilman Dunn explained that the City needs to hire more police officers to be able to provide the police presence.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which have been scheduled on February 25, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Adding Research & Technology Production as a Permitted Use in Certain Commercial Districts

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to add research and technology production as a permitted use in certain commercial districts.

This code amendment defines "research and technology production uses" and permits them in the Community Business II District, Institutional District, Highway Business District, Regional Business District, Central Business District, Commercial Industrial District and Industrial Districts. Once defined, the uses would be permitted in the River District as well. These uses are the "high tech" uses that form the backbone of our local economic development strategy.

This item was previously heard by the Planning and Zoning Commission and recommended for approval. At a City Council meeting, staff was asked to research environmental hazards concerns associated with the research and technology production uses and return the amendment for consideration. This research reveals that environmental concerns associated with the intended uses are effectively handled through existing environmental permitting procedures. There are extensive environmental permitting procedures that pertain to medical wastes and by-products from the types of uses proposed in this amendment; for some chemicals, this permitting involves "cradle-to-grave" tracking (i.e., from time of production to time of disposal).

On January 23, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that cloning is a use that might be allowed within this district, but Asheville's chances of us getting any kind of a cloning operation here is remote. He felt that there would be State laws that would apply to Asheville generally. Vice-Mayor Bellamy requested more information on any legal rights the Council would have if a cloning operation were to locate in Asheville.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on the February 25, 2003, formal City Council agenda.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 3:40 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 11, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY, 2003, AS "BLACK HISTORY MONTH"

Vice-Mayor Bellamy read the proclamation proclaiming February, 2003, as "Black History Month " in the City of Asheville. She presented the proclamation to Mr. John Hayes, President of the NAACP, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 28, 2003; THE CITY COUNCIL RETREAT HELD ON JANUARY 31-FEBRUARY 1, 2003; AND THE FEBRUARY 4, 2003, WORKSESSION

B. RESOLUTION NO. 03-22 - RESOLUTION DECLARING THE INTENT OF THE CITY OF ASHEVILLE TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF A PARKING FACILITY IN THE VICINITY OF BATTERY PARK FROM THE PROCEEDS OF FINANCING

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of a parking facility in the vicinity of Battery Park from the proceeds of financing.

City Council has previously directed staff to initiate action to obtain options to acquire land, retain real property and financial advisors, and contract for the design of a parking deck in the vicinity of Battery Park. City Council has also previously passed budget amendments authorizing expenditures for the project, with the supporting revenues to be provided from the proceeds of a Certificates of Participation (COPs) issue. The current project schedule calls for the COPs to be issued in the spring of 2003. However, some project expenses have already been incurred. U.S. Treasury regulations require that, if the City intends to reimburse itself from the proceeds of a tax exempt financing for certain project expenses, which were paid prior to the closing date of the financing, it must adopt a resolution evidencing that intent. The resolution of intent may cover expenses paid by the City during the period beginning sixty days prior to adoption of the resolution of intent and ending on the day of issue of the financing. The resolution indicates the City's intent to reimburse itself accordingly.

City staff recommends Council adopt the resolution.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution on the Consent Agenda and it would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT DESIGNATION AND MASTER PLAN REVIEW FOR WILD CHERRY GARDEN TOWNHOMES LOCATED ON WILD CHERRY ROAD AND BEAVERDAM ROAD

ORDINANCE NO. 2998 - ORDINANCE TO CONSIDER A PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT DESIGNATION FOR WILD CHERRY GARDEN TOWNHOMES LOCATED ON WILD CHERRY ROAD AND BEAVERDAM ROAD

Mayor Worley opened the public hearing at 5:10 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a Planned Unit Development (PUD) Overlay District to allow the construction of 76 attached townhome units on 20 acres at the northwest corner of the intersection of Beaverdam Road and Wild Cherry Road and Master Plan review for Wild Cherry Garden Townhomes. This public hearing was advertised on January 31 and February 7, 2003.

He said that a valid protest petition has been filed, thus requiring a ¾ vote of City Council to approve the ordinance.

The applicants, Bill Fleming and Elana Kann of Neighborhood Design Build, are proposing a project that consists of 76 attached townhome residential units and a central clubhouse/lodge facility at the intersection of Beaverdam Road and Wild Cherry Road. The project area consists of 20 acres (PIN Nos. 9740.08-77-6828, 9740.12-76-9578, 9740.08-77-6655, 9740.12-77-7246, 9740.12-76-9977, portion of 9740.12-76-9578, and 9740.11-77-2178) and would be accessed from Wild Cherry Road by a road located toward the northern end of the site.

The project site is located within the City limits at the intersection of Beaverdam Road and Wild Cherry Road. While the site and the properties immediately adjacent are zoned RS-4, there are two other zoning districts in the immediate area. There is an RS-8 district to the south across Beaverdam Road and a large RM-6 district to the west on both sides of Beaverdam Road that contains a number of attached condominium units.

The site is partly wooded, with its vegetation and tree cover mainly located to the southern portion of the site along the creek near the intersection of Beaverdam and Wild Cherry and along the site's eastern frontage along Wild Cherry Road.

The PUD District is intended to promote innovative design in development by providing for flexibility in site design. The PUD review process is a two-part procedure, which involves the rezoning of the property to the PUD District and approval of a master plan. The Planning and Zoning Commission has approved the master plan and no appeal has been received so the only issue under consideration by the City Council is the adoption of the PUD Overlay District.

The maximum density permitted in a PUD is 110% of the maximum residential density permitted in the underlying district and additional density may be permitted by the incorporating elements such as affordable units or preservation of open space into the plan. Seventy-six units are proposed for this project, which results in a density below what is permitted in the RS-4 District.

The site's access is from Wild Cherry Road and is located towards the north part of the site. Parking is provided for the dwelling units in off-street parking lots located toward the northern end of the site.

The UDO requires 500 square feet of open space for every residential unit proposed. This would result in a minimum of 0.87 acre for reservation as open space for the new residential units. The applicants are proposing 5.38 acres to be preserved as open space and are considering placing this open space in a conservation easement.

Buffering from adjacent properties is not required since the overall density of the project results in low density residential bordering other low-density residential development. The applicants, though, have proposed to buffer the site with a 15-foot "A" type buffer on property boundaries that have no vegetation and augment boundaries that have existing vegetation. A condition of the Planning and Zoning Commission's approval is the establishment of a type "D" buffer around the portion of the project where it borders properties to the north that have single-family homes on them. Landscaping is provided in and around the off-street parking areas.

The UDO requires that new developments provide one large maturing tree (over 35 feet in height at maturity) for every 40 linear feet of property abutting a street. The applicants are proposing using existing large trees or planting new ones on the development sides of Beaverdam and Wild Cherry Roads and along the entrance road from Wild Cherry Road.

The UDO requires sidewalk installation along the frontage of all streets. The applicant must provide these sidewalks or an alternative pedestrian walkway as approved by the Engineering Department.

The PUD District is intended to promote innovative design in development by providing for flexibility in site design that permits a mixture of housing types and the combination of housing with other uses such as neighborhood shopping centers and offices. This flexibility is intended to accomplish a number of purposes, which include:

1. Encourage better design and management of open space by creating more functional active and passive open space areas within a new development.
2. Retain natural features such as floodplains or steep slopes, and encourage developments that will be compatible with environmentally sensitive areas.
3. Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings.
4. Provide an effective use of the transit system within and adjacent to the development by effective organization of uses and the orientation of pedestrian and vehicular facilities.
5. Encourage pedestrian circulation within and adjacent to the PUD.

The project proposes that all the dwelling units are attached townhomes in groupings of four units. While a variety of housing types within the development are not proposed, the use of attached units results in a mixture of housing types within the neighboring area. In terms of a mix of uses within the development, the applicants have proposed using the lodge or a portion of it for certain limited commercial functions to serve the residents of the development. These uses would be food service, grocery shopping, transportation assistance, and/or home office support.

If the applicants wish to use the lodge facility for any higher intensity commercial uses, a revision to the Master Plan would be required.

The layout of the proposed PUD concentrates the dwelling units towards the northern part of the site and reserves the portions along Wild Cherry and to the south surrounding the creek as open space This results in a clustering of the units, which can provide infrastructure and cost savings, and the preservation of large amounts of open space in areas that retain the significant natural features of the site, including the stream and floodplain to the south and the mature stand of trees and vegetation along Wild Cherry. The concentration of large preservation areas also results in more functional passive open space for the development. Active open spaces for the development are provided along the western boundary of the site in the form of tennis courts and a shelter

Pedestrian circulation can be provided by the use of sidewalks and walking trails within the development. The applicants have discussed incorporating these into the development and have provided details for two of the main walkways, but would need to provide additional detail as to how all the pedestrian walkways will be laid out.

The Technical Review Committee reviewed the proposed PUD at its December 2, 2002, meeting and recommended approval with conditions. The PUD was then reviewed by the Planning and Zoning Commission, who voted 5-2 to recommend approval of the PUD designation and 5-1 to approve the Master Plan with conditions. Planning & Development staff recommend the approval of a PUD Overlay designation for the project.

The applicants have revised the master plan to satisfy the conditions of approval, including incorporating a portion of a planned City greenway into the project, adding a dedicated walkway between the development and a proposed bus shelter located along Beaverdam Road and providing additional information as to the commercial nature of the lodge facility and for possible conservation measures for the proposed open space.

When Ms. Elana Kann, applicant, asked if graphics could be used, City Attorney Oast said that there are certain development restrictions that apply within any planned unit development and the graphics would be an illustration of how those restrictions could be met on this site.

Ms. Kann said that their integrated approach to the Wild Cherry solar village development includes land and habitat preservation; a high level of energy and resource conservation; design that deliberately encourages a sense of community while protecting privacy; a pedestrian park and gardens around clustered dwellings, cars at the edge; an internal transportation system for the campus; extensive on-site services and shared facilities, primarily through the central lodge; central solar radiant heat and hot water with natural gas back-up; support for residents health and comfort; and professional property management She said that this development complies with all goals and guidelines established for a PUD. The underlying zoning will not change and we have asked for no density bonuses. She said the plan includes 6-8 acres of open space of the 20 total acres, which is 30-40% of the property. It includes conservation areas; an existing creek and existing woods; an easement for a City greenway; a public biking and walking path along the creek; active recreation areas, extensive gardens throughout the project; and trails and paths linking open spaces. We plan no development near the creek, in the woods along Wild Cherry Road or on steep slopes. She said with the clustering, we can achieve lower short term and long term costs. With a tighter infrastructure from clustering, we can install very high quality heat, water and communication systems for mid-range prices and for long-term savings in energy and maintenance. We will add a transit shelter on Beaverdam Road at an existing bus stop with bike rack and a trail and a sidewalk from the development to the transit shelter. We will offer small scale transit services as well for residents, e.g. a solar electric van for group trips into town, grocery shopping service, making car-pooling easy, and we will have a rental car available on site. The plan includes internal paths and trails with cars at the edge; Manual and electric carts for easy movement including carrying things; public biking and walking greenway along the creek, which would be in coordination with the Parks & Recreation Department. The PUD fits this site's location and unique characteristics. There is already a variety of development in the area. There are some pockets of higher density development, condo developments, and a townhouse development. The creek, the floodplain, the steep slopes and wooded areas on the site can best be preserved through the PUD flexibility. The City's infrastructure and other amenities are available to serve the development. This property is one mile from Ingles, from the Fresh Market, hardware stores, drug stores, etc. She explained how this development complies with goals of Asheville's smart growth definition and policies and the 2025 Comprehensive Plan. They have met with neighbors and have addressed many of their concerns. They realize it is painful for neighbors to see nearby open land developed. We have tried to listen well and see things from the neighbors' prospective. We held two community meetings in October with about 100 attendees, and we sent two follow-up letters to 150 households with update information and a postcard informing them of web-based survey. In addition, we met one-on-one with the closest neighbors to attempt to sort out property boundary issues. The neighbors had concerns about impact on the immediate neighbors. We voluntarily gave up any use of Old Road or Dickerson Road as an entry for residents or even for emergency vehicles, in order to protect those close neighbors privacy. We offered land transfers to the close neighbors for greater private space. We plan to install the "D" type buffer, the maximum, at our boundaries with the Talley and Niwinski properties. There have been concerns about traffic road safety and bike access. We moved our entry up the hill in response to neighborhood concerns about the Gibson Road intersection. We kept the entry about 100 feet from the Talley's house, plus we're providing quite a bit of buffering there. We have studied the issue of traffic generation. According to the National Traffic Study experts, 76 conventional attached dwellings would generate no more trips than 41 detached dwellings would on the site at peak hours. We think that the Wild Cherry development traffic will be significantly lower due to our traffic reduction features, like home offices; community transit services; grocery shopping service; on-site social and recreation facilities; pedestrian and bike trails and connections; and transit passes, if they are available at that time. The existing intersections and streets will be improved as required by the City Engineer to increase safety. We will improve the existing transit stop and provide pedestrian connection to it. We will offer a public greenway, which hopefully can extend further east and west within a few years. Multi-family housing was a concern to the neighbors. We will be building attached single-family houses. Density has also been a concern. The existing zoning for this property is RS-4 allowing site density of four dwellings per acre. The site density of this development is 3.8 dwellings per acre. The clustering of the dwellings does not increase the site density of the development. What the clustering does do is permit preservation of steep slopes, significant vegetation protection of the creek, and a large amount of usable open space. She said they are presenting a model for smart growth, which will have a relatively low impact on the City's roads and utilities, which will help to protect air quality, preserve significant open space and which offers a jump-start on the public greenway.

Upon inquiry of Vice-Mayor Bellamy, Ms. Kann said that they moved their original entrance, which was near Gibson Road, up the hill in response to some concerns that came up at neighborhood meetings.

When Vice-Mayor Bellamy asked about sidewalks, Ms. Kann said that they are adding a sidewalk to Wild Cherry Road crossing the bridge and all the way to the transit stop and then there will be a pathway for our residents to use to get to the road.

City Attorney Oast reminded Council that this PUD Overlay District, if it is approved by Council, will follow the property and the development may not necessarily be by these particular developers but whoever the developer is will be bound by whatever plan Council adopts.

The following individuals spoke in support of the proposed PUD Overlay District for various reasons, some being, but are not limited to: these applicants have demonstrated their concern for the environment, energy conservation and neighbors as seen by their sensitive development of the Westwood Co-Housing Community; this development is an example of increasing urban density, preserving the environment, green building, and better use of public transportation; air quality will be addressed; development meets many priorities established by the City; the PUD Overlay District is to encourage developers not to develop on steep slopes and to avoid sensitive areas and all PUD objectives are met with this development; didn't realize neighbors wanted sidewalks until this meeting; entrance into development was moved due to neighborhood concerns; the 17-foot wide Wild Cherry road is a good with for any kind of travel way in Asheville; preserves open space; less traffic than a traditional development; and encourages multi-modal transportation:

Ms. Paula Robbins, resident of Westwood Co-Housing Community
Ms. Laurie Huttunen, resident at Haw Creek Mews
Ms. Norma Ivy, Woodfin resident
Mr. Jake Gilmer, Asheville resident
Mr. Craig Justus, attorney representing 3 property owners who wish to sell their property to the developer
Mr. Boone Guyton, residential builder in Asheville
Mr. Chris Eller, Engineer for the project
Mr. Brownie Newman

The following individuals spoke in opposition to the proposed PUD Overlay District for various reasons, some being, but are not limited to: 76 units on 20 acres is too dense; not only will there be more traffic on Wild Cherry as a result of the 76 additional homes, but rumor has it that there is an additional development to connect on the back of this land, causing additional traffic on Wild Cherry; plan is poorly conceived and does not fit in with the neighborhood; needs of the neighborhoods haven't been responded to; cramming 76 units on a flat piece of land isn't saving open space; development is an insult to the single-family neighborhood; building elevations are too high for the area; traffic will triple on Wild Cherry Road; no sidewalks for the neighborhood; the entrance into the development was moved at the request of the TRC and not at the request of the neighborhood; since the development doesn't have a second entrance, it is not appropriate for the neighborhood; parking lot is directly in front of property owner; lights from development will overflow into the neighborhood; noise during construction and after construction will be overbearing; property values of adjoining homes will be decreased; all negative impacts from development will be borne by the neighborhood, not the development residents; the sidewalks in the development will not keep children safe who walk down on Wild Cherry Road to catch the school bus; and neighborhood wants single-family homes built on the property:

Mr. Ken Schmitz, area resident
Resident who lives at the end of Wild Cherry
Mr. Mark Sinsky, adjacent property owner
Ms. Julie Niwinski, adjacent property owner
Mr. Fred English, Haw Creek resident
Mr. Randy Talley, Wild Cherry Road resident
Ms. Francine Talley, Wild Cherry resident
Mr. Eric Niwinski, adjacent property owner
Mr. Jim McClure, Wild Cherry Road resident

Councilman Ellis suggested that instead of the children walking down Wild Cherry Road, perhaps for their safety they may wish to walk through the developer's property. Mr. Eller said that there are no sidewalks proposed on Wild Cherry Road due to the environmental impacts and topographic constraints what would force the buffer to sacrificed and more detrimental to the overall community.

Upon inquiry of Vice-Mayor Bellamy, Mr. Eller responded to questions related to buffering, number of parking spaces proposed on the development, and what the grade is from Wild Cherry Road to the proposed parking lot.

Mr. Eller explained, after Councilman Dunn asked, why they could not move the entrance about half-way up Wild Cherry Road. In addition, Mr. Eller explained the buffering on the property and the building elevations.

When Councilman Mumpower asked about lighting, it was noted that the lighting would be at low levels because there are houses that will be close to the parking lot in the development as well and they wouldn't want them disturbed by the light. In addition, Mr. Pettibone said that the City has a separate lighting ordinance to control that.

When Councilman Mumpower asked if there are any parking lot configuration possibilities, Mr. Eller said that with the way the terrain falls they were able to overcome that grade with tiering and stepping of the buildings. It would be difficult to move the parking lot because it would require a lot more visually obtrusive retaining walls to be built that would be looked upon by neighboring properties.

Mayor Worley closed the public hearing at 6:55 p.m.

Councilman Peterson asked to be excused from participation in this matter after just realizing his wife (who is an attorney) is involved in a case that would have a significant financial impact on the sale of this property. City Attorney Oast asked for a brief recess to discuss the possible conflict of interest with Councilman Peterson.

At 7:00 p.m., Mayor Worley announced a short break.

City Attorney Oast said that after talking with Councilman Peterson, it was his opinion that he does have a conflict of interest and a motion to excuse him from participating in this matter would be appropriate. Therefore, Vice-Mayor Bellamy moved to excuse Councilman Peterson from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

As a result of Councilman Peterson's absence, thus requiring a unanimous vote due to a valid protest petition, Ms. Kann said they would be willing to continue the matter for two weeks to review any unresolved issues with City staff. It was the consensus, however, for Council to proceed with the matter at this time.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower understood the intrusive nature of the development for the neighbors and they raised legitimate concerns. Unfortunately the system we have says the people that step-out and offer their voice to our policies are the people who chart the course of Asheville. And, the people who, before tonight, charted the course of Asheville by establishing policies that we, as elected representatives, are compelled to uphold. If we vote otherwise, we are acting on the basis of personal preferences, politics and pressures and that is not the way we are called to govern. Therefore, he was compelled, in spite of some of the legitimate arguments, to speak in support of the development.

Vice-Mayor Bellamy felt that the PUD process is a good tool if done correctly, that City Council can use in their development process. She didn't think that this development is unusual for the area, and in fact she felt this development is better than the Timbers. The developers have previously built a nice development in West Asheville and they have a good team of architects and engineers. She wished there was more consensus by the neighbors to support this in that when you care about your neighbors, crime rates decrease.

Mayor Worley spoke about how people tend to resist change, yet after that change occurs, most find that the change is good. This project meets the City's goals as we move toward smart growth. He felt this plan provides for a good, smart use of the terrain in the most unobtrusive way as possible.

Councilwoman Jones explained that in the next 20 years, Asheville will need 10,000 more homes and most want keep our families here and have a full community. This project will also begin to help with our air quality. She felt smart growth needed to be included in all neighborhoods.

Councilman Dunn was not convinced that the same number of single-family homes could be built on this property and he agreed that the neighbors did bring up some valid concerns. However, he did support the PUD on this property as it does provide for open space and additional housing. He didn't, however, like some of the designs in the plan, but that is not what City Council is voting on.

After speaking in favor of the project, Councilman Ellis moved to adopt Ordinance No. 2998 for a Planned Unit Development Overlay District for Wild Cherry Garden Townhomes located on Wild Cherry Road and Beaverdam Road. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 226

B. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF PROPERTY LOCATED ON SHILOH ROAD ACROSS FROM KENT STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2999 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED ON SHILOH ROAD ACROSS FROM KENT STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 7:48 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone a portion of property located on Shiloh Road across from Kent Street from Neighborhood Business District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on January 31 and February 7, 2003.

The applicants, Charlie and Claudia Tucker, are requesting a rezoning from Neighborhood Business to RS-8 for a 0.61-acre portion of a lot located on Shiloh Road (PIN No. 9657.13-13-1430) in order to develop the entire property for residential uses. The purpose of the

RS-8 district is to establish a high density per acre for single-family dwellings in areas where public infrastructure is sufficient to support such development.

The property, which totals 1.24 acres and is currently vacant, is split-zoned with Neighborhood Business zoning occupying the southern portion of the site and RS-8 zoning to the north. The property is also a through lot, with frontage on both West Chapel Road and Shiloh Road. The property owners plan to subdivide the entire property into three single-family lots, two of which would be accessed by West Chapel Road with the third via Shiloh Road.

This property is located within the City limits in a part of the Shiloh neighborhood that is predominantly zoned RS-8. Land use is the area is primarily single-family detached homes or mobile homes. Properties to the north and west are zoned RS-8 while properties to the east and south across Shiloh Road are zoned Neighborhood Business.

The property owners wish to develop the property for residential use by subdividing the property into three single-family lots. Since the property is split zoned and the Neighborhood Business District does not allow single-family residential as a permitted use, the property owners would like to rezone the Neighborhood portion of the property to RS-8 in order to have the whole parcel zoned one district and build the single-family homes.

The property was split-zoned as a result of the citywide zoning change in 1997. The goal of this zoning was to establish a neighborhood business center in the area. The City has not received definite interest in the past 5 years for developing this property or other nearby Neighborhood Business zoned property for uses permitted in the Neighborhood Business District. In addition, if this property were rezoned, 3 properties totaling 1.37 acres would remain in the Neighborhood Business District. Because of these factors, coupled with the fact that the property owners have a firm development proposal for the property, staff feels that the proposed rezoning is reasonable and recommends approval.

The Planning and Zoning Commission voted 5-0 to recommend approval of the rezoning of a portion of the property located on Shiloh Road at Kent Street from Neighborhood Business to RS-8. Planning & Development staff recommend the rezoning as well.

Mr. Charlie Tucker spoke in support of the rezoning to RS-8.

Mayor Worley closed the public hearing at 7:50 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 2999. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 228

C. **PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 3796 SWEETEN CREEK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

ORDINANCE NO. 3000 - ORDINANCE TO REZONE PROPERTY LOCATED AT 3796 SWEETEN CREEK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 7:51 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone property located at 3796 Sweeten Creek Road from RS-4 Residential Single-Family Medium Density District to Commercial Business II District. This public hearing was advertised on January 31 and February 7, 2003.

The request is for the rezoning of a .59 acre tract (PIN No. 9654-10-35-4931) in the south area of the City from RS-4 to CB II. The parcel is in the Royal Pines neighborhood and is a part of the City's Jake Rusher Park. The applicant is the Trust for Public Land. The existing playground and parking lot area are on separate parcels and are not a part of this rezoning proposal.

The parcel has access from Sweeten Creek Road and side street access from Peach Tree Street. The parcel is currently vacant but at one time had a small house in dilapidated condition. The rezoning request is part of a land trade proposal that the Trust for Public Land is coordinating. This parcel trade will provide a usable parcel for park use adjacent to Jake Rusher Park. The Parks and Recreation Department and the original land donor, Jake Rusher, are supportive of the rezoning request. The area surrounding this rezoning request were recently annexed and are undergoing initial zoning at this time. The parcels fronting on Sweeten Creek Road are proposed to be zoned CB II. Other residential parcels are proposed to be zoned RS-8.

The RS-4 Residential Single Family Medium Density District is reserved for areas for medium density single family uses and limited ancillary uses that support but still protect residential uses.

The Community Business II District is established to provide areas for medium to high density business and service uses serving several residential neighborhoods. The community business center may serve as a workplace for many residents in the surrounding neighborhoods. Projects may serve a significant pedestrian population but also provide for adequate vehicular access. The district should be located on minor and major thoroughfares, which serve several residential neighborhoods.

The Planning & Zoning Commission voted 5-0 to recommend approval of the rezoning of the property located at 3796 Sweeten Creek Road from RS-4 to Community Business II District. City staff recommends approval of the rezoning request as well.

Mayor Worley closed the public hearing at 7:54 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 3000. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 330

D. PUBLIC HEARING ON AMENDMENT TO CONTRACT FOR PURCHASE OF ROYAL PINES PROPERTY

RESOLUTION NO. 03-23 - RESOLUTION AMENDING CONTRACT FOR PURCHASE OF ROYAL PINES PROPERTY

Mayor Worley opened the public hearing at 7:55 p.m.

City Attorney Oast said that this is the consideration of a resolution approving an exchange of real property for the Royal Pines Park and amendment to the installment purchase contract for Royal Pines to effectuate the exchange. This public hearing was advertised on January 31, 2003.

Back in 1999, the City received an opportunity to acquire the Royal Pines Pool and Park properties from Jake Rusher, the man who had owned and operated the facility for many years. Mr. Rusher wished for the property to be used as a park, and agreed to provide some financial incentives if the City would purchase the Royal Pines property subject to this restriction.

For legal reasons, it was necessary to involve a third party in this transaction, and the Trust for Public Land (herein "TPL"), a park land acquisition and conservation organization that the City had worked with extensively on other acquisitions, became that third party. Essentially, Mr. Rusher has conveyed the property to TPL, and TPL holds title to the property for the benefit of the City. The City is paying for the property pursuant to an installment contract, and the purchase will be complete in 2004, at which time the City will acquire title to the property. The total purchase price was $925,000. The City is responsible for maintenance, upkeep and taxes on the property while this contract is in operation.

Recently, the City has been presented with an opportunity, working through TPL, to acquire some property adjacent to the Royal Pines property that will provide for a better configuration of the park lands. In exchange for that acquisition, the City proposes to convey some of the Royal Pines property not needed for the park to the owner of an adjacent shopping center which needs the property for parking.

The appraised value of the Somerville Parcel is $93,500; the appraised value of the Park Outparcel is $127,000. The difference of $33,500 is proposed to be credited against the City's remaining obligation in its contract to purchase the Royal Pines Property, less one half the cost (estimated at $12,500) of repairing a collapsed storm drain on the Park Outparcel.

In summary, this transaction would give the City a better configuration for its park, enable the adjacent shopping center to expand its parking, and reduce the overall cost to the City.

Even though TPL holds title to the property, the City will be the ultimate owner, so we are treating this transaction as if the City were already the owner. Because this is an exchange of real property and an amendment to the installment purchase contract, a public hearing is required before the transaction can be approved. This was the process followed when we entered into the contract in 1999.

Provided Council approves this transaction, we will amend our contract, and TPL will proceed with the closing, which must occur on or before February 28.

If Council wishes to exchange the property and amend the contract as proposed herein, adoption of the resolution is recommended.

Mayor Worley closed the public hearing at 7:58 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 03-23. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 312

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. DISCUSSION OF CANDIDATES FOR ASHEVILLE SCHOOL BOARD

It was the consensus of City Council for the City Clerk to arrange interviews of the following candidates for vacancies on the Asheville School Board: Marsha Bate, Tom Knoebber, Ann L. Von Brock, Marianne Reinert, Thomas Hunnicutt and Dolly Jenkins-Mullen.

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of January 24-30, 2003: Patricia Simmons (Civic Center), Courtney Davis (Fire), Charlie Tucker Jr. (Water), CP&L (Water) and Steven A. Daly II (Police).

The following claims were received by the City during the period of January 31 – February 6, 2003: The Timbers (Sanitation), Glenda Artie Thompson (Transit Services), Jerry Sherrill (Streets), Sophie Poore (Water), Pat Horrocks (Inspections) and Sagebrush Restaurant (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English suggested Council request our lobbyist to find funds to renovate the Civic Center and urged Council to participate in the March 1, 2003, Support our Soldiers activities.

Mr. Dennis Justice presented Council with some information on advertising display technology, soccer systems, shield systems and custom rail systems. He then explained his concerns on whether it is logistically possible to bring a hockey team to Asheville next season.

Upon inquiry of Councilman Dunn, Mayor Worley said that he would follow-up with Mr. Frank Worley at the Alcoholic Beverage Control Board about his letter to him regarding missing funds.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 18, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Application for National Pollutant Discharge Elimination System – Phase II Stormwater Permit

Summary: The consideration of a resolution authorizing the City Manager to sign the National Pollutant Discharge Elimination System (NPDES) Phase II Permit Application and any other paperwork necessary to comply with the Environmental Protection Agency (EPA) Federal Non-Funded Mandate.

In 1998, EPA adopted a rule called the NPDES Stormwater – Phase II rule. This rule applies to all municipalities with a population less than 100,000 that own or operate a Municipal Separate Storm Sewer System. The rule specifies that these units of government must develop a program for managing stormwater runoff, particularly pollutants associated with stormwater runoff. The application must be submitted to the State on or before March 2003.

The program must describe how the City will attempt to meet six minimum requirements: (1) Public Education/Outreach; (2) Public Participation/Involvement; (3) Illegal/Illicit Discharge Detection and Elimination; (4) Construction Site Runoff Control; (5) Post-Construction Runoff Control; and (6) Pollution Prevention/Good Housekeeping Measures.

In 2002, the City purchased a software program from the League of Municipalities as a guide to develop the permit. The permit will apply for a five-year period following the issuance of the permit from the State. The first year of the program will consist of developing plans and coordinating activities between various agencies. For example, the City of Asheville hopes to develop a Public Education/Outreach Program in conjunction with the other municipalities in the County.

One official deadline for the five-year program is that an ordinance controlling post-construction runoff must be adopted by City Council by March 10, 2005.

The cost of this program averages approximately $250,000 per year over the five-year period. At the 2002 City Council Retreat, Council approved City staff exploring the feasibility of developing a Stormwater Utility to fund the stormwater program. Staff is still in the process of evaluating this recommendation.

City staff requests that City Council authorize the City Manager to sign the National Pollutant Discharge Elimination System (NPDES) Phase II Permit Application and any other paperwork necessary to comply with the EPA Federal Non-Funded Mandate.

Upon inquiry of Vice-Mayor Bellamy, City Engineer Cathy Ball said she would try to incorporate the Water Resources Department's educational outreach program into this program.

Acceptance of New Street Name – East End Place

Summary: The consideration of a resolution accepting the new proposed street name "East End Place."

Asheville Area Habitat, owner of lots off of Martin Luther King Drive, has petitioned the City of Asheville to accept the street name " East End Place."
The new street will begin at Martin Luther King Drive and end at cul-de-sac on East End Place.

City staff recommends adoption of the resolution.

Agreement with WNC Soccer Association and Budget Amendment for Azalea Road Park

Summary: The consideration of a budget amendment, in the amount of $474,000, to continue the construction of Phase I of the Azalea Road Park project and consideration of a resolution authorizing the City Manager to enter into an agreement with the Western North Carolina Soccer Foundation for administering future funds collected for this project.

In 2001, City Council approved the Master Plan for the development of the Azalea Road Park. The development of the 155 acres will occur in a number of phases. The first phase includes the construction of two soccer fields, restroom/concession stand, picnic shelter, playground, parking and other infrastructure needs. The Department, in association with the WNC Soccer Association, has worked extremely hard in the past several months to secure funding for this project. First and foremost, a grant was secured from the Tourism Development Authority for funds totaling $400,000. This was the first grant awarded by this group for the development of the facilities that will increase the economic vitality of our community. In addition, we have secured $50,000 (which we will receive in $10,000 installments over five years) from Pepsi Cola Bottling Company through the generosity of John Teeter to go towards the development of the park. An additional $24,000 was secured from the sale of a small portion of the property. These funds will be used in conjunction with other funds already received to help meet our overall goal to complete Phase I.

In addition, an agreement with the WNC Soccer Foundation is required to outline the roles and responsibilities for both the WNC Soccer Foundation and the City of Asheville in securing future funds for this project.

The Parks and Recreation Department, in conjunction with the WNC Soccer Foundation, requests City Council approve the budget amendment to go towards the capital improvement budget for the Azalea Road Park construction and to authorize the agreement with the WNC Soccer Foundation for administering funds collected for this project.

Planning & Development Director Irby Brinson responded to various questions from Councilman Peterson and Councilman Dunn.

Contract Amendment with Carl Walker for Parking Garage in Battery Park Area

Summary: The consideration of a resolution authorizing the City Manager to amend the contract with Carl Walker, Inc. to include an additional $391,113 for the design/development drawings and the construction documents for the parking garage in the Battery Park area.

In 2000, the City of Asheville went through a formal process to select Carl Walker, Inc. to design the parking garage in the Battery Park area. The original contract was for a parking structure on the existing surface lot of the BellSouth lot. The original cost of the project was

$510,000. Since that time several changes have been make in the scope of the work. These changes include:

- The location of the site has moved, causing the design cost of the project to increase because of the geometry of the site;
- The Engineering fees of the Consultant have gone up annually since 2000;
- The Consultant was requested to complete design/development drawings for the private development component of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. This amendment brings the total cost of the project to $901,113.

Staff requests that City Council authorize the City Manager to amend the contract with Carl Walker, Inc. to include an additional $391,113 for the design of the parking garage in the Battery Park area.

Upon inquiry of Councilman Dunn, City Engineer Cathy Ball explained the reasons for the consultant fee increases.

Ms. Ball responded to several questions/comments from City Council.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON STATUS OF AIR QUALITY IN SOUTHEAST

Mr. Bob Camby, Director of the WNC Air Quality Agency, and Dr. Clay Ballantine, member on the WNC Regional Air Quality Agency, updated City Council on the status of air quality in the southeast.

Upon inquiry of Councilwoman Jones, City Attorney Oast said he has contacted the Attorney General's staff about joining the lawsuit to stop Environmental Protection Agency from weakening the Clean Air Act and he would report back to Council next week.

LIST OF EVENTS FOR CO-SPONSORSHIP STATUS WITH CITY FOR 2003-2004

Parks & Recreation Director Irby Brinson said that this is the consideration of a motion approving the list of events requesting co-sponsorship status with the City of Asheville.

The Parks and Recreation Department has developed criteria to determine the minimum requirements for an event to be considered for co-sponsorship. In 2002, the City co-sponsored 35 events and this year the City is requesting co-sponsorship for 41 events. The cost of City services is estimated at 90,000.

The following are the minimum criteria for co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.

5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The list of groups all meet the minimum requirements for co-sponsorship and have requested through the Asheville Parks and Recreation Department that City Council grant them co-sponsorship status in 2003.

The Asheville Parks and Recreation Department recommends City Council accept the list for co-sponsored events in 2003.

Upon inquiry of Councilman Mumpower, Mr. Brinson said that the Fees & Charges Committee would be looking at some cost-sharing measures.

Mr. Brinson responded to questions from Councilman Dunn about the types of different events the City co-sponsors and the possibility of limiting co-sponsorship events in the future.

Councilman Mumpower suggested that the criteria might be tightened a little more in the future.

Councilman Ellis said the events help the economic vitality of our community.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

REPORT FROM THE CITY COUNCIL SUBCOMMITTEE ON CAMPAIGN FINANCE CHANGES

Mayor Worley announced that this matter would be postponed until the March 4, 2003, worksession.

BOARDS/COMMISSIONS

It was the consensus of City Council to have the City Clerk arrange for interviews for the following persons for a vacancy on the Recreation Board: Dr. Gregory Motley, Mr. Samuel Camp and Mr. Jim Lewis.

CLOSED SESSION

At 4:25 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (2) To prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina or the United States, or not considered a public record within the meaning of Chapter 132 of the North Carolina General Statutes. The law that provides that the information to be considered is not a public record is N.C.G.S. 132-1.7. This motion was seconded by Councilman Dunn and carried unanimously.

At 5:00 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

SCHOOL BOARD INTERVIEWS

At 5:00 p.m., City Council interviewed Marsha Bate, Thomas Hunnicutt, Tom Knoebber, Marianne Reinert, and Ann Von Brock for two vacancies on the Asheville School Board. Ms. Dolly Jenkins-Mullen was unavailable to come in for this interview due to inclement weather. Therefore, it was the consensus of City Council to interview Ms. Jenkins-Mullen on February 25, 2003.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 25, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Grady W. Beard, veteran from US Army, led City Council in the pledge of allegiance.

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION OF $400,000 GRANT

Buncombe County Tourism Development Authority Vice-Chair Herman Turk, representing the Buncombe County Tourism Development Authority, and WNC Soccer Foundation President Lloyd Sigman and Chair Becky Lewis, representing the WNC Soccer Foundation, presented the City of Asheville with a check in the amount of $400,000 from a grant from the Buncombe County Tourism Development Authority and the WNC Soccer Foundation for construction of the John B. Lewis Soccer Complex at Azalea Road Park.

B. PROCLAMATION PROCLAIMING SATURDAY, MARCH 1, 2003, AS "SUPPORT OUR SOLDIERS DAY"

Mayor Worley read the proclamation proclaiming Saturday, March 1, 2003, as "Support our Soldiers Day" in the City of Asheville. He said that he and Buncombe County Chairman Ramsey would be presented the joint City/County proclamation at a rally on Saturday.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 11, 2003, AND THE WORKSESSION HELD ON FEBRUARY 18, 2003

B. RESOLUTION NO. 03-24 - RESOLUTION AUTHORIZING THE APPLICATION FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM – PHASE II STORMWATER PERMIT

Summary: The consideration of a resolution authorizing the City Manager to sign the National Pollutant Discharge Elimination System (NPDES) Phase II Permit Application and any other paperwork necessary to comply with the Environmental Protection Agency (EPA) Federal Non-Funded Mandate.

In 1998, EPA adopted a rule called the NPDES Stormwater – Phase II rule. This rule applies to all municipalities with a population less than 100,000 that own or operate a Municipal Separate Storm Sewer System. The rule specifies that these units of government must develop a program for managing stormwater runoff, particularly pollutants associated with stormwater runoff. The application must be submitted to the State on or before March 2003.

The program must describe how the City will attempt to meet six minimum requirements: (1) Public Education/Outreach; (2) Public Participation/Involvement; (3) Illegal/Illicit Discharge Detection and Elimination; (4) Construction Site Runoff Control; (5) Post-Construction Runoff Control; and (6) Pollution Prevention/Good Housekeeping Measures.

In 2002, the City purchased a software program from the League of Municipalities as a guide to develop the permit. The permit will apply for a five-year period following the issuance of the permit from the State. The first year of the program will consist of developing plans and coordinating activities between various agencies. For example, the City of Asheville hopes to develop a Public Education/Outreach Program in conjunction with the other municipalities in the County.

One official deadline for the five-year program is that an ordinance controlling post-construction runoff must be adopted by City Council by March 10, 2005.

The cost of this program averages approximately $250,000 per year over the five-year period. At the 2002 City Council Retreat, Council approved City staff exploring the feasibility of developing a Stormwater Utility to fund the stormwater program. Staff is still in the process of evaluating this recommendation.

City staff requests that City Council authorize the City Manager to sign the National Pollutant Discharge Elimination System (NPDES) Phase II Permit Application and any other paperwork necessary to comply with the EPA Federal Non-Funded Mandate.

RESOLUTION BOOK NO. 27 – PAGE 313

C. RESOLUTION NO. 03-25 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "EAST END PLACE" OFF MARTIN LUTHER KING DRIVE

Summary: The consideration of a resolution accepting the new proposed street name "East End Place."

Asheville Area Habitat, owner of lots off of Martin Luther King Drive, has petitioned the City of Asheville to accept the street name " East End Place."
The new street will begin at Martin Luther King Drive and end at cul-de-sac on East End Place.

City staff recommends adoption of the resolution.

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D. ORDINANCE NO. 3001 - BUDGET AMENDMENT TO CONTINUE THE CONSTRUCTION OF PHASE I OF THE AZALEA ROAD PARK PROJECT

Summary: The consideration of a budget amendment, in the amount of $474,000, to continue the construction of Phase I of the Azalea Road Park project and consideration of a resolution authorizing the City Manager to enter into an agreement with the Western North Carolina Soccer Foundation for administering future funds collected for this project.

In 2001, City Council approved the Master Plan for the development of the Azalea Road Park. The development of the 155 acres will occur in a number of phases. The first phase includes the construction of two soccer fields, restroom/concession stand, picnic shelter, playground, parking and other infrastructure needs. The Department, in association with the WNC Soccer Association, has worked extremely hard in the past several months to secure funding for this project. First and foremost, a grant was secured from the Tourism Development Authority for funds totaling $400,000. This was the first grant awarded by this group for the development of the facilities that will increase the economic vitality of our community. In addition, we have secured $50,000 (which we will receive in $10,000 installments over five years) from Pepsi Cola Bottling Company through the generosity of John Teeter to go towards the development of the park. An additional $24,000 was secured from the sale of a small portion of the property. These funds will be used in conjunction with other funds already received to help meet our overall goal to complete Phase I.

In addition, an agreement with the WNC Soccer Foundation is required to outline the roles and responsibilities for both the WNC Soccer Foundation and the City of Asheville in securing future funds for this project.

The Parks and Recreation Department, in conjunction with the WNC Soccer Foundation, requests City Council approve the budget amendment to go towards the capital improvement budget for the Azalea Road Park construction and to authorize the agreement with the WNC Soccer Foundation for administering funds collected for this project.

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E. RESOLUTION NO. 03-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE WNC SOCCER FOUNDATION FOR ADMINISTERING FUNDS COLLECTED FOR AZALEA ROAD PARK

Summary: See Consent Agenda Item "D" above.

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F. RESOLUTION NO. 03-27 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED CONTRACT WITH CARL WALKER FOR THE PARKING GARAGE IN THE BATTERY PARK AREA

Summary: The consideration of a resolution authorizing the City Manager to amend the contract with Carl Walker, Inc. to include an additional $391,113 for the design/development drawings and the construction documents for the parking garage in the Battery Park area.

In 2000, the City of Asheville went through a formal process to select Carl Walker, Inc. to design the parking garage in the Battery Park area. The original contract was for a parking structure on the existing surface lot of the BellSouth lot. The original cost of the project was $510,000. Since that time several changes have been make in the scope of the work. These changes include:

- The location of the site has moved, causing the design cost of the project to increase because of the geometry of the site;
- The Engineering fees of the Consultant have gone up annually since 2000;
- The Consultant was requested to complete design/development drawings for the private development component of the project.

All of the additional costs for the contract amendment will be recovered with bond proceeds. This amendment brings the total cost of the project to $901,113.

Staff requests that City Council authorize the City Manager to amend the contract with Carl Walker, Inc. to include an additional $391,113 for the design of the parking garage in the Battery Park area.

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G. MOTION APPROVING THE LIST OF EVENTS FOR CO-SPONSORHIP WITH THE CITY OF ASHEVILLE

Summary: The consideration of a motion approving the list of events requesting co-sponsorship status with the City of Asheville.

The Parks and Recreation Department has developed criteria to determine the minimum requirements for an event to be considered for co-sponsorship. In 2002, the City co-sponsored 35 events and this year the City is requesting co-sponsorship for 41 events. The cost of City services is estimated at 90,000.

The following are the minimum criteria for co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

The list of groups all meet the minimum requirements for co-sponsorship and have requested through the Asheville Parks and Recreation Department that City Council grant them co-sponsorship status in 2003.

The Asheville Parks and Recreation Department recommends City Council accept the list for co-sponsored events in 2003.

H. RESOLUTION NO. 03-28 - RESOLUTION AUTHORIZING THE SALE OF PROPERTY OFF BLAKE MOUNTAIN CIRCLE TO RHETT GROTZINGER.

Summary: The consideration of a resolution authorizing the sale of property off Blake Mountain Circle to Rhett Grotzinger in the amount of $10,600.

On October 22, 2002, the City Council directed the City Clerk to advertise for upset bids on property off Blake Mountain Circle. The advertisement ran in the Asheville Citizen-Times on November 1, 2002, as provided in N. C. Gen. Stat. sec. 160A-269. An upset bid was received by Bruce McTaggart in the amount of $3,935 and the bid was re-advertised on November 15, 2002. An upset bid was received by Rhett Grotzinger in the amount of $4,300 and the bid was re-advertised on November 29, 2002. An upset bid was received by Bruce McTaggart in the amount of $4,565 and the bid was re-advertised on December 13, 2002. An upset bid was received by Rhett Grotzinger in the amount of $8,000 and the bid was re-advertised on January 10, 2003. An upset bid was received by Bruce McTaggart in the amount of $10,000 and the bid was re-advertised on January 24, 2003. An upset bid was received by Rhett Grotzinger in the amount of $10,600 and the bid was re-advertised on February 7, 2003. No response was received. Therefore, the offer to purchase from Rhett Grotzinger in the amount of $10,600 was not upset and the sale to Rhett Grotzinger should be approved.

Approval of the resolution will authorize the sale of the property to Rhett Grotzinger for the amount of $10,600.

Community Development staff recommends adoption of the resolution authorizing the sale of property off Blake Mountain Circle to Rhett Grotzinger.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS ON PROPERTY LOCATED AT 139 THIRD STREET TO ALLOW THE SUBDIVISION OF EXISTING PROPERTY INTO TWO PARCELS WITHOUT PUBLIC STREET FRONTAGE

Mayor Worley opened the public hearing at 5:27 p.m.

Urban Planner Carter Pettibone said that this is consideration of a request for modification from the subdivision standards to allow the creation of two lots that do not abut a public street on property located at 139 Third Street. This public hearing was advertised on February 14 and 21, 2003.

The City has received a request from Samuel and Maureen Zitin to subdivide a parcel located at 139 Third Street into two lots (PIN No. 9658.17-11-6302). The parcel is 3.06-acres in size and zoned RS-8 Residential Single Family High Density District. It currently has two homes located on it, a mobile home and a single family detached dwelling. Third Street is a paved street maintained by the City up to the petitioner's property line. Public right-of-way for the street appears to end about 165' in front of the property. Since it is not possible to obtain the minimum frontage for the resulting lots as specified in the Subdivision Ordinance, a modification is required.

The petitioners wish to subdivide the lot in order for each home to have its own lot and no additional homes are proposed. Each resulting lot would also be able to meet the Unified Development Ordinance requirements of the RS-8 District for minimum lot size and setbacks.

Since one of the resulting lots would not have a direct connection to Third Street, access to it would need to be maintained through the creation of an access easement across the other lot. The establishment of this easement was a condition placed on the recommendations of staff, the Technical Review Committee (TRC) and the Planning and Zoning Commission.

The TRC and Planning and Zoning Commission each voted unanimously to recommend approval with the condition that an access easement be granted over one lot to serve the other.

The Planning and Development Staff also recommends approval of the subdivision modification with the condition.

Upon inquiry of Mayor Worley, Mr. Pettibone said that he would ask the Traffic Engineer investigate obtaining a public right-of-way for the remainder of the portion of the street that is currently being maintained.

Vice-Mayor Bellamy asked City staff look at a possible amendment to the Unified Development Ordinance so that a subdivision modifications such as this does not have to come before Council.

Mayor Worley closed the public hearing at 5:31 p.m.

Councilman Ellis moved to allow a modification from the subdivision standards on property located at 139 Third Street to allow the subdivision of existing property into two parcels without public street frontage with the condition that an access easement be granted over one lot to serve the other. This motion was seconded by Councilman Dunn and carried unanimously.

B. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ADD RESEARCH AND TECHNOLOGY PRODUCTION AS A PERMITTED USE IN CERTAIN COMMERCIAL DISTRICTS

ORDINANCE NO. 3002 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ADD RESEARCH AND TECHNOLOGY PRODUCTION AS A PERMITTED USE IN CERTAIN COMMERCIAL DISTRICTS

Mayor Worley opened the public hearing at 5:33 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to add research and technology production as a permitted use in certain commercial districts. This public hearing was advertised on February 14 and 21, 2003.

This code amendment defines "research and technology production uses" and permits them in the Community Business II District, Institutional District, Highway Business District, Regional Business District, Central Business District, Commercial Industrial District and Industrial Districts. Once defined, the uses would be permitted in the River District as well. These uses are the "high tech" uses that form the backbone of our local economic development strategy.

This item was previously heard by the Planning and Zoning Commission and recommended for approval. At a City Council meeting, staff was asked to research environmental hazards concerns associated with the research and technology production uses and return the amendment for consideration. This research reveals that environmental concerns associated with the intended uses are effectively handled through existing environmental permitting procedures. There are extensive environmental permitting procedures that pertain to medical wastes and by-products from the types of uses proposed in this amendment; for some chemicals, this permitting involves "cradle-to-grave" tracking (i.e., from time of production to time of disposal).

On January 23, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 5:35 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3002. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-29 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Bellamy said that the terms of Brian Weinkle and Roy Harris, as members of the Asheville School Board, expire on April 1, 2003.

On Tuesday, February 18, 2003, City Council interviewed the following candidates for vacancies on the Asheville School Board: Marsha Bate, Tom Knoebber, Ann L. Von Brock, Marianne Reinert and Thomas Hunnicutt. Since Dolly Jenkins-Mullen was unable to attend the interview on February 18, 2003, due to her being out-of-town during inclement weather City Council interviewed Ms. Jenkins-Mullen on February 25, 2003.

After each Council member spoke about the high qualifications of all the candidates, Marsha Bate received 3 votes, Tom Knoebber received 0 votes, Ann L. Von Brock received 6 votes, Marianne Reinert received 0 votes, Thomas Hunnicutt received 0 votes, and Dolly Jenkins-Mullen received 5 votes. Therefore, Ann L. Von Brock and Dolly Jenkins-Mullen were appointed as members to the Asheville School Board to begin serving a four year term respectively on April 1, 2003, until April 1, 2007, or until their successors have been appointed and qualified.

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B. RESOLUTION NO. 03-30 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Bellamy said that Tom McMahon has resigned as a member of the Recreation Board, thus leaving an unexpired term until June 30, 2003.

On February 18, 2003, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Mr. Jim Lewis, Mr. Samuel Camp and Dr. Gregory Motley. Dr. Motley was unable to come in for an interview due to his surgery schedule.

After Council spoke about the high qualifications of all candidates, Jim Lewis received 1 vote, Samuel Camp received 6 votes and Gregory Motley received 0 votes. Therefore, Samuel Camp is appointed to serve the unexpired term of Mr. McMahon, term to expire June 30, 2003, and then to serve a full three year term, term to expire June 30, 2006, or until their successor has been appointed

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C. RESOLUTION NO. 03-31 - RESOLUTION REGARDING THE INCORPORATION OF THE TOWN OF MILLS RIVER

Planning & Development Director Scott Shuford said that citizens in the Mills River area of Henderson County have petitioned the State Legislature to incorporate approximately 22 square miles of property containing about 6,890 residents centered on Highways 191 and 280 from south of the Asheville Regional Airport to the Transylvania County line. By contrast, the City of Asheville has an incorporated area of approximately 42 square miles and a population of about 70,000 residents. The approximate respective densities are 320 and 1667 persons per square mile.

The stated reasons for incorporation are quoted below from the Mills River incorporation web page:

- *To protect the historical, cultural and rural identity of the community.*
- *To have a stronger voice in decisions that are made concerning the community.*
- *To control our own destiny.*

The Town proposes a tax rate of 7.5 cents per $100 valuation, of which 6.5 cents will go toward continuation of rural fire district fire protection services. Four Town services will be provided:

- Fire protection through a contract with the rural fire district
- Police protection through a contract with the county sheriff department
- Garbage collection on a voluntary basis through a private hauler
- A street lighting program

Despite the stated intent to protect the "rural identity" of the community, Town zoning is to be handled by Henderson County under the County's "open use" zoning. There appears to be no active effort to establish a planning and zoning program to achieve the rural character goals since the County "open use" zoning allows virtually any land use to occur.

Under the proposed Charter of the Town of Mills River, one Town board will be created; this board will be charged with addressing agricultural issues. A five-member Town Council will be created and will operate under the council-manager form of government.

Under the NC Constitution, municipal incorporation requires an act of the legislature. Petitions for incorporation are filed with the Joint Legislative Commission on Municipal Incorporation. Upon receiving the petition, the Commission undertakes a "Phase 1" review, which is simply to determine the sufficiency of the petition, which must contain certain information. There follows a "Phase 2" review, which focuses on whether area meets the criteria for incorporation (density, degree of development; but a lower threshold than for annexation), and whether the services promised can actually be delivered.

During this process, the incorporating municipality must notify all other cities in the county or counties wherein it is located, and must notify any city of 50,000 or more that is within 5 miles ("proximity test"). In the case of Mills River, Asheville is within 5 miles and has been notified. Under the law, if a petition is insufficient (Phase 1), it may not be processed; if the criteria are not met (Phase 2), the Commission must make a "negative recommendation" to the General Assembly. Similarly, if there is a city that meets the proximity test that does not express its approval of the proposed incorporation (part of Phase 2), the Commission may not make a positive recommendation. In the event of a negative recommendation, the Commission may hold a public hearing and may, in certain circumstances, require a referendum (presumably of the affected area). Even if the Commission makes a negative recommendation, the legislature may still incorporate. However, if there is a city of 50,000 or more within 5 miles, incorporation requires a three-fifths vote of the General Assembly, whether or not that city approves of the proposed incorporation.

As Council has been advised, the Commission met last week for the Phase 1 review. The Commission is proceeding with Phase 2, but wishes to hear from Asheville on the question, and has given us two weeks to act.

The most obvious comment about this incorporation effort is that it seems counterintuitive to create an urban area (a "town") in order to maintain a rural land use character, especially when no specific land use controls are proposed to preserve that rural development pattern. The limited number of public services and extremely low tax rate (only 1 cent above the current tax rate) seems to argue that the incorporation is primarily a "defensive" one, initiated to stop possible annexation by Fletcher, Hendersonville, or Asheville rather than to create an urban area of enhanced public services.

However, the key issue of importance for the City of Asheville is that the incorporation and its proposed continued use of "open use" zoning will effectively prohibit the conversion of the prime flatland in the Mills River Valley to industrial uses. This land represents a regional resource that, under "open use" zoning, will most likely be developed with low density residential or small-scale commercial land uses. Strict, industrial-only zoning regulations are required to preserve this land for industrial use. Additionally, an incorporation that is created to maintain a rural character without including the zoning tools necessary to ensure that the desired character will be maintained will not be successful; instead, this area will most likely continue to be developed in a sprawl pattern that is counter to regional economic development goals.

We have had limited discussions with the Town of Fletcher regarding their concerns about this incorporation. Fletcher is amenable to the incorporation only if there is a "boundary agreement" worked out between Fletcher and Mills River. Such an agreement could address the above concerns of the City of Asheville by ensuring that critical land suitable for industrial development is reserved for that use. To our knowledge, no such agreement has been pursued by those seeking the incorporation of the Town of Mills River.

From a land use planning perspective, it would appear to make more sense for the incorporation to be concentrated in a much smaller area, generally centering on the Highway 191 and 280 intersection. This location exhibits a more "urban" development pattern than the remainder of the proposed area of incorporation; it is already known and accepted as the "town center" of Mills River. The incorporation of this area would allow the "town center" of Mills River to be established now and perhaps expanded at a later date, while also allowing a more comprehensive planning program to be developed that would address the concerns of Asheville and Fletcher about the scale of the proposed annexation and the ultimate land use pattern.

For the reasons noted, staff recommends adoption of the resolution.

Upon inquiry of Vice-Mayor Bellamy, Mayor Worley received a letter today from the Town of Fletcher Mayor William B. Moore that said they do not support the incorporation effort without an equitable boundary agreement with the Town of Fletcher. Mayor Moore said that they would not have representation at the meeting today because they have their pre-budget retreat.

Upon inquiry of Councilman Ellis, Mr. Shuford said that there are some small subdivisions, some small business and industrial parks, and some agricultural product uses being built off of 280. It is an area in transition, but even on the map, that Mills River representatives participated in the drawing of it, shows the expanded Metropolitan Planning Organization

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boundaries do not include all of the area that is being proposed for incorporation, nor does it show this as an urban area in any stretch of the imagination. This is likely not a very high growth area, at least over the short term, but an area that is seeing some transition and change and that's probably why there is some interest in seeking incorporation – to have control over how that change might affect them. However, what has been proposed in terms of town services for this are not any sort of zoning or planning pattern that would better reflect that community character.

City Attorney Oast summarized state law by saying that if the City of Asheville takes no action on the resolution, the Joint Legislative Commission on Municipal Incorporation may not make a positive recommendation to the General Assembly. In other words, unless City Council adopts a resolution of approval, then the Commission may not make a positive recommendation.

Mr. Shuford said that staff's recommendation is one of approval, but just a smaller boundary.

When Vice-Mayor Bellamy asked if the Commission could work out the boundaries of what they are allowing to be incorporated, City Attorney Oast said the Commission has the authority to modify the petition.

Upon inquiry of Vice-Mayor Bellamy regarding the Town of Fletcher's boundary agreement request, City Attorney Oast said that they don't have any legal standing since they are not a city of 50,000 or more that is within 5 miles of the proposed incorporation.

Councilman Ellis would support a positive recommendation for Mills River to incorporate a smaller area. Then that would give them the opportunity, at some later time, to come back, just as all other cities do now, to expand.

Councilman Dunn said he'd like to let our neighbors make their own decisions. In response, Mr. Shuford said that it's with a lot of reluctance that we find ourselves in a position of having to make a recommendation to Council that is less than what Mills River did request as far as their incorporation. But we think we would be remiss in not pointing out the fact that we've got a regional resource, just as is the water of Mills River and the French Broad River is a regional resource in terms of the land, and that is an issue that Council needs to be aware of as you evaluate this request. City Attorney Oast also noted that at the initial review of the petition on this matter which came up before the Commission a couple of weeks ago, they affirmatively requested Asheville's input on this.

Councilman Peterson asked is staff sees any downside in not passing a resolution if there is not consensus on Council. Mr. Shuford said the downside would be to the people who are attempting to make this incorporation because it would send forth a negative recommendation from the Commission charged with making some recommendation on this. They may forward that as a technically negative recommendation and qualify it by saying that they didn't receive anything from the City of Asheville and that may have some affect on how the legislature votes. Mr. Shuford explained that staff's concern is fairly limited and it deals with the potential of that land to be developed eventually for industrial purposes and we think that is a regionally economic development issue, not a City of Asheville issue. Again, staff does not have a strong point of view on this, other than to point out to Council that they have a concern about the fact that the proposed zoning plan for the community, their land use development program, doesn't seem to adequately protect certain flatland for potential industrial development. Henderson County does have an industrial zoning district in its toolbox and certainly those are things that could be brought into play at some future point.

Ms. Elana Carland, representing the Mills River Incorporation, said that if they incorporate the smaller area, their density would not meet state requirements and it would place an undue tax burden on those businesses in that area Asheville's staff's main concern with the incorporation is the industrial areas. This committee has never said they would not support industry. We are starting a town and therefore we cannot initiate planning and zoning at the beginning, unless they want to do a poor job of it. We are contracting for two years with Henderson County for them to take care of the planning and zoning issues. In the third year of our budget, we have a town planner budgeted. That way we will have time to establish our town and then we can go on and do our planning. Seventy-five percent of this area is already regulated by government agencies. The only area that is not is that industrial area that we are all talking about. Our tax rate is very low – one cent. We feel that would be very attractive as a regional industrial attractant for industry because they will see the low tax rate. The Mills River residents have said they want minimal government and low taxes and that is why we are incorporating this huge area. We would like to start our town with historic town boundaries and we are encompassing most of our fire district. She read a quote from a former Henderson County Commissioner said that "incorporation of a large area reduces headaches associated with future annexation and it gives us the ability to plan for the whole community from the start." Most of the residents in this area have wanted in the incorporation area. We have met with the Town of Fletcher several times and have not worked out a boundary agreement with them. We don't see the need to enter into a boundary agreement with them. We did offer them some prime industrial land as a boundary agreement in their Charter and they refused it and said it was not enough. Our state representatives are all in support of this incorporation. She said they met with Asheville on April 22, 2002, and on July 2, 2002, and asked if there were any concerns and they received no answers.

Vice-Mayor Bellamy wanted to make sure that the Committee thought about if the town would be able to meet their budget needs with all the unfunded state mandates on small and large cities. Ms. Carland said they would work with minimum government at the start, again stating that they are capable of providing the services, e.g., by increasing the sheriff's patrol in that area.

When Vice-Mayor Bellamy questioned if it is going to be equitable to Henderson County residents (who are not being incorporated), Ms. Carland responded that there was unanimous support from the Henderson County Commissioners.

Upon inquiry of Councilman Dunn, Ms. Carland said she would like Asheville to pass a resolution in support of the incorporation of the current boundaries. They are not prepared to shrink their boundaries and see no reason to do that since Asheville has not made a strong enough argument to convince them to shrink the boundaries. She felt that industrially, they would be the most attractive for regionalism industry because they will have the lowest tax rate and they will be able to provide everything they need.

Mr. Daniel Breen spoke in support of the City supporting the Mills River community incorporation especially since industrial growth and farm land is so important.

Councilman Peterson asked if there would be a potential conflict with Asheville's agreement with Henderson County that if there are regional water lines, the Regional Water Authority would build and own those, but they would be in some other town. He said it's one proposition for water customers in Asheville to be paying for water lines in Henderson County and another proposition for water customers in Asheville to be paying for water lines in some other town. Mayor Worley responded that it was his understanding of the agreement that the incorporation would not affect the agreement. It would still be Henderson County making a request under the terms of the current agreement, even if the property were within an incorporated area. There is nothing in the agreement that restricts the ability to put in a regional water line to an unincorporated area, so he didn't think it would have any effect on that particular agreement. He noted that Asheville owns the water lines in the Town of Black Mountain. In addition, City Manager Westbrook said that most of the area of the proposed incorporation would be served by the City of Hendersonville, opposed to the Regional Water Authority.

Councilman Ellis said that he understands that the whole concept of towns and cities under state law is that incorporation is supposed to serve an urban area. From that standpoint, he felt that the 22 square miles is a rural area. They would not be creating a town to serve an urban area. Even though the Asheville doesn't want to be involved in this decision-making process with regard to the Mills River incorporation in another County, he would rather vote not to do anything and let the process proceed without Asheville's input, or he would support the incorporation of a smaller boundary because that would be creating a town to serve an urban area.

Councilman Dunn felt Asheville should give Mills River a chance to incorporate and felt Asheville's concerns were more about control. He supported the incorporation of the original boundaries.

Upon inquiry of Councilman Mumpower, Ms. Carland said that it would be very difficult for them to meet the density for incorporation if their boundaries were condensed and that they are unique in terms of a town because they are so spread out. She said that there are 7,000 people in the entire boundary area and most are not directly on the road. They do not want to stress the few businesses in the condensed area by making them support the whole town.

Councilman Mumpower said that prior to the meeting, what staff said made sense about supporting the incorporation of the condensed boundaries, but the Mills River community says that if they don't have the entire 22 square miles, they can't realistically develop a tax base to incorporate. If Asheville is going to try to help them, we need to help them in a way that gives them a realistic chance for success. Therefore, he would support a vote and let Asheville get out of the way and let the state wrestle with some of the more complex issues, such as boundaries and density.

Councilman Peterson said that this Council has seen that when certain undesirable development happens here in Asheville, the people who have a vote tend to turn out and be very opposed to it. He felt that the plan right now that the Mills River community is presenting doesn't include restrictive zoning but he thinks it will happen and it won't be good for the region. This is currently a mostly residential area and we know what happens when something tries to go into a residential area when the residents don't like it. He couldn't support any resolution. He doesn't want to draw their town's boundaries and we should let them settle that with the legislature.

Vice-Mayor Bellamy said that she would support the incorporation. She felt there will be some issues that they will have to deal with, whether it's providing city services for their residents, trying to balance their budget, or trying to meet all the state mandates, but if they feel they have researched all the information, she didn't think it's our position to interfere. Since they have committed to working towards regionalism for economic development reasons, she would support them.

Mayor Worley said that City Council is unanimous in wishing they didn't have to voice an opinion in this incorporation. He responded to Ms. Carland's statement about the prior meetings with Asheville staff, noting that at the time the meetings were held, they felt they were meeting to obtain information only. It was only within the last 30 days that Asheville realized they would have to make an opinion on the incorporation. He did have some concerns about the size of the original proposed area. We need to express our opinion with an honest, up-front answer and to him that's based on good urban planning principles. When you look at 22 square miles, and just for comparison Asheville is 34 square miles, and a population of 7,000, versus the population in Asheville of $70,000, it sets that contrast. So, we have to question the size of the area being consistent with good urban planning. That having been said, he would be willing to support a resolution that expresses Asheville's concerns, but supports the incorporation and then at least our concerns have been noted and the rest would be up to the Commission.

City Attorney Oast suggested the following amendment to the resolution Council has received: (1) The City of Asheville approves the effort of the Community of Mills River to obtain a greater degree of governance and control over its future through incorporation but expresses the following concerns: (a) That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; and (b) That the proposed incorporation may limit the land available in the area for business development; and (2) The City Attorney is directed to transmit a certified copy of this resolution to the Commission.

Councilwoman Jones asked if the Joint Legislative Committee will see what the vote was by Council on the resolution. City Attorney Oast said that a 4-3 vote has the same weight as a unanimous vote. There is no requirement for any other kind of vote other than a majority on this resolution.

Vice-Mayor Bellamy moved to adopt Resolution No. 03-31, as suggested by the City Attorney. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilman Peterson voting "no".

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VI. OTHER BUSINESS:

Clean Smokestacks Act

Upon inquiry of Councilwoman Jones about the upcoming March 3, 2003, deadline of joining other states in a lawsuit against the Environmental Protection Agency (EPA), City Attorney Oast updated City Council on his research of Asheville joining in a lawsuit with other states against the EPA's decision to review the New Source Review provision of the Clean Air Act. He said that he spoke with members of the State Attorney General's staff and they had advised him that they don't think the proposed change will have an affect on the Clean Smokestacks Act. This is a very complex matter that requires extensive expertise in environmental law and we do not have that expertise in the City Attorney's Office. Based on his limited research, he recommended Asheville not get involved as a party in this matter because that would involve a considerable amount of time and he would have to ask Council to budget funds in order to hire an attorney because we do not have the expertise in-house. He did point out other ways that Asheville could get involved without that level of commitment and to add our voice to those others who are involved.

Claims

The following claims were received by the City of Asheville during the period of February 7-13, 2003: Glenda R. Sargent (Police), Lynnwood Jackson (Water), BellSouth (Water), Reid Thompson (Water) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Will Harlan, representing The Canary Coalition, encouraged City Council to adopt a resolution supporting and encouraging Attorney General Roy Cooper to join the lawsuit against the Environmental Protection Agency with the other ten states.

Mr. Daniel Breen, Asheville resident, urged City Council to appoint a committee to look at the pollution that will go into the French Broad River as a result of the Ecusta plant in Transylvania County shutting down their pollution controls. He said we need to make our voice heard to our state representatives.

Mr. Grant Millin, representing the WNC 911 Coalition for America, presented City Council with information and asked Council to educate and make policy on critical homeland security issues.

Mr. Fred English spoke about the many freedoms we now enjoy because of our veterans He urged City Council to not allow two rallys to occur on Saturday, March 1, 2003, since he felt one rally will only disrupt the other rally.

Mr. Bill Fishburne, retired Green Beret, asked that City Council relocate the second rally (Support Our Soldiers – Bring Them Home) on March 1, 2003, to Montford Park so as not to disrupt the Support Our Soldiers rally. He understood that the Parks & Recreation Department had to issue a permit, however, there is a possibility of confrontation and conflict and they wish to avoid that disruption. City Manager Westbrook said that the Police Department is aware of those concerns, will continue to monitor it, and they have the situation well under control. City Attorney Oast also pointed out that the City is limited in our ability to deny permits for simultaneous events.

Ms. Rebecca Campbell presented City Council with a set of materials regarding the requested repeal of Resolution No. 01-144 which gave "unconditional support to the Bush administration's so-called War on Terror." She asked Council to repeal or rewrite Resolution No. 01-144 to "not only preclude possible civil liberties litigation, but to reflect a more cautious support for a national administration that history will show to have been far more inimical to the welfare of the American people than any foreign terrorists."

Mr. Calvin Loyd Hensley, former employee of the City of Asheville, briefed Council on his termination from the City and requested information on the number of Masons the City of Asheville employs.

After discussion initiated by Councilwoman Jones, it was the consensus of City Council to have the City Attorney write a letter for the Mayor's signature to the Attorney General's Office to encouraging him to do whatever he can to protect the air in Western North Carolina.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:17 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 4, 2003 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Clerk to Advertise Offer to Purchase Property on Iris Drive

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot at 125 Iris Drive.

A bid from Neighborhood Housing Services of Asheville (NHS), in the amount of $17,100, has been received for the purchase of a vacant lot at 125 Iris Drive. The bid is not less than the appraised value of $17,100.

The property is a single-family residential RS-8 zoned lot on Iris Drive comprising approximately 0.28 acre of land. The property has a rectangular shape and is fairly level elevated about 3' - 4' above street level. It has approximately 100 front feet on Iris Drive. There is no current or contemplated use for the property by the City. NHS plans to build a single -family residence on the site for sale.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer of purchase for upset bids.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DOWNTOWN RESTROOMS REPORT

Parks & Recreation Director Irby Brinson said that the Parks and Recreation Department was asked by the City Manager to conduct a study on downtown restrooms within the City's business corridor.

Mr. Brinson said that the issues for public restrooms include: abuse of existing facilities; some facilities not designated for heavy public use and lack required maintenance; lack of awareness of some facilities open to the public; some facilities are not handicap accessible; limited availability between 5:30 p.m. and 8:00 a.m.; and provision of public restrooms for the residents and visitors who are not accommodated by private restroom facilities. Optimum qualities for public restrooms include: open to general public; visible; handicap accessible; strategically located; well-lighted; durable design; attractive; promoted as an asset; year-round usage; monitored and maintained; discourages vagrancy; and convenient hours of operation.

He said a survey of existing restrooms in public facilities revealed that there are 21 restrooms in the downtown area: City Hall; Buncombe County Courthouse; County Health

Department, YMCA, Thomas Wolfe Memorial; Municipal Building; YMI Cultural Center; Public Works Building; Pack Plaza; NC Cooperative Extension Service; Asheville Transit Authority; Asheville Public Library; Civic Center; Food Lion Skatepark; Grove Arcade; Western Carolina Rescue Mission; Chamber of Commerce; Salvation Army Shelter; Senior Opportunity Center; United Way, and Department of Social Services. There are 12 restrooms in public facilities that are open during daylight hours and have minimal restrictions. Those include: City Hall; Public Works Building; Municipal Building; Buncombe County Courthouse; YMI Cultural Center; Senior Opportunity Center; Food Lion Skatepark; Asheville Public Library; Grove Arcade; United Way; Civic Center; and Department of Social Services. Two restrooms in public facilities that are open at night include the Salvation Army Shelter and the Western Carolina Rescue Mission.

Mr. Brinson said that a number of case studies were reviewed to determine what other cities have done to address this issue, which included Black Mountain, N.C.; Roanoke, Virginia; Chattanooga, Tennessee; and Boulder, Colorado.

He shared with Council a number of options in trying to address the issue, along with advantages, disadvantages and cost estimates for these options.

Option No. 1 – Utilize and Promote Existing Restrooms in Public Facilities – Initial cost would be minimal. Estimate for annual maintenance - $35,000.

Option No. 2 – Standard Portable Restrooms – Initial cost would be $2,500 for five units. Estimate for annual maintenance - $10,500.

Option No. 3 – Deluxe Portable Restrooms – Initial cost would be $5,000 for five units. Estimate for annual maintenance - $10,500.

Option No. 4 – New Facilities in Downtown Storefront – Initial cost would be $175-200,000. Estimate for annual maintenance - $45,000.

Option No. 5 – Integrate into New/Existing Public Parking Deck – Initial Cost would be $80-150,000. Estimate for annual maintenance - $45,000.

In summary, Mr. Brinson said there are currently 21 restrooms located in downtown Asheville public facilities. Twelve of these restrooms are currently open during daylight hours and have minimal restrictions and two restrooms are open at night, but contain restrictions. Strong concerns exist regarding vandalism, cleanliness, accessibility and operating costs in these public facilities. All options do not form a solution because of existing social issues. These existing issues are larger than a "public restroom." All of the options presented will require additional resources to address security and maintenance.

Discussion surrounded a possible partnership with the Downtown Association; some kind of district to help fray costs; and fees to use restrooms.

Councilwoman Jones felt Council needed to make a decision and commit money to this issue. She felt we have a moral responsibility to provide more than what is existing now. She did not feel, however, that portable restrooms would be good for our community.

Councilwoman Jones did not see a problem in having the Downtown Social Issues Task Force review this information for their input and advice; however, it is City Council's responsibility.

Councilman Ellis, liaison to the Downtown Commission, agreed that it is Council's ultimate responsibility, but he felt it should be a shared responsibility with the downtown merchants. He did note that the merchants are aware of the issues and most are willing to work with the City. He felt it would be appropriate for City Council to ask the Downtown Social Issues Task Force to review this information, along with the other charges given to them by City Council, and report back to Council with a comprehensive recommendation

Vice-Mayor Bellamy was concerned that by the time the recommendation is received from the Task Force, Council will be in the middle or through the budget process and will have to wait another year to initiate any recommendations. City Manager Westbrook said that if the budget is complete by the time the recommendations come in, City Council can make an appropriation from either Contingency or Fund Balance.

It was the consensus of Council, after further discussion, to ask the Downtown Commission, the Downtown Association and the Downtown Social Issues Task Force to review this information on a fairly quick basis and to report back to Council their recommendations, which may include the best way to build partnerships and how to solicit contributions.

REPORT FROM THE CITY COUNCIL SUBCOMMITTEE ON CAMPAIGN FINANCE CHANGES

Councilman Peterson said that the City Council Subcommittee on Campaign Finance Changes met on February 27, 2002, and reviewed his following report: "Because this is such a controversial and legally difficult area, I suggest we try to follow established models. Council can look at what has worked before. There are several successful models to use as guides for what progresses to follow, organizational structures, and substantive reforms.

"Furthermore, Council should seriously consider the Recommendations from the Citizens Campaign Finance Reform Study Committee.

"First, Council can take a few, relatively simple steps to begin to address the problems. Second, Council can appoint a new Citizens Committee to develop a more comprehensive plan and the organizational structures necessary to carry out a comprehensive plan.

"One, Council could raise the filing fee to run for Council and Mayor from the current $5.00 filing fee to $90.00.

"In the last several city elections, there have been a great number of individuals who filed to run for Council. Unfortunately, many of the people who filed were not serious candidates and did not conduct serious campaign efforts. With only three council seats up each election cycle, the public had great difficulty learning about and distinguishing among the 15 to 20 candidates in the primary. The great number of candidates also made candidate forums very difficult and media coverage very limited.

"Two, Council could request that our local General Assembly delegation introduce a local bill that would allow Asheville to significantly lower the $4,000 maximum cap on campaign contributions.

"The Town of Chapel Hill had local legislation passed several years ago that allowed the Town Council to limit by Town ordinance the amount that individuals and local PACs could contribute to candidates for local office below the $4,000 State law limit that would otherwise apply. Chapel Hill Town Council then lowered the contribution limit for town elections to $200 per election.

"I suggest that Council request our local delegation introduce similar legislation that would authorize Asheville City Council to set by local ordinance a maximum contribution limit lower than the state limit. If this local bill were passed, he would suggest Councils set the limit at

$500 per election for all candidates for Council and Mayor. This cap would apply to both individual and PAC contributions.

"Since Asheville would merely be following Chapel Hill's existing local bill, the chance for General Assembly passage should be very strong.

"For further efforts to improve the local campaign process and possibly develop a campaign financing reform plan, he suggested we appoint a new Citizens Campaign Improvement Committee to develop further recommendations.

"As a guide, one successful model the Citizens Committee can look to follow would be the City's Public Access Channel Commission. The Public Access Commission first conducted a comprehensive study into what other local governments have done, legal restrictions, financial requirements, and technology. Then the Public Access Commission recommended that city government establish a separate non-profit entity to actually establish and run the Public Access Channel. The Citizens Committee could explore the possibility of establishing a not-for-profit organization in partnership with one or more local community organizations such as the League of Women Voters.

"Council can suggest that the Citizens Committee explore a number of different approaches to improve the local campaign process. He suggested that we ask the Citizens Committee to first study ways other than direct public contributions to candidates. He suggested Council ask the Citizens Committee to explore the following: (a) oetter coordination of candidate forums; (b) sponsor more issue-oriented forums; (c) better public exposure of candidate forums through better news coverage and the broadcast on television and radio of one or more candidates forums (including possibly purchasing television time on WLOS); (d) arrange the publication and distribution of one or more voter guides with information about the candidates and their position on important issues; (e) explore other options to help candidates better inform city voters and to lower the cost of campaigns; and (f) voluntary spending or contribution limits.

"If the Citizens Committee develops a solid not-for-profit Campaign Improvement Organization with workable options to improve voter participation, then this Campaign Improvement Organization could seek contributions and support from individuals, other organizations, businesses, non-profits, and foundations. The Organization may also seek financial support from city government.

"With regard to direct public financing for city elections, there are several models to look to for guidance. The Federal government, as part of public financing for the Presidential general election, established a Campaign Finance Fund that receives voluntary contributions through the check-off question on taxpayer's Federal Income Tax returns. North Carolina has a similar system to fund the major political parties through voluntary check-off on State Income Tax forms. The General Assembly has recently passed legislation to establish a public financing fund for State Appellate Court races.

"To implement such a system, Asheville would need to seek local legislation that expressly authorizes the City to (1) establish a local Campaign Finance Fund, (2) transfer public dollars to the Fund, and (3) contribute through the Fund to candidates for local office that agree to voluntary spending limits.

"Council could also consider other structural changes to the current format for city elections to lower the costs of running for Council and/or to improve voter information. Possible options could include: (a) establishing a District system for some Council seats. Clearly a person running for a District seat that includes only a portion of the City could run an effective campaign for much less than running city-wide. He suggested considering four District seats and two at-large seats with the Mayor at-large. Almost all of North Carolina's larger cities have District seats; b) return to partisan elections for Council seats and the Mayor; and (c) other options.

"Council may want to address the situation that occurred after the 2001 City election when a member of Council in mid-term was elected Mayor thus creating a vacancy on Council that had to be filled by appointment after the City election."

The following is the outcome from the Subcommittee's meeting:

(1) There was unanimous support by the Subcommittee to raise the filing fee to run for City Council and the Mayor, noting that there is a process in N. C. Gen. Stat. sec. 163-107.1 (d) by which a person may get his or her name on a ballot by petition signed by 10% of the registered voters, and avoid the filing fee.

(2) Regarding a request to our local General Assembly delegation to introduce a bill that would allow Asheville to significantly lower the $4,000 maximum cap on campaign contributions, the Subcommittee was split.

(3) With regard to the appointment of a Citizens Campaign Improvement Committee, there was unanimous support by the Subcommittee, however, they were uncertain how that Committee would be structured, but that it would be independent of City government with narrow guidelines.

(4) With regard to the Committee exploring the possibility of establishing a not-for-profit organization, the Subcommittee was not in support of this at this time, however, the Committee could look at that after looking at other items Council asks them to review.

(5) Regarding the establishment of a District system for some Council seats, the Subcommittee did express some interest.

(6) There was not a lot of interest by the Subcommittee about returning to partisan elections for Council seats and the Mayor.

(7) The Subcommittee did not make a recommendation regarding the situation in 2001 election when a member of Council in mid-term was elected Mayor, thus creating a vacancy on Council that had to be filled by appointment after the city election.

Councilman Mumpower said that there was consensus of the City Council Subcommittee on Campaign Finance Changes ("Subcommittee") on voluntary spending or contribution limits. Councilman Peterson agreed and felt that was an issue the Citizens Campaign Improvement Committee ("Committee") could look at.

Upon inquiry of Councilman Mumpower, Councilman Peterson felt the discussion by the Subcommittee on better coordination of candidate forums and encouraging the media to give better coverage of the candidate forums were also items he felt the Citizens Campaign Improvement Committee could look at.

Vice-Mayor Bellamy also noted that the Subcommittee talked about district elections and the possibility of enlarging the number of Council members. However, they felt that any change in the structure of City Council should be placed on the ballot for the voters to decide.

After discussion, Councilman Mumpower pointed out that if we did seek local legislation that would allow us to limit the amount for campaign contributions, then at least Council has the authority to change that at some later date, if they choose. He did point out that spending limits might restrict a candidate's ability to generate name recognition.

There was discussion regarding the district system. City Attorney Oast said that he would have to research this item if Council chose to go in this direction. He did note, however, that it appears that the districts must be drawn prior to undertaking the process for changing to the district form of government. In addition, the districts would have to be redrawn as annexations become effective.

Upon inquiry of Councilman Dunn, Councilman Peterson said that the Subcommittee did not review the possibility of lowering the Mayor's term from four years to two years.

Councilwoman Jones felt that Council must find ways to build public trust and if there are things that this Council can do as a body to build that trust and give them confidence, then we must try. She has heard comments from the public that they fear there is a relationship between financial contributions and actions by Council. In an effort to reduce that fear, she supported lowering the amount individuals and organizations contribute to candidates.

Discussion surrounded broken public trust vs. apathy in the voters.

After a brief discussion it was the consensus City Council to raise the filing fee to run for City Council from $5.00 to $75.00; and to raise the filing fee to run for Mayor from $5.00 to $100.00, noting that there is a process in N. C. Gen. Stat. sec. 163-107.1 (d) by which a person may get his or her name on a ballot by petition signed by 10% of the registered voters, and avoid the filing fee. City Attorney Oast said that he would prepare the proper paperwork for City Council action in order that it be effective in the next election process.

Councilman Ellis supported asking our local delegation for the authority to lower the maximum cap on campaign contributions; however, he wanted the maximum to be left up to City Council. After further discussion, it was the consensus of Council to add this item to the suggested legislative request items to be voted on later in the meeting.

After discussion about the establishment of a Citizens Campaign Improvement Committee, it was the consensus of Council to have the Subcommittee research this more thoroughly and suggest a specific charge for the committee, it's make-up, etc.

Regarding district seats, it was the consensus of Council to not pursue this matter. However, Councilwoman Jones felt the Committee should explore this issue, the possibility of returning to partisan elections, and the issue of a vacancy on Council when a Council member is elected Mayor in the middle of his/her term.

City Attorney Oast discussed with Council some options of filling a vacancy when a Council member is elected Mayor in the middle of his/her term. He said that he would research other options and report back to Council.

At 4:55 p.m., Mayor Worley announced a short break.

TOWING FROM PRIVATE PARKING LOTS

City Attorney Oast said that a non-consensual tow occurs when a towing company tows a vehicle without the permission of the vehicle's owner. The Asheville Police Department can initiate a non-consensual tow for a violation of state law or a city ordinance. City Code § 19-148. In addition, private property owners may contract with commercial towing companies to remove vehicles that park in private lots or spaces without authorization of the owner or lessee of the lot or space.

The City of Asheville has received numerous complaints centering on the failure to post private lots, excessive towing and storage fees for non-consensual tows from private parking lots, and the treatment that people receive when they retrieve their towed vehicles. At City Council's request, the City Attorney's Office has looked into the legality of regulating the rates that towing companies charge for performing a non-consensual tow from a private parking lot and/or space.

Most of these complaints emanate from downtown Asheville and Biltmore Village. Many of the complainants are tourists, who say that they will not return to Asheville, and will warn their friends not to go. The fact that some people take the time to write suggests that there are more people who have the same experience but do not write. Complaints have been made to the Chamber of Commerce and to the lot owners themselves. The practice is that tow companies will pull a car from a lot, and refuse to return it until paid, usually in cash, acting as if the tow gives them a lien on the car. From a strictly legal perspective, however, the obligation to pay for these non-consensual tows may actually be that of the lot owner, not the vehicle owner, since the contract is between the lot owner and the tow company, and the tow company may have no legal right to refuse to return the vehicle. This is not generally understood by most people, and at the hours and under the circumstances in which many of these tows occur, that is not the kind of point that they wish to debate. Ultimately, the person whose vehicle is towed might be liable to the lot owner for the expense of removal anyway, so it would just be deferring the payment. The issue for Council is whether the City wishes to get involved in what is essentially an issue between private citizens, and to intervene when someone incorrectly assumes that any parking lot is available for private use, even if it is after normal business hours. On the other hand, this activity is having an apparently disproportionate and harmful effect on tourism.

Our ability to regulate this practice is limited. Currently, the federal government has pre-empted most aspects of motor vehicle carrier regulation, with an exception that allows political subdivisions to regulate the price and other aspects of non-consensual tows as a matter of consumer protection. 49 U.S.C. § 14501(c). Even though the federal government gives states and political subdivisions the power to regulate the price of non-consensual tows, it appears that the General Assembly of North Carolina must specifically grant a city or county the power to regulate the rates charged by towing companies for non-consensual tows from private property. Currently, there is no statutory authority that gives a city or county the power to regulate the price of a non-consensual tow from private lot.

We have checked with other cities that regulate the rates charged by towing companies for performing non-consensual tows from private lots. In most of those instances, it is clear that there is explicit state authority to allow such regulation. For example, Atlanta currently has a broad scheme that regulates non-consensual towing from private lots, including setting the rates that a towing company may charge for the service. Georgia Code § 44-1-3(d) states that the governing authority may set the maximum reasonable costs of removal, relocation and storage for private trespass towing. Additionally, Florida Statute Title XL, Chapter 715, Section 715.07(b), states that local government shall not be precluded from enacting additional regulations including the right to regulate rates when vehicles are towed from private property. North Carolina does not have any enabling legislation like the Georgia and Florida statutes.

The only general statute in North Carolina that addresses the towing of a vehicle from a private lot or space is N. C. Gen. Stat. sec. 20-219.2. This statute, along with N. C. Gen. Stat. sec. 14-401.9, makes it a class three misdemeanor to park in a privately owned or leased parking space without the express permission of the owner or lessee, allows for the removal of the offending vehicle from the parking lot or space, and establishes a statutory lien on the towed vehicle in favor of the tow company. Before the owner can tow, however, the statute requires that the parking lot be marked by signs no smaller than 24 inches by 24 inches and prominently displayed at the entrance of the lot, and each parking space must be clearly marked by signs setting forth the name of each individual lessee or owner. However, the application of this general statute is limited to specific counties and cities in North Carolina, and currently Asheville and Buncombe County are not included.

Notwithstanding the lack of specific enabling legislation, some NC cities do regulate the price of non-consensual tows from private lots. In the case of Charlotte, there is a charter provision that allows this, and Charlotte is one of the cities that is listed in N. C. Gen. Stat. sec. 20-219.2. In the case of Wilmington, the cited authority was N. C. Gen. Stat. sec. 160A-194, which contains the general law that allows cities to regulate businesses "subject to the general law of the State." Wilmington, however, is also one of the cities that requires posting of private lots pursuant to N. C. Gen. Stat. sec. 20-219.2, and this may be the real source of their authority.

One way to address the problem in Asheville is to request that Asheville be added to the coverage of N. C. Gen. Stat. sec. 20-219.2; this would require action by the General Assembly. Another way to address it is to adopt an ordinance setting forth sign requirements for owners of private parking lots and/or spaces to post their lots and/or spaces, and requiring that said signs meet certain dimensional requirements and be posted in prominent places so as give adequate notice that the lot/space is private and vehicles will be towed away at the owner's expense. The difference between the two is that, under the State law, it is a crime to park in a properly posted private lot, and the vehicle owner is responsible for the costs of towing, while under the ordinance, the offense would lie in not posting the lot, and the lot owner would be responsible for whatever penalties are prescribed by Council. This second option was considered by Council in 1998, but no action was taken.

Other options include requiring the posting of a single, larger sign at the entrance to a private parking lot and not requiring the posting of each space, as was done in a 1983 act applicable to Forsyth County, or requiring the posting of a sign containing a pre-towing notice at the entrance to a private lot before towing may legally occur, as was done in a 2001 act applicable to Greenville (NC) and Chapel Hill, both college towns with significant parking problems.

If Council wishes to seek to be added to the coverage of the State law, then this item should be part of our legislative request. If Council wishes to adopt an ordinance, then we will draft one for your consideration.

At 5:20 p.m., Vice-Mayor Bellamy left the meeting unexcused. Therefore, any votes taken will be affirmative votes.

Councilman Peterson suggested Council adopt an ordinance setting forth sign requirements for owners of private parking lots and/or spaces to post their lots and/or spaces, and requiring that said signs meet certain dimensional requirements and be posted in prominent places so as to give adequate notice that the lot/space is private and vehicles will be towed away at the owner's expense. In addition, he felt we should also ask our legislators to add Asheville to the 2001 act applicable to Greenville, N.C., and Chapel Hill, N.C, which requires the posting of private parking lots before vehicles may be towed.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that he hasn't contacted the private lot owners regarding this issue at this time, however, when this issue was discussed by Council in 1998, there was an effort to contact the lot owners by organizations such as the Chamber of Commerce and the Council of Independent Business Owners.

Councilman Mumpower felt uncomfortable in wielding a heavy regulatory hand before obtaining suggestions from perhaps the private lot owners and the Downtown Commission.

Mayor Worley felt that the reality is that there are lots where tows are occurring and those owners aren't interested in making those lots available at night. He supported asking for legislation similar to Greenville and Chapel Hill.

Councilman Ellis said that the majority of parking lot owners already posted their lots, but there are a number of smaller private lots who do not want to participate.

It was the consensus of Council to (1) ask our legislators to add Asheville to the 2001 act applicable to Greenville, N.C., and Chapel Hill, N.C, which requires the posting of private parking lots before vehicles may be towed; and (2) begin the initiatives of asking the Downtown Commission for their suggestions with regard to this matter.

RESOLUTION NO. 03-32 - RESOLUTION APPROVING LEGISLATIVE REQUESTS FOR THE CITY OF ASHEVILLE FOR 2003

Councilman Mumpower moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

City Attorney Oast said that this is the consideration of a resolution directing the submission of certain legislative requests to the North Carolina General Assembly.

Council has discussed seeking special legislation as to several matters:

- Photographic enforcement of red light violations
- Reducing term of housing authority members from 5 years to 3 years
- A food and drink tax for the Civic Center and related items
- Regulating towing from private parking lots

Each of these items has been covered in detail in other memoranda, and at the retreat or previous work sessions. A brief summary of the proposed legislation follows:

1. Photo enforcement at red lights. This program was explained in detail by Chief Annarino at the retreat. As he noted, many cities in North Carolina are authorized to use a photo-enforcement system. There is a general statute, N.C.G.S. 160A-300.1, that provides this general authorization, and the legislative action required is simply adding Asheville's name to the list. This request was made by Council for the 2001 session, but our legislative delegation did not support it, and the bill was not introduced. There is a possibility that this law could become popular enough that it will become general law applicable to all municipalities in North Carolina. If that happens, special legislation will not be necessary.

2. Food and drink tax. This matter was also explained at the retreat in connection with Council's discussion of the Civic Center, and possible funding sources. A proposal to this effect was taken to our legislators in 2001, who indicated that the plans for renovating the Civic Center and the proposed uses of the revenue needed to be more fully developed before they could support it.

   At the retreat, Council was generally in favor of making this request again, but the timing of the request depends on how the plans for renovating the Civic Center proceed. There was also some discussion of whether the tax should be one or two percent, whether it should apply to all of Buncombe County or just to the City of Asheville, and whether the revenue might be available for other purposes, such as infrastructure improvements and affordable housing. As he indicated during the meeting, our research from 2001 indicated that a one percent tax was the norm across the State, but we will research this further. Also, in my experience, the purpose of such a special tax should be very carefully – and somewhat narrowly – identified.

A "special" tax is not generally considered an appropriate revenue-raising vehicle for general needs, and the more narrowly drawn the purpose is, the better chance it has of being approved. Food and drink taxes are typically used to support such travel and business-related activities as civic centers and convention centers. While the purpose of the special tax may be broadened by amendment to include additional objectives (i.e., changes from construction of a baseball park to repair and maintenance of the park), the additional objectives usually are related to the original purpose. It may be difficult to include, as one of the purposes of such a tax, either initially or by amendment, an objective that is not typically associated with it, or that bears no obvious relation to it. However, a special tax may be viewed as freeing up other revenues for general use that might otherwise have gone to support the special purpose now supported by the special tax.

3. Reducing term length for Housing Authority. Under the applicable General Statutes, the terms for appointed members of housing authorities across the State is 5 years. Several years ago, the City of Charlotte obtained legislation, applicable only to its housing authority, reducing the term to three years. Last year, on Vice Mayor Bellamy's initiative, Council requested that Asheville's Housing Authority be added to the Charlotte legislation with respect to this reduced term. A bill to this effect was introduced last year, but because there was some concern about this proposal expressed by the Housing Authority to our legislators, the bill could not be certified as "non-controversial," a requirement for consideration in the Short Session, and it was withdrawn at our request.

4. Non-consensual towing from private parking lots. As I advised Council at the retreat, we would bring this matter to Council's February 18 (now March 4) work session for discussion. As noted in previous memos to you, the City has little ability to regulate the prices charged for non-consensual tows from private parking lots. There is, however, a State law that will allow us to require the posting of private lots with signs as a condition to towing from them, but it is applicable only to the cities and counties named. One possible measure to address this issue is to have Asheville's name added to the list of localities wherein this law is effective. An act adopted in 2001, applicable to the cities of Greenville and Chapel Hill, requiring the posting of private parking lots before vehicles may be towed, is an option that may interest Council.

Three of these items involve adding the City of Asheville to existing legislation. The proposed legislation is accordingly simple, but cryptic.

The proposed legislation for a Prepared Food and Drink Tax would be a new law, but my draft is similar to such acts in other cities. My draft is based on similar legislation adopted for the City of Albemarle in 1991.

The Senate's deadline for submitting items to the bill drafting office in time to have them introduced this session is March 12; for the House that date is March 19. In general, however, the sooner we can get these items to our delegation, the better, and he prefers to submit in time to meet the earliest deadline. Also, several Council members have indicated that they wish to meet individually with our legislators to discuss our legislative requests and other matters. Though these meetings can occur at any time, it may be helpful to have the legislative package as approved by Council in hand when these meetings occur.

Accordingly, and since most of these items were discussed at the retreat, Council should act on these items at the March 4 work session. Council may decide to move forward with all of them, some of them, or none of them, make changes to the proposals, or add new ones (though this may require additional research). I will then transmit the approved package to our delegation in Raleigh.

Once Council decides on the legislation to request, adoption of a resolution approving the package and directing its transmittal to our local delegation is recommended.

Regarding the photo enforcement at red lights, it was the Mayor's understanding that our legislative delegation would not support this for Asheville. Councilman Mumpower felt that this issue has brought forth that there is a problem at red lights and asked the Police Chief to explore other options to address that problem.

Regarding the food and drink tax, Mayor Worley said that the restaurant association supported a one-half cent sales tax instead of a prepared food and drink tax. He suggested the proposal to the legislators be for a funding source for the Civic Center (which will likely come from a one-half cent sales tax or a prepared food and drink tax) and that way we can keep our options open.

Councilman Dunn felt the funding source should be a room tax and suggested some amendments to the draft act prepared by City Attorney Oast, who said there would be ample time to amend the Act.

Regarding the reduction for Housing Authority terms, Councilman Mumpower said that he had an opportunity to speak to four of the five members of the Housing Authority and they are opposed to reducing their terms. Councilman Peterson would support the action to reduce the terms.

Regarding non-consensual towing from private parking lots, Councilman Peterson spoke in support of adding Asheville's name to the Act which was adopted in 2001, applicable to the cities of Greenville and Chapel Hill, requiring the posting of private parking lots before vehicles may be towed.

Councilwoman Jones asked that we ask our local delegates to introduce a bill that would allow Asheville to significantly lower the $4,000 maximum cap on campaign contributions.

Mr. Dennis Justice, Fletcher resident, felt that Asheville needed a plan regarding the Civic Center and another engineer was needed to study the graphics. He felt that there was no way for hockey and basketball to co-exist in the Civic Center. He also felt that eventually the Civic Center Commission will need to become a Sports Authority.

After discussion, there was no motion for photo enforcement at red lights.

Councilwoman Jones moved to ask our legislators to enact a bill for a funding source for the Civic Center. This motion was seconded by Councilman Ellis and carried unanimously.

Councilman Peterson moved to ask our legislators to add the Asheville Housing Authority to the Charlotte legislation with respect to reducing their terms from five to three years. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Peterson moved to ask our legislators to add Asheville's name to the act adopted in 2001, applicable to the cities of Greenville and Chapel Hill, requiring the posting of private parking lots before vehicles may be towed. This motion was seconded by Councilman Ellis and carried unanimously.

Councilwoman Jones moved to ask our legislators to introduce a bill that would allow Asheville to lower the $4,000 maximum cap on campaign contributions. This motion was seconded by Councilman Peterson and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn and Councilman Mumpower voting "no" and Councilman Ellis, Councilwoman Jones, Councilman Peterson and Vice-Mayor Bellamy (voting in the affirmative because she was not excused from the meeting) voting "yes."

When Mayor Worley asked Council to add their endorsement to the North Carolina League of Municipalities' legislative agenda and the North Carolina Metropolitan Coalition's agenda, it was the consensus of Council to vote on that at their next formal meeting.

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UPDATE ON EARLY ACTION COMPACT – AIR QUALITY

City Engineer Cathy Ball said that City staff is requesting that City Council review and approve the assignment of City of Asheville and Buncombe County residents to the Air Quality Early Action Compact (EAC) Stakeholders Group and that City staff be authorized to work with Buncombe County staff to substitute a stakeholder in the event the original stakeholder is unable to participate in the process.

In December 2002, City Council signed a resolution entering into an EAC to reduce air pollution in the region. Additionally, five counties along with several municipalities in the area signed resolutions indicating the intent to work toward proactive means to reduce air pollution. By signing this resolution, the City of Asheville agreed to work with the other government agencies to develop and implement measures to reduce air pollution in the region.

The EAC mandated that we develop a list of measures to be included in the plan to reduce air pollution by June 16, 2003. The Environmental Protection Agency (EPA) has recommended that all stakeholders be involved in the process of developing these measures and monitoring the implementation of the measures.

Over the past few weeks, the City representatives met with all of the County representatives in the Compact to develop a process for selecting the stakeholders and preparing a time frame to insure that the deadlines of the EAC are met. This group agreed that stakeholder groups would be appointed by individual counties and the City of Asheville. Each County will be responsible for developing their own plan; however, EPA must determine that each County's plan is supportive of the goal of reducing air pollution.

The City Manager met with County staff to develop the following schedule for completing the first Phase of the EAC. The schedule is as follows:

- March 2003 – Stakeholder Process Begins
- March 10, 2003 – City Staff Develop Preliminary List of Measures to Reduce Air Pollution
- April 2003 - First Draft of Measures to EPA for Review
- April 2003 - First Draft of the Semi-Annual Status Report
- April 2003 – Conduct Additional Meetings as Needed (Stakeholders and Staff)
- May 1, 2003 – Final Draft of Air Quality Measures Completed
- Mid-May 2003 – City's and County's Review Measures
- By June 16, 2003 – City Council Approve Final Measures to be Submitted to EPA

It was agreed that the City and County would jointly work together to develop the list of ten stakeholders for Buncombe County. City and County staff have developed the following list to be reviewed and approved by City Council:

Name	**Stakeholder Group**	**Representing**
Nancy Thompson	*Industry - Utilities*	*CP&L*
Karl Koon	*Industry - Petroleum*	
Bill Jackson	*Community - Forests*	*U.S. Forest Service*
Brownie Newman	*Environment - Policy*	*WNC Alliance*
Chuck Pickering	*Industry - Tourism*	*Biltmore Company*
Jan Davis	*Industry - Small Business*	*Jan Davis Tires*
Judy Calvert	*Industry / Community*	*Tyco / Chamber Trans Committee*
Hedy Fischer	*Community - Planning*	*Planning and Zoning Com /Real Estate*
Bette Jackson	*Community - Residential*	*League of Woman Voters/ Vision*
Grant Gouge	*Environment*	*Retired Air Weather Service*

City staff requests that City Council approve the above assignment of the City of Asheville and Buncombe County residents to the Air Quality Early Action Compact Stakeholders Group. Staff also requests the approval to work with Buncombe County staff to substitute a stakeholder in the event the original stakeholder is unable to participate in the process.

Upon inquiry of Councilman Mumpower, Ms. Ball said that the suggested stakeholders have not been asked if they would be willing to serve.

It was the consensus of City Council to approve the above assignment of the City of Asheville and Buncombe County residents to the Air Quality Early Action Compact Stakeholders Group and in the event an original stakeholder is unable to participate in the process that City staff advise City Council.

PARKS & RECREATION YOUTH PROGRAMS

Mr. Butch Kisiah, Superintendent of Recreation, and Mr. David Mitchell, Superintendent of Cultural Arts, outlined the Parks and Recreation Department's successful youth programs offered over the past year and explained their ideas for future programs.

The Parks and Recreation Department offers a variety of year-round wholesome recreation opportunities to the citizens of and visitors to the City of Asheville. This is evident through the success of a number of programs we produce. Our major focus, however, is providing opportunities for our youth that will serve as positive alternatives to a number of very difficult situations. The Department is committed to continue serving the youth of our community.

There was discussion about the need for multi-use fields and the percentage of the budget for park maintenance.

Upon inquiry of Councilman Dunn, Mr. Brinson stated that the City does work with Buncombe County when they can to share staff and equipment.

ECONOMIC DEVELOPMENT INCENTIVE GRANT

Economic Development Director Mac Williams said that this is the consideration of a motion setting a public hearing on March 25, 2003, for an economic development incentive grant to a company proposing an expansion of operations into the city limits and creation of new jobs.

Plasticard Locktech International (PLI) specializes in printing on plastic and is the largest producer of plastic hotel keycards in the nation. The company was founded in the area in 1988 and has grown steadily ever since. PLI is now located on Pond Road (outside the city limits) in a facility they own. The company is proposing to purchase and relocate operations into a building located in the Sweeten Creek Industrial Park (inside the city). The expansion would involve an investment of $2.275 million in building improvements and new equipment and creation of 16 new jobs with an average hourly wage of $12.23 plus benefits.

Comparing this project to the criteria established in the City of Asheville Economic Development Incentive Policy, Council has, preliminarily, determined to award a grant of $25,000 payable in equal installments of $5000 over 5 years commencing after all capital investment and new jobs are placed in service. A performance agreement setting these and other terms and conditions must be mutually accepted and executed by the company and City and approved, along with the grant, at a formal public hearing.

Staff recommends City Council set a public hearing on March 25, 2003, to consider acceptance and execution of the proposed Performance Agreement and offer the economic development incentive grant to Plasticard Locktech International under the terms and conditions in that Agreement.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:02 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 11, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Retired Command Sergeant Major William A. Cravener led City Council in the pledge of allegiance.

INVOCATION

Mayor Worley gave the invocation.

ADDITIONS TO THE AGENDA

At the request of Mayor Worley, it was the consensus of Council to add a resolution regarding the federal liaison services contract to the Agenda under Other Business.

I. PROCLAMATIONS:

A. PROCLAMATION CONGRATULATING THE UNC-A MEN'S BASKETBALL TEAM FOR WINNING THE BIG SOUTH CONFERENCE TOURNAMENT AND WISHING THEM WELL AS THEY PROCEED TO THE NCAA DIVISION ONE MEN'S BASKETBALL TOURNAMENT

Mayor Worley presented Head Coach Eddie Biedenbach and three team members a proclamation congratulating the UNC-A's Bulldog's Men's Basketball Team for winning the Big South Conference Tournament on Saturday, March 8, 2003, and wishing them well as they proceed to the NCAA Division One Men's Basketball Tournament. Mayor Worley was proud to announced that this is the first time in UNC-A history for the Bulldog's Men's Basketball Team to proceed to the NCAA Tournament.

II. CONSENT:

Mayor Worley announced that Consent Agenda Item D would not be considered at this meeting.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 25, 2003, AND THE WORKSESSION HELD ON MARCH 4, 2003

B. RESOLUTION NO. 03-33 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS A VACANT LOT AT 25 IRIS DRIVE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a vacant lot at 125 Iris Drive.

A bid from Neighborhood Housing Services of Asheville (NHS), in the amount of $17,100, has been received for the purchase of a vacant lot at 125 Iris Drive. The bid is not less than the appraised value of $17,100.

The property is a single-family residential RS-8 zoned lot on Iris Drive comprising approximately 0.28 acre of land. The property has a rectangular shape and is fairly level elevated about 3' - 4' above street level. It has approximately 100 front feet on Iris Drive. There is no current or contemplated use for the property by the City. NHS plans to build a single -family residence on the site for sale.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer of purchase for upset bids.

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C. MOTION SETTING A PUBLIC HEARING ON MARCH 25, 2003, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR PLASTICARD LOCKTECH INTERNATIONAL

D. MOTION TO ADOPT THE NORTH CAROLINA METROPOLITAN COALITION'S LEGISLATIVE REGULATORY PRIORITIES FOR 2003-04 AND THE 2003 NORTH CAROLINA LEAGUE OF MUNICIPALITIES LEGISLATIVE GOALS AND PRIORITIES - This item was not considered at this meeting.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution on the Consent Agenda and it would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Peterson and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING FOR 3.88 ACRES LOCATED ON THIRD STREET AND BLALOCK STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASSOCIATED MASTER PLAN

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:13 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Ms. Shannon Tuch, Urban Planner, said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

Ms. Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of conditional use rezoning for 3.88 acres located on Third Street and Blalock Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use, and the issuance of a conditional use permit for the associated Master Plan.

On December 30, 2002, The Flynn Christian Home submitted a request to conditionally rezone an undeveloped parcel from its current RS-8 designation to RM-16, in the neighborhood of Oakley in the southeast area of the City (City Exhibit 3 – Location Map).

The conditional use rezoning request is for a parcel located between Third Street and Blalock Street (PIN No. 9658.17-20-0736) totaling 3.88 acres. The conditional use component of this application will be a site master plan showing the construction of five residential structures: two group homes, one duplex, one resident manager's home, and one four-unit transitional home, along with their associated drives and parking areas. All five structures will be single family in style and operation.

The project site is located within the City limits and is surrounded by single family homes all zoned RS-8 except along the northern property boundary where the single family homes north of the railroad are zoned RM-16. The primary access for the Flynn homes will be off of Third Street where four of the five homes are to be accessed through a 60' easement off of Third Street while the transitional home is to be accessed off of Blalock Street (City Exhibit 3 – Site Plan). The duplex, group homes, and transitional home will be two-story construction on block foundations with possible basement/storage space. The resident manager's home will be a single story cottage style home. All homes are to be of modular construction. The project will provide 10 parking spaces, bicycle parking, and a 20'wide Type "B" landscape buffer as required by the Unified Development Ordinance (UDO).

The majority of the site is a mixed deciduous forest with dense non-native undergrowth of vines and other invasive plant materials. The proposed site plan calls for the existing native vegetation to be preserved and maintained with additional plant material to be supplied as needed for the required landscape buffer. A small open area and unnamed perennial tributary to Sweeten Creek will also be preserved and maintained.

RM-16 Residential Multi-Family High Density District is established to permit a full range of high density multi-family housing types. It is intended that this district be located near employment centers, shopping centers, roads and other urban infrastructure capable of handling the demand generated by high density development.

The existing RS-8 Residential Single-Family High Density District is established to permit a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development and to stabilize and protect the district's residential character.

The applicant is seeking the conditional use rezoning since RM-16 is the only residential zoning district that allows for the operation of a group home. The designation is not being sought for density purposes.

As part of the special requirements applied to Uses by Right Subject to Special Requirements, the project must meet several conditions for group homes as found in section 7-16-1(c)(31) of the UDO:

a. Private yard or garden space required; minimum size 500 square feet (minimum dimension 15 feet).
There is well over 500 square feet of open space available to the residents for a variety of gardening opportunities.

b. Client drop off at the rear or side of the main building.
Frontage for the property is located off of Blalock Street with all drop-off areas and parking to the rear of the buildings.

The Technical Review Committee (TRC) met on January 22, 2003, and again on February 3, 2003, at which time the TRC made a positive recommendation that the project be forwarded to the Planning and Zoning Commission.

The Planning and Zoning Commission reviewed this project at their February 5, 2003, meeting where the Commission unanimously (7-0) recommended approval of the project with the following conditions:

1. The applicant shall meet all TRC conditions.
2. The applicant shall provide 10 off-street parking spaces (the maximum allowed per the UDO) to reduce the potential for on street parking.
3. The applicant shall work with the Transit Authority on establishing a safe location for a bus stop and bench. The applicant shall provide the bench.
4. In the event that the operator of the facility changes, the conditional use rezoning shall be reconsidered.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
The development is within standards of development practice set forth by the City of Asheville and other governmental units. In addition, the proposed development meets the definition of a group home as defined by the Unified Development Ordinance: "Group home means a residential home provided by an agency, organization or individual for persons who need sheltered living conditions for rehabilitation, but not including mentally ill persons who are dangerous to others

as defined in N.C. Gen. Stat. sec.122C-3(11)b (or its successor)." Residents of the home have gone through treatment, are not charged with any crime, and are not considered a threat to the public.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The 3.88 acre site's topography forms a ravine with side slope grades ranging from approximately 15-25%. The site has significant existing natural vegetation along with a small perennial unnamed tributary flowing north out of the site. The buildings have been sited to preserve existing vegetation and minimize grading. A vehicular connection between the Third Street buildings and the Blalock building has not been proposed in order to preserve the integrity of the natural slope and unnamed tributary. Preserving the existing vegetation around the periphery will serve to buffer neighboring properties.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
Historically, the Flynn Christian Home has not had an adverse impact on property values in their current location in the neighborhood of Montford where property values have increased dramatically in the last decade. The proposed residential structures are to be single family style structures intended to blend in with the surrounding properties and are not expected to injure property values of adjoining or abutting properties.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
The surrounding properties are made up of single family homes occupying between one quarter acre and larger lots. This development, which places five separate residential structures over 3.88 acres, appears to be in harmony scale, bulk, coverage, and density with the surrounding neighborhood. In addition, the homes are to be single family in style, varying somewhat in size and architectural form from one another, helping them to blend into the character of the existing neighborhood.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
This proposed development supports the smart growth policy of affordable in-fill housing in a variety of neighborhoods throughout the city. It is also supported by the City of Asheville's Consolidated Housing and Community Development Plan 2000-2005, which calls for the need to develop affordable housing for low income people with special needs, including recovering substance abusers.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
This proposed development is located near transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and near the route 12 bus line that serves Oakley. Preliminary review by other utility providers has not revealed any problems for serving the development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

> ***The proposed development will not substantially increase the number of cars operating on Third Street or Blalock Street. Most residents of the Flynn Christian Home will be using alternative modes of transportation and off-street parking will be limited to 10 parking spaces for all five structures, an average of 2 cars per home. Third Street and Blalock Street are both somewhat narrow with limited sight distances, however, the City of Asheville's Traffic Engineer has examined the roads and does not expect the vehicular traffic from the proposed development to significantly impact traffic on either Third Street or Blalock Street and does not consider improvements to the roads to be a priority.***

The Planning and Zoning Commission and City staff recommend approval of the zoning change from RS-8 to RM-16 and approval of the associated conditional use permit as proposed by the applicant subject to the following conditions: (1) The applicant shall meet all TRC conditions; (2) The applicant shall provide 10 off-street parking spaces (the maximum allowed per the UDO) to reduce the potential for on street parking; (3) The applicant shall work with the Transit Authority on establishing a safe location for a bus stop and bench. The applicant shall provide the bench; and (4) In the event that the operator of the facility changes, the conditional use rezoning shall be reconsidered.

Upon inquiry of Councilman Mumpower, City Attorney Oast explained that an appropriate way to look at this is whether the RM-16 zoning classification would be appropriate in this area with conditions, without necessarily determining what those conditions are. Then, the second consideration on the conditional use permit would be to determine what conditions would be appropriate.

Mr. Harry Giezentanner, Chairman of the Board of the Flynn Christian Homes. He said the Flynn Home has been located in the Montford area for over 40 years. They have caused no problems, have been an asset to the community as they take pride in their facility and the service they offer to their residents. The Flynn Home is governed by a board of directors and had a full staff. Due to the cutback from governmental funds, they find that to support themselves they need a larger facility to accommodate more residents. Their present location prohibits them from any expansion. They need to be located in an area that has public transportation, job potential (residents are required to work), where they can get to the AA meetings, and close to churches. They like to be in a residential development and want a home-like atmosphere for their residents.

Mr. Gerald Green, resident on Cumberland Avenue who is also working with the Flynn Home, said that they tried to minimize the impact on the property through this development and minimize the development on the adjacent property owners (Applicant Exhibit 1 – Site Plan). The buildings are located on the edges of the property to minimize grading and disturbance of the existing landscaping. There is buffering proposed from the adjacent properties, using, to the extent possible, the existing vegetation supplemented by additional vegetation to meet the requirements of the landscaping ordinance. The buildings will be designed residentially and will blend in with the neighborhood. They will be preserving most of the vegetation on the site. There is an existing open space area. There will be a trail connecting the two portions of the site, however, Building E on the site plan is speculative at this time as funding is not available for that transitional three-quarter home. If all buildings are built, there will be a maximum of 31 persons living on this property – 16 people in one of the group homes, 8 people in the other group home, 1 resident manager, 1 assistant manager, 1 cook and 4 residents in the transitional three-quarter home. That is 31 people on over 3 acres of land, which is far less than the density permitted under the existing zoning. The majority of residents of Flynn Home do not drive and they are dependent upon mass transit, public transit, buses, taxis or friends for transportation. There is a bus stop at the intersection of Third Street and Fairview Road. The Flynn Home has committed to purchase a bench for that bus stop and will work the Transit Services Department to upgrade the bus stop. The driveway off Third Street will be the primary access and it will meet City standards. At the end of the parking area will be an area that will be designated no-parking to provide a turn-around for emergency vehicles, noting that there is approximately one delivery truck a week. Although the property in front is under contract by the Flynn Home is not part of this property, the intent of the Flynn Home is to develop that property with single-family homes and market them for sale. There is an easement for the driveway. The Flynn Home provides 24 hour, 7 days a week supervision for their residents. The goal of this development and the placement of the structures is such that it minimizes the grading and land-disturbing activity and basically leaves most of the property undisturbed. This development does provide affordable housing for those who may not otherwise be able to find housing in an environment of supervision and some structure.

Mr. Green then addressed the protest petition filed. Regarding the petition's first statement, he said the structures will be designed in a residential manner and will be in scale of the homes in the neighborhood. The 31 people who live there will not significantly increase the traffic as pointed out by the City's Traffic Engineer. They will be improving the bus stop at Third Street and Fairview Road, which is the primary means of transportation for the residents at Flynn Home. With regard to the petition's second statement, the Flynn Home does need to expand not only to meet their budget but to meet the needs of the people in the area who need this type of service. The Flynn Home currently provides housing for 16 people and they have a list of people that far exceeds that number. The number of units to be developed on this property under the conditional use rezoning is significantly less than could be developed under the current RS-8 zoning. This will actually be more in character with the lower density development than the existing RS-8 zoning would permit. Finally, with regard to the petition's third statement, the Flynn Home residents are not evil people. They are people who have made a wrong choice at one time and are now trying to recover from the impact of alcohol and substance abuse. These people do not harm other people. He has lived five houses down from the Flynn Home for 12 years and he has a 10 year old daughter who has grown up there. His neighbor has three children under the age of 9, there are many elderly women in the neighborhood, and there are single women in the neighborhood and the Flynn Home residents do not bother those people. Twelve years ago, the only reason the Flynn Home stood out was because it was better maintained than all but three homes in a two-block area. They have been a good neighbor for the 12 years he has lived there. Some Flynn Home residents have participated in the Reed Creek Greenway Clean-Up and they have been a good member of the neighborhood. He felt they would be a good member of the Oakley neighborhood too.

Upon inquiry of Councilman Peterson, Mr. Green said that the 16 bedroom building will be a two-story building with 8 shared bedrooms (Applicant Exhibit 2 – Front Elevations).

Councilman Ellis asked how many vehicles would be on the road if the property were developed with the existing RS-8 District. Mr. Green said that if 18 single-family homes were built with an average of 6 trips per day, that would total approximately 108 trips per day. Again, most of the Flynn Home residents will walk because many have lost their drivers license.

Upon inquiry of Councilman Ellis regarding disturbances, Mr. Green said that his home is five houses down from the Flynn Home but he didn't recall any instances where the Police Department had to be called.

Councilman Dunn was concerned that the RM-16 District might not be suitable for this development because it is not located near employment centers or shopping centers. Using City Exhibit 3 (Site Location Map), Ms. Tuch showed that the site is within walking distance to the Target, the new Wal-Mart, the Dreamland development, Best-Buy, Circuit City, Asheville Mall, etc., and is accessible by bike or other modes of transportation. In addition, Planning &

Development Director Scott Shuford said that Fairview Road, on the other end, terminates in an employment center with all of the activities east of the Biltmore Village area.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford said that in the Unified Development Ordinance (UDO), the RM-16 zoning classification is the only residential district that permits this use. So, instead of amending all of our residential classifications in the UDO to allow this type of use to occur, Planning staff felt that conditional use zoning would be a way to tailor the use at the specific site. He felt the Code amendment might be something staff needs to look at in the future, but this seemed to be the most direct way, which gives City Council a lot of control over how the site is designed and what goes into it. Had they requested a straight rezoning, City Council could not have considered what use might be put on the property.

Councilwoman Jones and Vice-Mayor Bellamy asked City staff to research other ways in order to not limit only one residential district being open to group homes.

Ms. Laurie Tollman, Executive Director of Flynn Home, explained that the mission of Flynn Homes (Applicant Exhibit 3) is to enable the homeless, recovering substance abuser to gain self-respect, become productive, enhance spiritual growth, and maintain recovery by providing a structured and supportive home-like environment. She said that although the Flynn Home is not affiliated with any religious organization, they require attendance of a minimum of four AA/NA meetings per week, including mandatory attendance at one in-house AA meeting. The 12-Step Recovery programs encourage spiritual growth, but do not require religious affiliation. Flynn Homes encourages, but does not require, church attendance and bible study. She explained that the admission requirements are strict and that most residents are referred by the Veterans Administration Medical Center or the Buncombe County Alcohol and Drug Abuse Treatment Center in Black Mountain. Information on criminal histories is complete as part of the admission. Flynn Home does not admit sex offenders, violent criminals, or those with severe mental illness. Some residents are admitted from correctional facilities if they have completed a drug and alcohol treatment program. She also noted that the Flynn Home does random drug and alcohol testing. She said the average length of stay for the year 2002 was four months with 48 unduplicated residents. Residents may stay up to two years. The average age of the residents is between 31-55. The Flynn Home requires residents to be employed within three weeks and pay a weekly client fee for room and board. Staff provides support services in terms of resume assistance and referral services to local employment agencies and educational institutions. Community service is highly encouraged by Flynn Home as part of recovery. Flynn Home supports continuing education as part of growth and development and to enhance employability. The Flynn Home provides 24-hour supervision in a highly structured environment. Curfews are as follows: Sunday-Thursday 10:30 p.m. and Friday-Saturday 11:30 p.m. Residents are required to complete daily chores and abide by the house curfew. Residents are also encouraged to work together toward goals and provide support and fellowship to each other.

Upon inquiry of Councilman Dunn, Ms. Tollman said that they could receive the entire criminal record of residents if they request it from the treatment facility.

Councilman Dunn asked what happens to the residents if they do not conform to the rules of the Flynn Home. Ms. Tollman said that they are asked to leave. She said that approximately two weeks ago a resident was kicked out because he got intoxicated and tried to get back in after curfew. The Flynn Home did call the police. She said that she has been with the Flynn Home over a year and this was the first time the police were called.

Councilman Ellis said that he worked at the Black Mountain Center, which is next door is the Alcohol and Drug Treatment Center, for eight years and never recalled a police incident. He pointed out that the Treatment Center is adjacent to Highland Farms Retirement Homes and felt that maybe some the concerns are not as great as people might anticipate based on past history.

Councilman Mumpower asked if there was any information on actual contacts that the police have had with the residents of Flynn Home for the past 3-5 years. Ms. Tollman they did a general search and there have been no contacts, with the except of when the Flynn Home had to call to make sure someone was off their property and out of the neighborhood. There have not been any calls on any of their residents that have disturbed any of the adjacent neighbors.

Councilman Peterson asked if there are legal limits on what Council could hear regarding concerns about the type of people living at the Flynn Home. City Attorney Oast said that under the Fair Housing Amendments Act of 1988, the law basically prohibits housing discrimination based on a person with a disability, and included within the definition of disability are recovering substance abusers. That would include much of the population in the Flynn Home. That definition did exclude from it persons with mental problems that would be dangerous to themselves or others. He suggested Council focus on the land use, not the type of resident. He also noted that there have been cases that have held it a violation existed when there is an undue amount of testimony about that.

Councilman Mumpower asked if Council could consider the behavior of the Flynn Home residents, e.g. safety. City Attorney Oast said that the reference to police visits to the facility is probably relevant to Council's consideration.

The following individuals spoke in favor of the conditional use zoning/permit for various reasons, some being, but are not limited to: people from all walks of life (doctors, lawyers, etc.) have gone through the Flynn Home and have become productive residents of the community; many properties were looked at and this property was the most suitable because of the space, bus stop, and a lot of jobs in the area; the site plan will have a low impact on the property and environment; if developed at the existing RS-8 zoning, that will be more damaging to the neighborhood; the Flynn Home has a great deal of control over the residents in the home, which is far more than the neighbors knowing who their neighbors might be; the Flynn Home in Montford is a good neighbor and they maintain an attractive, clean and quiet property; there is a bus stop directly in front of the Flynn Home in the Montford community and there has been no problems with the residents of the Flynn Home; children go trick or treating at the Flynn Home and stop there for fund-raisers and there have been no problems; there are a number of elderly residents in the Montford community and they have not been harmed by the Flynn Home residents; property values in the Montford neighborhood have risen; the Flynn Home does not have a criminal element in it; there is more danger walking to your car in the Asheville Mall parking lot; the Flynn Home needs to be in a residential area because the residents rely on public transportation or they walk; the Flynn Home is a good and solid community asset; and disparaging remarks about Flynn Home residents are uncalled for:

Ms. Betty Darr, former Chairman of the Board of the Flynn Christian Homes and former Board Member
Ms. Nancy McMullen, member of the Board of the Flynn Christian Homes
Mr. Scott Dedman, resident on Cumberland Avenue
Mr. John Michael Thompson, former resident of the Flynn Home
Mr. Steve Greer, former resident of Flynn Home
Mr. Mickey Mahaffey

The following individuals spoke in opposition of the conditional use zoning/permit for various reasons, some being, but are not limited to: the property was zoned RS-8 and changing it would be a breach of trust to the neighborhood; the intersection of Fairview Road and Third

Street is already a hazard as seen by accidents and to bring more cars into this area will make it worse; since children cannot pick up the school bus on Third Street because it can't turn around, how will the delivery trucks manage; any delivery vehicle that parks will be a safety hazard because an emergency vehicle won't be able to pass them; there are no sidewalks and no no-parking signs on Third Street; a home should be a safe and secure place, but there will be a lot of transient people moving in and out of the Flynn Home a year; in 2002, a Flynn Home resident said there were two instances where the Police were called; the children are not safe in playing outside if there are 30-40 strangers who the residents don't know but they do know they have a drug problem; the homes in the area are not close together so you can't watch your child; the rezoning will bring unwanted and unwarranted safety concerns to the neighborhood; the Flynn Home is imposing a burden on the neighborhood to provide the community atmosphere; the neighborhood has already bore the cost of the Flynn Home residents by their taxes supporting the programs for recovering alcoholics and substance abusers; at least one Flynn Home resident is not even from North Carolina; property should be developed for single-family homes as all surrounding homes are consistent with that zoning; sales for some homes have fell through because of the threat of the rezoning of this property; real estate in Montford community has risen over 5 times is due to regulations by the Asheville Historical Society and cannot be attributed to the Flynn Home since it has been in the area since 1962; the Flynn Home may decide to sell the property after the rezoning and then more uses could be built on the property which would be totally out of character with the neighborhood; most surrounding homes have at least two areas and the Flynn Home will have five buildings on over three areas which will be out of character with the neighborhood; this is not a smart growth decision for our community; it will be difficult for large vehicles to access the proposed driveway; Third Street is not wide enough for parks to park on the street and children to walk on it; the Flynn Home should be built in a better suitable location; Oakley has enough low-income people; there is a stream on the property which falls under the Isolated Stream laws; since people in AA are encouraged to have sponsors, there will be more people affiliated with the Flynn Home; no on-street parking on Third Street; the improvement to the bus stop by adding a bench does nothing but increase congestion between the chain-link fence and the street; the Flynn Home is not a home, but a facility with a parking area; since residents at the Flynn Home are transients, the neighborhood can't get to know and trust them; grading on the site will not be minimal; the Flynn Home will adversely affect the sale of homes in the area if prospective buyers know a group home is being built; the community did find another piece of property for the Flynn Home that is much more compatible and already zoned for this facility; according to state law, the Flynn Home must be a certain distance from railroads and this one borders right up to a railroad and it is also not located on a street; the Flynn Home residents would have to walk ¼ mile to cross the railroad track if they wanted to walk to the Asheville Mall area; there are a number of natural springs on the site, thus cutting down the number of houses that can be built on the site; existing businesses, financial community, and new upscale revitalization of Biltmore and Oakley should have been notified of the possible housing of released prisoners in their area; and the name Flynn Christian Homes is misleading:

Mr. Dale Rhew, resident on Third Street (Neighborhood Exhibit 1 – Petition containing approximately 298 signatures)
Mr. Max Wilson, resident on Fairview Road
Ms. Angela Rhew, resident on Third Street (Neighborhood Exhibits 2 and 3 – Two letters from people not present and pictures)
Mr. Charles Townsend Riley
Mr. Nathan Rhew, resident on Third Street
Mr. Jeffrey Black, resident on Third Street
Ms. Miriam Allen, resident on Third Street
Mr. Fred English, Haw Creek resident
Ms. Myra Vinzant, resident on Fairview Road
Mr. John Boll, property owner in the area (Neighborhood Exhibit 4 – Cross-section of the land drawing)

Ms. Teresa Conner-Howard, resident on Main Street (Neighborhood Exhibit 5 – Location map and drawing of another location for Flynn Home)
Ms. Kay Rollin, resident on Ridge Avenue

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:20 p.m.

At 7:20 p.m., Mayor Worley announced a short break.

Upon inquiry of Councilman Dunn about the grade of the driveway, Mr. Shuford said it is a steep site (City Exhibit 4) but what they have reviewed to date has only been the concept plan submitted by the applicant. If the plan cannot meet City standards, they wouldn't be able to build the project.

When Councilman Mumpower asked about the possible violation of the Isolated Stream laws, Mr. Shuford said that the developer would have to abide by those laws as well in developing the property.

Mayor Worley reiterated that if Council were to approve the conditional use rezoning and permit, the developer would have to comply with any other regulatory requirement. If they cannot meet those requirements, even though City Council might approve the project, they could not build it. Mr. Shuford agreed that City Council's approval would not override those underlying development regulations.

When Councilman Mumpower asked if the Planning staff had any information on police concerns or arrest records in the existing neighborhood, Mr. Shuford said that he did not have that information because he didn't think that would be a problem given the comments at the prior public hearing.

Upon Council's request, City Attorney Oast explained what City Council's role in this conditional use rezoning would be. He explained that an appropriate way to look at this is whether the RM-16 zoning classification would be appropriate in this area with conditions, without necessarily determining what those conditions are. Then, the second consideration on the conditional use permit would be to determine what conditions would be appropriate.

Councilman Ellis explained that it is Council's responsibility to make a decision on what they feel is good for the entire City and all the people who live in it. He understood the neighborhood's concerns, however, he personally did not feel that their safety is at risk nor did he feel their property values would be decreased. He explained why this is a very difficult decision for him. He then moved to rezone 3.88 acres located on Third Street and Blalock Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Single-Family High Density District/Conditional Use. This motion was seconded by Councilwoman Jones.

Councilman Dunn felt that to rezone this property RM-16 would not be appropriate since the City does have other areas in the City that can accommodate this development. In addition, he didn't think the RM-16 zoning classification is the right designation for this type of facility and that it doesn't fit with the City's smart growth principles.

Councilman Mumpower said that with the clarifications that the City Attorney has given to Council, he felt the arguments on safety concerns, character issues, injury to value are more persuasive than the arguments against those issues. As a psychologist, he has people who go through this program and he knows they do good things, but that is not the basis upon which he should decide.

Councilwoman Jones said that based on her interpretation of the technical land use requirements and the Fair Housing law, she would support the rezoning. She felt as City leaders in the public eye, they should try to dispel the myths regarding alcoholism and substance abuse. Alcoholism and substance abuse are horrendous diseases and most of us don't have to look far in our own family trees to find that struggle and it takes great courage to begin the recovery process and generalizations and stereotypes don't encourage people to take that first step of the 12-Steps. She lives two blocks from the Flynn Home in Montford and as a single woman with a small child, she will be sad to see them leave.

Vice-Mayor Bellamy pointed out that there is no other residential district in the UDO for this project. That is not the applicant's fault, but the City's fault. They could have petitioned Council for a straight rezoning to RM-16 and then Council would not have had the ability to place any conditions on the development. She has seen a map of the RM-16 districts throughout the City and unfortunately they are all built on.

Mayor Worley felt that the lower density on the site and appearance of the property would actually be in harmony with the existing neighborhood. He also felt that there was no expert testimony to support the statements that this development will lower property values. In fact, the reality is that over the years seldom do you see development lower values.

The motion made by Councilman Ellis and seconded by Councilwoman Jones failed on a 5-2 vote, with Mayor Worley, Vice-Mayor Bellamy, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "yes" and Councilman Dunn and Councilman Mumpower voting "no."

B. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 100 MORRIS STREET FOR THE NEW CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3003 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT AT 100 MORRIS STREET FOR THE NEW CONSTRUCTION OF A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 8:10 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Ms. Shannon Tuch, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a conditional use permit for property located at 100 Morris Street for the construction of a duplex in an RS-8 Residential Single-Family High Density District.

On January 27, 2003, Mr. Danny Hayes submitted an application for a conditional use permit to allow the new construction of a duplex in a single family zoning district in west Asheville.

The subject property is located at 100 Morris Street (PIN No. 9638.17-01-2856). This property and the surrounding area is zoned RS-8, single family residential allowing up to 8 units per acre (City Exhibit 3 – Location Map). The applicant is proposing to subdivide an existing .42 acre lot in order to construct a 2100 square foot duplex next to the existing single family home (City Exhibit 3 – Site Plan).

As part of the conditional use permit requirements, the project must meet several conditions for duplexes found in section 7-16-2(d)(5) of the Unified Development Ordinance (UDO):

a. Duplexes must be located a minimum of 300 feet from all other multifamily uses (excluding dwellings with accessory apartments) on the same street in the single family district.
The property is located over 300 feet from other duplexes on the same street.

b. Minimum lot area shall be 125 percent of that required for a single family residential unit in the respective district.
The resulting lot for the duplex is .20 acres and is well above the lot size requirements.

c. Parking shall be located in the rear and screened with vegetation from adjacent single family uses.
All parking is located in the rear and existing vegetation will be supplemented with additional vegetation as required to screen the parking area from adjacent single family uses.

d. The structure shall have a single front entrance and other entrances as required.
The proposed duplex has a single front entrance with a secondary entrance at the rear.

e. Requirements of the N.C. State Building Code shall be met.
The proposed duplex will be new construction and will be built to meet building code requirements.

The Technical Review Committee (TRC) reviewed this project at their February 17, 2003, meeting and recommended that the project be forwarded to the City Council with a recommendation of approval with conditions. All TRC conditions have been met by the applicant in the revised site plan. Review by the Planning and Zoning Commission is not required for this use.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
   The proposed development is within standards of development practice set forth by the City of Asheville and other governmental agencies.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   The proposed duplex will appear single family and will be compatible with the surrounding neighborhood. In addition, the existing topography of the site will provide favorable conditions for the construction of a lower level unit.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
   The duplex will have the appearance of a single family home and will blend in with the existing neighborhood fabric. Neighboring property values are not expected to be injured.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
   The average home on Morris Street is a modest cottage with a small footprint. The proposed duplex will have two stacked units, each being only 1050 square feet and will appear to be in scale, bulk, coverage, density and character with the surrounding homes.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
   This proposed development supports the smart growth policies of affordable in-fill housing and mix of housing types within a given neighborhood outlined in the Asheville City Plan 2025.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
   The proposed duplex is located within an existing neighborhood located off of Brevard Road. The property has adequate infrastructure in place.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.
   The proposed duplex will not generate traffic problems.

The TRC and City staff recommend approval of the conditional use permit to build a duplex in a single family zoned neighborhood in accordance with the plans submitted by the applicant.

Upon inquiry of Councilman Peterson about parking, Ms. Tuck said that the minimum number of required parking spaces is four and the maximum number is six. When the applicant asked Planning staff what would be better, she told him that because of the nature of the conditional use permit that he would be tied to whatever is shown on the plan. Therefore, he showed six parking spaces.

Councilman Peterson felt the people who live on the upper level would park on the street and he would rather see less parking in the back so that the entire back yard is not a parking lot.

Mr. Danny Hayes, applicant, was amenable to reducing the number of parking spaces to four. He spoke in support of allowing him to expand the basement apartment.

Ms. Lynn Jones, adjoining property owner, said that with the parking lot of the West Asheville Park and the proposed parking area in the rear of this duplex, the entire area will all be asphalt. She said that Morris Street is not a wide road and has already enough traffic on it now. Allowing this structure to go to a duplex will make a small street even busier.

Mr. Taylor, resident on Morris Place, said that after the lot was graded out he was told by Planning staff that there would not be any further construction until after the City Council public hearing. He felt he was mislead by the Planning staff. He would have liked to receive more information at the TRC meeting similar to the presentation at this meeting. He asked that the structure not be allowed to be built into a duplex; that the parking lot not be in the rear because it adjoins his and will decrease his property value; that a buffer type "B" be installed; and the property be landscaped. He asked Council to review (1) that no permit or construction be allowed prior to the City Council public hearing with no exceptions; (2) make an extra effort to update public records to find out who is actually adjacent land owners; (3) that the City check-list be enforced unselectively per each applicant; (4) that duplex, triplex and quadraplex be removed in the RS-8 zoning district from conditional use, or to at least the Level III special use; (5) RS-8 zoning lot size minimum requirement to be upgraded to 1,000 square feet; and (6) any property split in such a manner to prevent this kind of unharmonious reaction with the neighborhood.

Mr. Chad Anderson, adjoining property owner, said there is no shrubbery to separate the duplex from his house. The six parking spaces in the rear will decrease his property values because it will be in his backyard. With the children in the neighborhood and the narrow road, there is no more room to park on the street in front of the duplex.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 8:35 p.m.

There was discussion by Council about the buffer vegetation and/or privacy fence and how they could be used to shield the parking lot near Mr. Taylor's home and near Mr. Anderson's home.

Councilman Peterson supported a condition for a privacy fence to be installed below the wall by the driveway. He didn't envision it for the entire length of the property but just enough to block the area adjacent to the Anderson house. He would, however, leave that up to the Planning staff to determine where the fence would be appropriate. He also supported a condition that the parking spaces be limited to four spaces in the rear of the property.

Mr. Tuch responded to Councilman Dunn's question about why he could not move the rear parking lot onto the other adjoining piece of property, which is also owned by the applicant.

When Councilman Mumpower asked about additional vegetation to shield the parking lot, Ms. Tuch said that because two of the parking spaces will be taken out, there would be room for additional buffer. Councilman Mumpower suggested that the existing guidelines be used with regard to buffering to this piece of property. Ms. Tuch suggested the condition read that an "A" buffer as described in the UDO be provided between the parking area and adjacent single-family uses and any reductions, such as the combination with the privacy fence.

Vice-Mayor Bellamy moved to adopt Ordinance No. 3003, to issue the conditional use permit for property located at 100 Morris Street for the new construction of a duplex in an RS-8 Residential Single-Family High Density District. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Peterson asked if Vice-Mayor Bellamy and Councilwoman Jones would be willing to amend their motion to add the following conditions: (1) parking shall be reduced to the minimum required by the UDO to four spaces and screened by the equivalent of a Type "A" buffer in the rear of the property; and (2) that a privacy fence be erected at an appropriate location on the east side of the property in order to screen the driveway. Vice-Mayor Bellamy and Councilwoman Jones both accepted that their motion be amended to all the two conditions.

Upon inquiry of Councilman Mumpower, Mr. Anderson explained that his home is higher than the driveway in the back of the duplex and a fence would not help his situation.

Mayor Worley, Councilman Dunn and Councilman Ellis all agreed that the condition to require a privacy fence may be unnecessary since Mr. Anderson feels it won't solve the problem of screening the vehicles who park in the rear of the duplex.

At the request of Councilman Mumpower, Mayor Worley re-opened the public hearing at 8:55 p.m. only for the purpose of discussing a privacy fence on the east side of the property.

Upon inquiry of Councilman Mumpower, Mr. Hayes said that he would be amenable to installing a privacy fence on the east side of his property.

Mr. Anderson responded that he doesn't care about the installation of a privacy fence; he just does not want the property developed into a duplex.

Mayor Worley closed the public hearing at 8:57 p.m.

The amended motion made by Vice-Mayor Bellamy and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

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C. **PUBLIC HEARING TO REZONE PROPERTIES LOCATED ON CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT**

ORDINANCE NO. 3004 - ORDINANCE TO REZONE PROPERTIES LOCATED ON CLINGMAN AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

At the request of Vice-Mayor Bellamy, Councilwoman Jones moved to excuse Vice-Mayor Bellamy from the remainder of the meeting. This motion was seconded by Councilman Ellis and carried unanimously.

Mayor Worley opened the public hearing at 9:00 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone 12 lots located at the southwest corner of Clingman Avenue and Rector Street from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on February 28 and March 7, 2003.

On December 27, 2002, Mountain Housing Opportunities (MHO) submitted a request to rezone several parcels from RM-8 to RM-16 at the southwest corner of Clingman Avenue and Rector Street, including property with frontage on Jefferson Street.

The rezoning request is intended to help MHO implement the West End Clingman (WECAN) plan prepared for MHO by Correa-Valle-Valle. The plan calls for higher density infill development in this area. MHO has indicated an intention to bring the WECAN plan forward for official City adoption in the near future.

The zoning change is from one density of multifamily residential to another and thus does not constitute spot zoning. The density allowable under the proposed zoning will not overtax the existing street network as Clingman Avenue serves both as an arterial street and as a gateway link between downtown Asheville and "downtown" West Asheville. Other public services will be analyzed once plans for development are received.

The RM-8 Residential Multi-Family Medium Density District is intended to permit a full range of medium density multi-family housing types including single-family detached and attached to residences.

The RM-16 Residential Multi-Family Medium Density District is intended to permit a full range of high density multi-family high housing types along with limited institutional, public and commercial uses appropriate to high density residential areas. This district should be located near employment centers and along roads capable of handling the demand generated by such high density residential development.

The parcel site is currently a mixture of vacant and developed lots. The parcel has direct access to three roads (Clingman Avenue, Rector Street and Jefferson Street). With higher density development anticipated in the WECAN plan and being implemented north of the site by MHO's Merritt Park project, the parcel is in a likely location for higher density residential development. Plans for development on this parcel will follow development requirements of the Unified Development Ordinance.

On February 5, 2003, the Planning and Zoning Commission considered this rezoning request and unanimously recommended its approval. The Planning and Development staff also recommends approval of the request.

Mr. Mike Vance, Home Ownership Manager of MHO, spoke in support of the rezoning request and said that WECAN unanimously supports the rezoning.

Mayor Worley closed the public hearing at 9:05 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 3004. This motion was seconded by Councilman Mumpower and carried unanimously.

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Councilwoman Jones applauded the WECAN community for being a part of the solution.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. UPDATE ON CORPORATION FOR HEALTH PLAN ADMINISTRATION

Finance Director Bill Schaefer updated City Council on the corporation for health care administration. He reviewed the progress to date since December 2002 and where we are today. He then explained the formation of the Western Carolina Well Care, Inc. (WCWC), the first payer owned third party healthcare administrator/network in the region. WCWC is a public non-profit corporation formed effective January 1, 2003 whose mission is to serve as a third party administrator for self-funded group health claims and / or to provide access to regional providers for health care services. Formation of WCWC began by the City in December, 2002 in anticipation of the demise of Mountain Health Care in an effort to protect the City's employees and retirees and preserve access to the region's providers at discounted fees. Working in collaboration with Crescent Preferred Provider Organization (PPO) Inc., located in Canton, NC, WCWC is offering interested employers in the region the opportunity to access care through the WCWC network of providers. Using Crescent PPO as the core of its network WCWC has expanded the available panel of providers to include numerous physicians in the region who have not in the past, or may not now participate in other available networks. As of this date, WCWC has signed agreements through Crescent and direct with WCWC for fee schedules with 924 regional physicians, hospitals and healthcare providers. An additional 582 are currently under negotiation having already expressed an interest in participating in the network. Ownership of WCWC will reflect employer participation in the network. As new employers become members each will become voting members of WCWC. To date, PPO networks in the region have been largely commercially owned for-profit enterprises, or provider owned entities. WCWC is the first payer owned third party administrator / network in the region. Owner / participants in WCWC will have the option of keeping their own third party administration (TPA) and accessing only the WCWC panel of providers and fee schedule, or they may opt for the network availability and TPA services together.

Interested employers may contact John Miall at 259-5684 for information about the network. In addition, a community meeting will be held at 6:30 p.m. on Monday, March 17, 2003, at the Wolcott Public Works Building at 161 S. Charlotte Street, in Room A109 to allow community employers, agents, and providers to ask representatives of WCWC's board of directors, partners and advisors any questions they may have.

VI. OTHER BUSINESS:

UNIFIED DEVELOPMENT ORDINANCE

At the request of Councilwoman Jones, and by consensus of Council, the Planning staff was asked to identify real solutions to our homelessness problem, which two are housing and substance abuse rehabilitation, then to report back to Council with recommendations for specific

Unified Development Ordinance amendments in order to implement solutions that will be long-lasting and fundamental.

RESOLUTION NO. 03-34 - RESOLUTION AUTHORIZING THE CITY MANGER AND MAYOR TO NEGOTATE A CONTRACT FOR FEDERAL LIAISON SERVICES

Mayor Worley said that this is the consideration of a resolution authorizing the City Manager and Mayor to negotiate and execute a contract to provide federal liaison services on behalf of the City of Asheville.

On January 28, 2003, City Council adopted Resolution No. 03-21 authorizing the issuance of a Request for Proposals (RFP) to qualified firms for the provision of federal lobbying services on behalf of the City of Asheville. Subsequently, the RFP was issued resulting in four qualified responses. A sub-committee of Council, Mayor Worley, Councilman Ellis and Councilman Mumpower, selected two candidate firms for personal interview, and then, ultimately, Ball-Janik, LLC. Going forward, a contract must be in place, a City agenda determined, and various procedures undertaken by the contractor in order for the City agenda to be effectively positioned for the 2004 federal budget cycle. Therefore, the timeframe to complete these next steps must be compressed.

This resolution allows the City Manager and Mayor, in consultation with the City Attorney, to negotiate and execute the contract without further Council action.

Staff recommends Council approve the resolution to allow the City Manager and Mayor to negotiate and execute the contract with Ball-Janik, LLC.

Councilman Mumpower said that after interviewing the firm of Ball-Janik, LLC., he felt that they would have the potential to really do some good work for the City of Asheville.

When Councilman Dunn asked for an opportunity to review the contract, Mayor Worley said that once the contract is negotiated, it would be circulated to Council.

Councilman Peterson said that he wasn't aware that there was a Council subcommittee appointed to review the responses and make a recommendation. He would have liked more information on Ball-Janik, LLC, like who they are and why did we choose them, their price and what their scope of services will be. Mayor Worley responded that once we get the contract negotiated, then it will be circulated to Council with the details of the contract. Then, once the agreement is entered into, Ball-Janik will meet with the City fairly extensively to go over what our needs are, what our opportunities are, what our agenda is, what our preferences are, and then we as an entire Council would make those decisions for the firm to proceed.

City Manager Westbrook said that Mayor Worley is bringing this up now because we are facing a deadline at the federal level with their assistance in getting in some requests.

Councilman Peterson didn't want there to be a pattern of Council subcommittees doing the business that should be left up to the entire City Council.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 03-34. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 329

CLAIMS

The following claims were received by the City of Asheville during the period of February 14-27, 2003: Doug McKee (Streets), Andrea O'Gorman (Water), Cheryl Anderson (Sanitation), Maxine Jones (Parks & Recreation), Alfred Gilmore Jr. (Water) and Beaverdam Condos (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

LAWSUIT

The City was served with the following Petition for Certiorari on March 3, 2003, which is generally described as follows: Rom Youen, Elva L. Ponder and husband Bobby L. Ponder, and Ruth D. Adams and husband Roy L. Adams vs. Board of Adjustment. The nature of the proceeding is a Petition for Writ of Certiorari to review the decision of the Board of Adjustment. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Grant Millin, representing the Bill of Rights Defenders, presented City Council with information regarding his request that (1) City Council to amend Resolution No. 01-144, which condemned the terrorist attack and supported the President, because it doesn't represent him; and (2) that Asheville be designated a Bill of Rights Defense City.

Mr. Fred English, Haw Creek resident, felt City Council should not increase the filing fee to run for City Council from the existing $5.00, and to not raise the water rates. He presented City Council with a "Support Our Soldiers" hat.

Mr. Eric Lynch, Director of Education and Action, said that he supports young peoples right to participate in democracy and self-determination. Therefore, he asked City Council to commit to include discussion about the resolution the high school students will be presenting to Council later in the meeting in Council's next meeting.

Ms. Grace Williams, student at Asheville High School, said that many cities are passing anti-war resolutions and she asked that Asheville become one of them. She presented City Council with an anti-war resolution petition, which reads, "We, the citizens of Asheville, ask you to adopt a strong anti-war resolution. It has been shown by dozens of rallies that thousands in the community are against a preemptive war with Iraq. We want Senators Dole and Edwards and Congressman Taylor to know that Asheville disagrees with any action taken against Iraq." She asked that Council consider adoption of a resolution to be considered at a later date.

Ms. Susan Bloom spoke in support of the petition presented by Ms. Grace Williams and presented City Council with pictures of people from Iraq.

Mayor Worley said that regardless of what City Council decides to discuss or not to discuss, he commended Ms. Grace Williams and supports the students in their efforts to make their voices heard. He welcomed them to come to the Council meetings on this issue or any other issue that they would like to bring before the Council and Council certainly supports their right to express themselves in that way.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:47 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 18, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Budget Amendment to the Water 35 Fund to Provide Funding for an Emergency Response Plan

Summary: The consideration of a budget amendment to reprogram funds to provide additional funding for an Emergency Response Plan.

The Regional Water Authority and Brown and Caldwell entered into an agreement for a Vulnerability Assessment in September 2002, and it is being funded with a $115,000 Environmental Protection Agency (EPA) grant. The Assessment is complete and was presented to the City Council in February, but it is now required that the Authority develop an Emergency Response Plan that incorporates the results of the Vulnerability Assessment. An Emergency Response Plan will include plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. It shall also include actions, procedures, and identification of equipment, which can eliminate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water.

The cost of the plan is $45,000 with $16,000 being provided from the remaining EPA grant funds that were granted to the Authority in September of 2002 to conduct the Vulnerability Assessment and an Emergency Response Plan. An additional $29,000 is needed to complete funding for the Emergency Response Plan. Staff is recommending reprogramming $29,000 from the Master Plan Improvements to the Water Security Assessment (Vulnerability Assessment) to complete funding for the Emergency Response Plan.

Staff recommends that City Council approve a budget amendment to reprogram funds to provide additional funding for an Emergency Response Plan.

Declaration of Withdrawal of Henry Street

Summary: The consideration of a resolution finding that Henry Street is not part of an adopted street plan.

The Asheville Area Chamber of Commerce submitted to the City a Declaration of Withdrawal for Henry Street. The Chamber of Commerce owns all of the property, which abuts the alley. The property is needed for construction of the new Chamber of Commerce building and parking lot. The alley is not used as an ingress or egress nor has it ever been used as such. The Chamber's request for a resolution from Council finding that Henry Street is not part of the street plan adopted under G. S. 136-66.2, is supported by the legal research performed by the law firm of Van Winkle, Buck, Wall, Starnes & Davis, P.A., certifying that the following three criteria have been met.

N. C. Gen. Stat. sec. 136-96 permits the filing of a Declaration of Withdrawal of any street dedicated to public use and not utilized within 15 years from and after dedication.

In order to withdraw a street from public dedication, N. C. Gen. Stat. sec. 136-96 requires:(1) that the street must have been dedicated to public use; (2) the person desiring to withdraw, must be the original dedicator or someone claiming under the original dedicator; and (3) that the street not have been opened and used by the public for 15 years from and after the dedication. The statute goes on to state that upon request, the City shall adopt a resolution stating whether the street is or is not part of the street plan adopted under G. S. 136-66.2.

Public Works Department staff have consulted with all appropriate City departments and determined that the right of way designated as Henry Street as shown in Plat Book 8, Page 72 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that the right-of-way designated as Henry Street as shown in Plat Book 8, Page 72, is not part of an adopted street plan.

Renewal of Franchise Ordinance for Narrated Historic Tour Trolley

Summary: The consideration of renewal of an existing franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

For the last year, Asheville Historic Trolley Company (AHTC) has operated a narrated historic tour in Asheville using a 30 foot bus that looks like a trolley car. The venture has been successful to the extent that the AHTC would like to renew the franchise for a period of two years. There have been no complaints and several compliments received by the City over the course of the last year.

The tour will continue to follow an established route, and could occur up to four times per day.

The operator is required to meet with the city Traffic Engineer to review and get approval for the routes that the historic tour will run.

The vehicle is a 30 foot rubber tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day of the week. For charter operations the hours of operation are not limited to the above providing that Trolley Leasing meets all local state, and federal laws regarding the operation of a chartered vehicle. The franchise fee is one dollar per day of projected operation.

The ordinance is drawn to be as narrowly as possible, and does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council renew the franchise ordinance with Trolley Leasing, LLC, for a two-year period.

Grant for Fire Department Equipment

Summary: The consideration of a resolution to apply for and enter into an agreement with the Department of Homeland Security for funds to assist with the purchase of Self-Contained Breathing Apparatus and Portable Radios for Asheville Fire Rescue.

In recent years there has been improved technology in Self-Contained Breathing Apparatus (SCBA) and related equipment. Asheville Fire Rescue decided to switch to the improved technology SCBA manufactured by Scott. Each unit is $2,800 so it is cost prohibitive for the Department to replace all of the units at one time. At the same time, it is essential that all of the fire vehicles operate with the same SCBAs so that all fire personnel are trained on the same type of equipment. In addition, this grant provides an opportunity to update other types of equipment, such as VHF Portable Radios to enhance interoperability.

Asheville Fire Rescue is requesting $174,578 in grants from the Department of Homeland Security for 44 SCBAs and spare bottles, 130 SCBA masks and 24 Portable Radios. The grant requires a 30% local match, or $52,373.40, which will require an appropriation of $52,373.40 from the Contingency account. Upon notice of the grant award, a budget amendment will be brought to City Council for the full amount of the grant award, including the City's match.

The Fire Rescue Department recommends the City of Asheville apply for and enter into an agreement for grant funds to assist with the purchase of Self-Contained Breathing Apparatus and Portable Radios.

Clerk to Advertise Offer to Purchase Air Rights Adjacent to 21 Battery Park Avenue

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a portion of the air rights adjacent to 21 Battery Park Avenue comprising a total of 1,210.80 square feet.

A bid from 21 Battery Park, LLC, in the amount of $9,000.00, has been received for the purchase of a portion of the air rights adjacent to its property at 21 Battery Park. The bid is not less than the appraised value of $9,000.00.

The property is zoned Central Business District and fronts on Battery Park Avenue to the south with an alley at the east and north. The proposed purchase is made up of three air right parcels and the appraisal by Mickey Foster dated December 1, 2002, estimates a value for each parcel.

North side:	507.17 sq. ft.	$2,789
East side:	290.18 sq. ft.	$1,596
South side:	413.45 sq. ft.	$4,548
Total	1,210.80 sq. ft.	$8,933 rounded to $9,000

The appraisal takes into consideration that the air right parcels are not 100% of the air rights but limited in size to the space from 36' above ground level to 72' above ground level. Furthermore, the limited potential uses of the underlying land are considered.

There is no current or contemplated use for the air rights by the City. Staff recommends that the use of the air rights space be limited to roof overhang and/or open balconies. The sale of the air rights will enable 21 Battery Park, LLC, to proceed with construction of the proposed improvements at 21 Battery Park Avenue that include a multi-use building with six levels.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

GREENWAY COMMISSION ANNUAL REPORT

Ms. Linda Giltz, Chair of the Greenway Commission, reviewed with City Council the 2002 Greenway Commission's Annual Report. She said the first greenway was developed in 1988 and in 1997 the Greenways Task Force was established. In 1998 City Council approved the Master Plan. In 1999, the Greenway Commission was established and in 2000 the Parks and Greenways Foundation was established. The greenways are consistent with City Council's goals of smart growth initiatives, increasing the "quality of life" and amenities in new developments. Greenways have economic benefits: (1) they attract economic development and provide new business opportunities; (2) enhance tourism and increase revenue from tourism and recreation; and (3) create economic opportunity through riverfront revitalization. Air quality benefits include: (1) greenways are transportation corridors; and (2) walking, biking are non-polluting forms of transportation. Water quality benefits include: (1) preserve wetlands; (2) reduce flood damage; (3) improve water quality of local streams. Other environmental benefits include: (1) preserve open spaces; (2) provide habitats for plants and animals; and (3) natural resource corridors for wildlife. Community health and safety include: (1) increase sense of community and neighborhood awareness; (2) provide connections to schools, parks, work and shopping; and (3) enjoyable, safe places for walking, running, bicycling and skating.

The Greenway Commission's philosophy and role include: invite neighborhood ownership; work jointly with other organizations; name after waterways; use/recruit volunteers; building on city-owned property and easements; encourage developers to build greenways; increase public awareness through presentations; and help solicit donations of easements.

Ms. Giltz reviewed with Council the completed greenway projects. She said that 4.83 miles of greenways have been constructed at an average cost/mile = $100,000; average annual maintenance costs/mile = $7,000; City funding to date = $95,000; outside funding to date = $388,000; and total land value donated = $450,000. Current greenway projects include the French Broad River Park, the Reed Creek Greenway, the Clingman Forest, the Azalea Road Park, the River Bend development, and the creek along West Asheville Park.

Ms. Giltz asked City Council to keep greenways as a high priority; encourage developers to incorporate greenways into their plans; be advocates for greenways with other agencies (NC DOT, MSD, etc.); and continue to support the Master Plan and its upcoming revision.

On behalf of City Council, Mayor Worley thanked Ms. Giltz and the entire Commission for their hard work and dedication on the Greenway Commission.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on March 25, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Greater Front Setback Flexibility in a Variety of Non-Residential Zoning Districts

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to provide for more flexible front setbacks in pedestrian-oriented areas in a variety of nonresidential zoning districts.

This code amendment provides for reduced front setback requirements in a variety of nonresidential zoning districts if pedestrian oriented design features are utilized. A definition of pedestrian oriented design is included as part of this ordinance. In effect, the incentive of a reduced front setback is provided as an option for developers if certain design standards are met and there is no conflict between the reduced setback and any scheduled road widening.

Affected districts include: Neighborhood Business District, Office II District, Office/Business District, Community Business I District, Community Business II District, Resort District, Institutional District, Highway Business District, Regional Business District, River District, Commercial Industrial District, and Industrial District.

On March 5, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on the March 25, 2003, formal City Council agenda.

MINIMUM HOUSING CODE

Advocates for a Complaint-Only Inspection System

Ms. Bonnie Bailey, Housing Code Task Force member, passed out to Council the myths and realities regarding the Minimum Housing Code. She then reviewed with Council the history of the Minimum Housing Code and how their proposal became a compromise, which the majority of the Task Force members did agree on. She pointed out that people cause fires and the overwhelming majority of fires are not remotely related to the Housing Code. She explained how the Code is actually more defined or restrictive. She pointed out that our housing and rents, without substantial increases in personal income, have increased and the supply has only had a minimal increase. Other cities throughout the state and the country have progressive and aggressive programs to locate and address substandard housing. She explained how providers of affordable housing are impacted by fees, taxes, tax increases, re-evaluations and insurance costs. These costs are due and payable immediately and cannot be pro-rated over time. The mandatory inspection process is a cost where the City Council can make a positive difference and have a positive impact on affordable housing cost. Investors must feel they can have a fair return on their investment of money and their time or they will not take the risk. She then explained that the City should consider and adopt a complaint-based system with a mandatory component that is targeted and is focused on at risk properties, or irresponsible property owners whether the properties are single-family owner-occupied dwellings, single-family tenant occupied residents or multi-family residential structures.

Mr Steve Duncan, Housing Code Task Force member, briefly explained how their proposal outlines how to locate substandard housing by three methods (1) following N. C. General Statutes where 5 citizens may file a complaint; (2) complaints from citizens; and (3) a plan by the Building Inspection Department that fairly and systematically locates or identifies properties or areas of properties where substandard housing appears to exist. In addition, the proposal will include (1) a specifically designed Housing Complaint Inspection Form for City inspectors to follow; and (2) a Community Housing Inspection Board made up of representatives of homeowners, tenants and professionals from the real estate community.

Mr. Duncan said that the mandatory inspection and enforcement is applied when evidence is found that clearly warrants an inspection of any residential unit. He explained that should a warranted inspection show violations which substantially fail the Housing Complaint Inspection Form (25% or more of the identified areas of inspections or if the property was found to have any of the issues that may require immediate condemnation), the property owner shall be given up to 30 days to correct items that violate the safety checklist. The property will then be subject to a mandatory re-inspection program following the detailed City inspection guidelines and forms, until the owner corrects all violations and has successfully completed at least one additional mandatory inspection. He then explained when a property would be released from the mandatory inspection program.

Mr. Duncan then reviewed with Council the repeat offender program and the voluntary inspection incentive and recognition program.

Advocates for a Mandatory Inspection System

Mr. Jim Barrett, Housing Code Task Force member, reviewed the history of the Code, the case for regular code enforcement, the benefits of our Code, the affordability factor, the current Task Force's commonalities and differences and technical recommendations. They believe the code is best implemented by a fair and impartial schedule of inspections administered throughout the City. This position is in contrast to that of other members of the Task Force who believe the Code can be enforced through complaints and voluntary compliance. They disagree.

They feel a complaint-based system relies on the vigilance of tenants to complain about their landlords and risk retribution. Tenants have been known to move before they would complain for fear of losing their apartments. Furthermore, complaints can always be tainted by personal bias or a desire for retribution. The resolution of each complaint could become a cumbersome, and often adversarial process.

A system of inspections is designed to diffuse the interpersonal element in enforcement. Every housing structure is required to submit to a set calendar of inspections thereby avoiding the appearance that enforcement is singling out certain people for enforcement.

Complaints rely on what can be observed by a layperson. The most serious dangers affecting a house can only be seen by testing the electrical panel, examining the structure underneath the house, and going on the roof and inspecting the chimney flue.

Complaints react to a danger that is serious enough to be observed. A regular schedule of inspections are intended to be preemptive, to implement the elements of Code to catch deterioration before it causes more serious problems.

They endorse the present system of regular scheduled inspections, however, they believe improvements can be made by rewarding landlords who have proven themselves to be responsible and by eliminating redundancy.

In conclusion, they believe that a well-enforced housing code is a benefit to our whole community. Our regular inspections and enforcement: (1) focuses on health and safety; (2) utilizes the experience of unbiased professionals to identify hazards – not the layperson's suspicion of what a hazard might be; (3) preserves our housing stock and neighborhoods; (4) strengthens and increase our tax base. Cuts the City's firefighting and demolition costs. Protects renters and homebuyers from deceptive and dangerous practices and conditions; (5) is fair as it expects and enforces compliance across the board; and (6) requires the private sector to maintain housing, rather than shifting that burden to the taxpayers. Provides a means for property owners to insulate themselves from liability – if they comply with the minimum standards.

Building Safety professionals know that complaint driven codes don't work. They know that to reduce the enforcement power of the code will be to render it unenforceable. As one county inspector stated "with a complaint system you'll see the return of widespread substandard housing in the city and you will begin to look like the county again."

Fire data, while controversial to some, is something that this Council should not ignore. Supplemental materials from the National Fire Data Center point time and time again to the increased incidence of fire in homes due to substandard conditions and the impact that this has had on the whole community. Let us remain a leader. Let us err on the side of safety.

Our city's housing policies should both produce and maintain good affordable housing. Housing code enforcement and compliance is good business. Support code enforcement and provide the financial resources needed to Building Safety so that they can do their job.

Mr. James Davis, third party inspector for the City, felt that the complaint-based system is putting the tenants and neighbors as the front line for inspections. Either the house has to look so bad outside for a neighbor to complaint, or the tenant has to have the knowledge and courage to make the complaint. As an inspector, he does things that are not immediate apparent, e.g., he crawls underneath the house looking for erosion that might undermine the foundation. If some erosion is found, it can be addressed before a real problem occurs in that foundation. In addition, he runs the furnace to determine if it's malfunctioning, he looks down the chimney for blockages, which allow gases to back up into the house, and he takes off the electrical panel to see if wiring is done properly. The point is that they address a problem before it becomes serious.

Mr. Gene Bell, Housing Code Task Force member, said that people need to be assured that their investments are protected. If we don't have some way to ensure the houses are maintained, there are a number of residents who are struggling and who have a tendency to compromise their safety to meet their dream and we don't want them to be victimized.

City Staff Presentation

Director of Building Safety Terry Summey thanked and commended the Housing Code Citizen Task Force. He said that during the past nine-months, staff and a 21-member Housing Code Citizens Task Force have been meeting to discuss the Minimum Housing Code. The Task Force discussed various issues from technical standards to issues of enforcement. Enforcement was the focal point of disagreement. The Task Force was unable to arrive at a compromise on changes to the Housing Code. The City's Risk Manager, John Miall, facilitated the last four months of the Task Forces' meetings and arising out of that facilitation were the two separate Power Points City Council has just heard. Some of the issues and concerns discussed by the Task Force include but are not limited to:

- Enforcement of the Code (Mandatory, Complaint or Hybrid of both)
- Technical changes to the housing standards.

- Discussion about fees
- Increased penalties for those rental units not in compliance.

Councilman Peterson asked that City staff give Council a recommendation on what they feel would be the best system, which would not be based upon political considerations, but their experience and expertise. He felt that since this is such a complex issue, City Council might wish to review the inspection of rental dwellings and the inspection of owner-occupied dwellings at two separate worksessions.

Mr. Summey requested Council give City staff time to review both proposals and to come back to Council at a worksession with details, which would include a suggested recommendation as to the type of enforcement program and changes to the Code. As this is an educational process for Council, at the future worksession City Council will have a better understanding of the information presented today.

Vice-Mayor Bellamy asked Mr. Summey to provide some additional information: the differences between the City's Housing Code and Buncombe County's Housing Code; how did the voluntary compliance work prior to 1993; what are the condemnation requirements; what are our inspection fees; a copy of the existing complaint-driven form; and information on how often the complaint-driven from is used. In addition, Councilwoman Jones asked for a list of the technical changes that were generally agreed to by the entire Task Force.

It was the consensus of Council to review the information presented, have City staff report back to Council with some recommendations and then Council will be in a better position to ask questions and give their direction to staff and then set a public hearing.

N.C. DEPT. OF TRANSPORTATION AGREEMENT FOR PACK SQUARE RENAISSANCE PROJECT

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

The Pack Square Conservancy requested funds in the amount of $25,000 from the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

Since NCDOT can only provide these funds to municipalities, Pack Square Conservancy and NCDOT requested that we accept the money from the state and pass it through to the Conservancy. The City will enter into a contract with the Conservancy for the $25,000. This grant requires no match and will not cost the City any out-of-pocket costs.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

N.C. DEPT. OF TRANSPORTATION AGREEMENT FOR NEW HAW CREEK ROADWAY IMPROVEMENTS

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

In April 2001, City Council recommended that a task force be established to work on pedestrian safety issues within the Haw Creek Valley. The Task Force consists of City and NCDOT staff in addition to community residents. The group developed the first phase of the plan, which includes installing sidewalk from Arco Road north to Beverly Road on New Haw Creek Road and on Avon Road.

This agreement (which requires no match) will allow the City to accept money from NCDOT in the amount of $150,000 to go toward roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

While these funds cannot be used to install sidewalk on New Haw Creek Road, they will be used to install curb and gutter, resurface the street and install storm drainage pipes and structures needed to complete the sidewalk. This funding is from the NCDOT Small Urban Funds, which was limited at the time of our application to $150,000. (Currently the maximum amount of the grant is $250,000.) These funds are limited to improvements on State maintained roadways.

In Fiscal Year 2003-04 staff will request an additional $250,000 for funds to extend the project from Arco Road south to the main entrance to Haw Creek on New Haw Creek.

In February 2003, City staff was notified that the City was awarded a TEA 21 Enhancement Grant in the amount approximately $172,000 to install sidewalk on New Haw Creek Road and Avon Road. This $150,000 was used as a match for the project in addition to $40,000 from the City and $5,000 from the Haw Creek Community Association. The City's portion of the project is currently budgeted in the Capital Improvement Program.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

Ms. Ball responded to questions from Councilman Peterson regarding the TEA 21 Enhancement Grant.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

N.C. DEPT. OF TRANSPORTATION AGREEMENT FOR INSTALLATION OF PEDESTRIAN SIGNALS

Transit Services Director Bruce Black said that this is the consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) to install pedestrian signals at three locations.

This agreement will allow for the installation of pedestrian signals at the following locations: (1) US 25 (Hendersonville Road) and Wal-Mart/Deerfield; (2) US 70 (Tunnel Road) and Riceville Road; and (3) US 25 (Biltmore Avenue) and Victoria Road.

The NCDOT estimates the amount for this installation will be approximately $43,000, all of which is allocated for this project in the Transit Services Department budget though the vehicle registration funds.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for the installation of pedestrian signals at three locations.

Vice-Mayor Bellamy suggested two additional intersections in the future: (1) Hilliard and Clingman Avenues; and (2) Montford Avenue near Hunter Banks.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FORMALIZING PARKING APPEALS

Transit Services Director Bruce Black said that this is the consideration of an ordinance authorizing the City Manager to institute and appeals process for the adjudication of parking citations and late penalties.

The City of Asheville currently handles parking appeals on a case-by -case basis. Citizens who think they have justifiable reasons for a parking citation to be dismissed have either filled out a City of Asheville Parking Services Appeals form or made their request orally or in letterform. In an effort to provide that all citizens can avail themselves of this process and that it be clearly posted in the City Code of Ordinances for their reference, staff recommends City Council adopt an ordinance allowing the City Manager to establish an appeal process for persons receiving a civil penalty.

Staff requests that City Council approves the ordinance.

Vice-Mayor Bellamy asked staff review the policy to make sure that people realize the 15-day penalty includes Saturdays and Sundays.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Councilman Mumpower asked for the Mayor to research a way that the Consent Agenda items be outlined for the public at the formal meeting to show the good things that the City is doing.

GRANT FOR POLICE DEPARTMENT TRAFFIC UNIT

Police Chief Will Annarino said that this is the consideration of a resolution to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit.

Aggressive driving is one of the top complaints received by Asheville Police Officers. The types of aggressive driving violations that are most problematic in the City of Asheville are speeding, red light/ stop sign, erratic lane changes, following too closely and driving while impaired. A dedicated traffic unit would be able to help reduce the incidences of aggressive driving through targeted enforcement, educational programs and focused traffic studies aimed at reducing the number of accidents on high incidence roads.

The Governor's Highway Safety Program offers a four-year grant with graduated match requirements in the personnel, equipment and additional costs categories. The Asheville Police Department is requesting $474,438 in grants from the Governor's Highway Safety Program to hire and train four officers and one supervisor, and to purchase five vehicles and computer equipment for the unit in the first year. The first year of the grant there is a 25% match on equipment and training, but there is no match for personnel. The match is $71,365.82 for the first year, which will require an appropriation of $71,365.82 from the Contingency account. Upon notification of grant award, a budget amendment will be brought to Council for the full amount of the grant award, including the City's local match. The second year request is for $202,109.72, with a local match of $51,921.43. The third year request is for $209,971.07 with a local match of $106,379.54. In the fourth year the City is required to cover 100% of the grant, which will be $218,146.87.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire and train a traffic unit with four officers and one supervisor to reduce the incidence of aggressive driving in the City of Asheville.

Councilman Dunn questioned if this was a good grant in the long-run since in the fourth year the City is required to cover 100% of the grant.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At the request of Vice-Mayor Bellamy, Chief Annarino updated Council on the riot at the Asheville Mall. Vice-Mayor Bellamy asked that the notification system be expanded to Council members should an emergency situation arise. Mayor Worley explained that there is a system in place and suggested that any Council member who has a concern regarding a situation to call the City Manager or Police Chief.

WATER TREATMENT PLANT TOURS

Interim Water Resources Director David Hanks said that this is the consideration of discontinuing the tours of the North Fork Water Treatment Facility and the Mills River Water Treatment Plant.

The Environmental Protection Agency (EPA) has mandated that all water systems serving more than 3,300 customers have a Vulnerability Assessment (VA) conducted effective January 1, 2003. The City of Asheville and the Regional Water Authority of Asheville, Buncombe and Henderson (RWA) applied for an EPA grant of $115,000.00 to have the VA done per the EPA requirements. The RWA water system was one of only three (3) water systems in North Carolina to apply for and receive the EPA grant, which was voluntary in 2002. The grant required that the VA be completed by March 31, 2003. The United States Congress has since passed a law requiring all water systems to have a VA conducted which is the EPA mandate effective January 1, 2003, with completion by July 1, 2004, depending on the size of the water system.

The RWA VA was conducted by the engineering firm, Brown and Caldwell (B&C), which is nationally recognized as experts in the field of these assessments. The project manager for B&C was given carte blanche control of the process with the understanding that in no way did employees of the Water Resources Department want to skew the results of the VA. The entire water system was looked at along with the water treatment plants. The VA lists findings and proposals, which the consultant recommends should be implemented. One such proposal is limiting access to the water treatment plants and watersheds to essential access only, including eliminating tours of the facilities. The concern from the consultants was not only possible terrorist attacks from extremists groups but the liability from groups and tours that could have someone

I. The Planning and Zoning Commission at its March 5, 2003, meeting voted 6-1 to recommend approval of the rezoning as well.

Mr. Gerald Green, representing the owner, felt the property is more suitable for an office component. The character of the area has been changing over the past few years and he urged Council to vote in favor of the rezoning.

Mayor Worley closed the public hearing at 5:48 p.m.

Upon inquiry of Councilman Peterson, Mr. Pettibone said that the buffer requirements would depend on what the owner will use the property for.

Councilman Peterson was concerned that since the Sweeten Creek Road Widening Project is on the N.C. Dept. of Transportation's (NC DOT) Transportation Improvement Plan, that more commercial property will be developed along that stretch of road and it will cost more for NC DOT to acquire the right-of-way, thus reducing the amount of money that can be used for other Asheville transportation projects. Planning & Development Director Scott Shuford replied that if we had an actual design for the road and knew what the taking would be, or what setbacks would be required, they would be in a position to measure set-back and development requirements off that design. However, the Sweeten Creek Road Widening Project is probably 7-8 years out and we don't have a projected right-of-way for it at this time. He did understand Councilman Peterson's concern that there might be a potential for a strip commercial pattern along Sweeten Creek Road but assured him that City staff doesn't feel that would be appropriate. However, given the location of this request, the lot is deep enough that if it is widened it probably will be able to continue to be used for small scale office or commercial use.

Councilwoman Jones was concerned that we were rezoning another piece of multi-family residential property and asked for a report on the amount of acreage contained in each of the different zoning classifications. Mr. Shuford said that we have been fortunate to develop and encourage some mixed-use districts, such as the Neighborhood Corridor District and the Urban Village District. He said that he would provide that information to Council as well.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3009. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE

D. PUBLIC HEARING TO CONSIDER AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE FLEXIBLE FRONT SETBACKS IN PEDESTRIAN-ORIENTED AREAS IN A VARIETY OF NON-RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3010 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE FLEXIBLE FRONT SETBACKS IN PEDESTRIAN-ORIENTED AREAS IN A VARIETY OF NON-RESIDENTIAL ZONING DISTRICTS

Mayor Worley opened the public hearing at 6:00 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for more flexible front setbacks in pedestrian-oriented areas in a variety of nonresidential zoning districts. This public hearing was advertised on March 14 and 21, 2003.

This code amendment provides for reduced front setback requirements in a variety of nonresidential zoning districts if pedestrian oriented design features are utilized. A definition of pedestrian oriented design is included as part of this ordinance. In effect, the incentive of a reduced front setback is provided as an option for developers if certain design standards are met and there is no conflict between the reduced setback and any scheduled road widening.

Using an example of the proposed Red Lobster building, Mr. Shuford explained how this code amendment would apply.

Affected districts include: Neighborhood Business District, Office II District, Office/Business District, Community Business I District, Community Business II District, Resort District, Institutional District, Highway Business District, Regional Business District, River District, Commercial Industrial District, and Industrial District.

On March 5, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:08 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3010. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTIONS OF INTENT TO ANNEX THE DEAVERVIEW ROAD AREA, THE CROWELL ROAD AREA, THE SMOKY PARK HIGHWAY AREA, THE SAND HILL ROAD AREA AND THE HENDERSONVILLE ROAD AREA AND SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Mr. Carter Pettibone, Urban Planner, said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in N C. Gen. Stat. sec. 143-318.11 (a) (4). This motion was seconded by Councilman Dunn and carried unanimously.

At 6:12 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

ADJOURNMENT

Mayor Worley adjourned the meeting at 6:12 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 25, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Terry M. Bellamy (maternity leave)

PLEDGE OF ALLEGIANCE

Col. Ray Green led City Council in the pledge of allegiance.

INVOCATION

Councilman Peterson gave the invocation.

SPECIAL RECOGNITION

Councilwoman Jones introduced her new daughter Gabriella Elizabeth Jones.

I. PROCLAMATIONS:

A. RECOGNITION OF THE ASHEVILLE HIGH SCHOOL'S GIRL'S BASKETBALL TEAM WINNING THE STATE 3-A CHAMPIONSHIP

Mayor Worley read a Certificate of Recognition for the Asheville High School's Girl's Basketball Team winning the State 3-A Championship and how proud the City of Asheville is of the Team. He presented the Certificate to Head Coach Sonita Gibbs and team members.

B. PRESENTATION OF $25,000 GRANT

Asheville Parks and Greenways Foundation Chair Chuck Cloninger and Ms. Nancy Thompson, representing the Progress Energy Foundation, presented the City of Asheville with a check in the amount of $25,000 from a grant for the construction of the wetland/interpretive area at the French Broad River Park Phase IV.

On behalf of the City Council, Mayor Worley thanked Mr. Cloninger for his dedication to the Asheville parks and recreation program, and Ms. Thompson for Progress Energy Foundation's wonderful community partnership.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 11, 2003, AND THE WORKSESSION HELD ON MARCH 18, 2003

B. RESOLUTION NO. 03-35 - RESOLUTION AUTHORIZING THE SALE OF PROPERTY ON 125 IRIS DRIVE TO NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE

Summary: The consideration of a resolution authorizing the Mayor to convey 125 Iris Drive to Neighborhood Housing Services (NHS) for $17,100.

On March 11, 2003, the City Council directed the City Clerk to advertise for upset bids on 125 Iris Drive. The advertisement ran in the Asheville Citizen-Times on March 14, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from NHS in the amount of $17,100 was not upset and the sale to NHS should be approved.

Planning Department staff recommends adoption of the resolution authorizing the sale of 125 Iris Drive to Neighborhood Housing Services for $17,100.

RESOLUTION BOOK NO. 27 – PAGE 330

C. ORDINANCE NO. 3005 - BUDGET AMENDMENT AMENDING THE WATER FUND TO PROVIDE FUNDING FOR AN EMERGENCY RESPONSE PLAN

35

Summary: The consideration of a budget amendment to reprogram funds to provide additional funding for an Emergency Response Plan.

The Regional Water Authority and Brown and Caldwell entered into an agreement for a Vulnerability Assessment in September 2002, and it is being funded with a $115,000 Environmental Protection Agency (EPA) grant. The Assessment is complete and was presented to the City Council in February, but it is now required that the Authority develop an Emergency Response Plan that incorporates the results of the Vulnerability Assessment. An Emergency Response Plan will include plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. It shall also include actions, procedures, and identification of equipment, which can eliminate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water.

The cost of the plan is $45,000 with $16,000 being provided from the remaining EPA grant funds that were granted to the Authority in September of 2002 to conduct the Vulnerability Assessment and an Emergency Response Plan. An additional $29,000 is needed to complete funding for the Emergency Response Plan. Staff is recommending reprogramming $29,000 from the Master Plan Improvements to the Water Security Assessment (Vulnerability Assessment) to complete funding for the Emergency Response Plan.

Staff recommends that City Council approve a budget amendment to reprogram funds to provide additional funding for an Emergency Response Plan.

ORDINANCE BOOK NO. 20 – PAGE 243

D. RESOLUTION NO. 03-36 - RESOLUTION FINDING THE RIGHT-OF-WAY DESIGNATED AS HENRY STREET IS NOT PART OF AN ADOPTED STREET PLAN

Summary: The consideration of a resolution finding that Henry Street is not part of an adopted street plan.

The Asheville Area Chamber of Commerce submitted to the City a Declaration of Withdrawal for Henry Street. The Chamber of Commerce owns all of the property, which abuts the alley. The property is needed for construction of the new Chamber of Commerce building and parking lot. The alley is not used as an ingress or egress nor has it ever been used as such. The Chamber's request for a resolution from Council finding that Henry Street is not part of the street plan adopted under G. S. 136-66.2, is supported by the legal research performed by the law firm of Van Winkle, Buck, Wall, Starnes & Davis, P.A., certifying that the following three criteria have been met.

N. C. Gen. Stat. sec. 136-96 permits the filing of a Declaration of Withdrawal of any street dedicated to public use and not utilized within 15 years from and after dedication.

In order to withdraw a street from public dedication, N. C. Gen. Stat. sec. 136-96 requires:(1) that the street must have been dedicated to public use; (2) the person desiring to withdraw, must be the original dedicator or someone claiming under the original dedicator; and (3) that the street not have been opened and used by the public for 15 years from and after the dedication. The statute goes on to state that upon request, the City shall adopt a resolution stating whether the street is or is not part of the street plan adopted under G. S. 136-66.2.

Public Works Department staff have consulted with all appropriate City departments and determined that the right of way designated as Henry Street as shown in Plat Book 8, Page 72 is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that the right-of-way designated as Henry Street as shown in Plat Book 8, Page 72, is not part of an adopted street plan.

RESOLUTION BOOK NO. 27 – PAGE 331

E. ORDINANCE NO. 3006 - ORDINANCE RENEWING A FRANCHISE ORDINANCE WITH TROLLEY LEASING LLC FOR A NARRATED HISTORIC TOUR TROLLEY ON THE STREETS IN THE CITY OF ASHEVILLE

Summary: The consideration of renewal of an existing franchise ordinance for the operation by Trolley Leasing, LLC, of a narrated historic tour trolley on the streets of the City of Asheville.

For the last year, Asheville Historic Trolley Company (AHTC) has operated a narrated historic tour in Asheville using a 30 foot bus that looks like a trolley car. The venture has been successful to the extent that the AHTC would like to renew the franchise for a period of two years. There have been no complaints and several compliments received by the City over the course of the last year.

The tour will continue to follow an established route, and could occur up to four times per day.

The operator is required to meet with the city Traffic Engineer to review and get approval for the routes that the historic tour will run.

The vehicle is a 30 foot rubber tired trolley with open sides where the windows would normally be. This area can be closed off with clear plastic roll down curtains in inclement weather. The operator has assured the staff that the narration from within the trolley is not audible outside the vehicle.

The vehicle is driven and the tour narrated by one person, but could also include a second person if appropriate.

The franchise ordinance also limits operation of the narrated tour from 7:00 a.m. to 8:00 p.m., Sunday through Thursday, and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. For City-recognized holidays and days on which City-approved festivals occur in the Central

Business District, the operating hours may be extended to 12:00 Midnight, regardless of the day of the week. For charter operations the hours of operation are not limited to the above providing that Trolley Leasing meets all local state, and federal laws regarding the operation of a chartered vehicle. The franchise fee is one dollar per day of projected operation.

The ordinance is drawn to be as narrowly as possible, and does not attempt to franchise any other part of the business operation except that part which will regularly and routinely utilize local public rights-of-way with the potential of repeated constraints to the flow of traffic.

City staff recommends City Council renew the franchise ordinance with Trolley Leasing, LLC, for a two-year period.

ORDINANCE BOOK NO. 20 – PAGE 245

F. RESOLUTION NO. 03-37 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE DEPARTMENT OF HOMELAND SECURITY FOR FUNDS TO ASSIST WITH THE PURCHASE OF EQUIPMENT FOR THE ASHEVILLE FIRE DEPARTMENT

Summary: The consideration of a resolution to apply for and enter into an agreement with the Department of Homeland Security for funds to assist with the purchase of Self-Contained Breathing Apparatus and Portable Radios for Asheville Fire Rescue.

In recent years there has been improved technology in Self-Contained Breathing Apparatus (SCBA) and related equipment. Asheville Fire Rescue decided to switch to the improved technology SCBA manufactured by Scott. Each unit is $2,800 so it is cost prohibitive for the Department to replace all of the units at one time. At the same time, it is essential that all of the fire vehicles operate with the same SCBAs so that all fire personnel are trained on the same type of equipment. In addition, this grant provides an opportunity to update other types of equipment, such as VHF Portable Radios to enhance interoperability.

Asheville Fire Rescue is requesting $174,578 in grants from the Department of Homeland Security for 44 SCBAs and spare bottles, 130 SCBA masks and 24 Portable Radios. The grant requires a 30% local match, or $52,373.40, which will require an appropriation of $52,373.40 from the Contingency account. Upon notice of the grant award, a budget amendment will be brought to City Council for the full amount of the grant award, including the City's match.

The Fire Rescue Department recommends the City of Asheville apply for and enter into an agreement for grant funds to assist with the purchase of Self-Contained Breathing Apparatus and Portable Radios.

RESOLUTION BOOK NO. 27 – PAGE 332

G. RESOLUTION NO. 03-38 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS FOR A PORTION OF THE AIR RIGHTS ADJACENT TO 21 BATTERY PARK AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for a portion of the air rights adjacent to 21 Battery Park Avenue comprising a total of 1,210.80 square feet.

A bid from 21 Battery Park, LLC, in the amount of $9,000.00, has been received for the purchase of a portion of the air rights adjacent to its property at 21 Battery Park. The bid is not less than the appraised value of $9,000.00

The property is zoned Central Business District and fronts on Battery Park Avenue to the south with an alley at the east and north. The proposed purchase is made up of three air right parcels and the appraisal by Mickey Foster dated December 1, 2002, estimates a value for each parcel.

North side:	507.17 sq. ft.	$2,789
East side:	290.18 sq. ft.	$1,596
South side:	413.45 sq. ft.	$4,548
Total	1,210.80 sq. ft.	$8,933 rounded to $9,000

The appraisal takes into consideration that the air right parcels are not 100% of the air rights but limited in size to the space from 36' above ground level to 72' above ground level. Furthermore, the limited potential uses of the underlying land are considered.

There is no current or contemplated use for the air rights by the City. Staff recommends that the use of the air rights space be limited to roof overhang and/or open balconies. The sale of the air rights will enable 21 Battery Park, LLC, to proceed with construction of the proposed improvements at 21 Battery Park Avenue that include a multi-use building with six levels.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 333

H. RESOLUTION NO. 03-39 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

The Pack Square Conservancy requested funds in the amount of $25,000 from the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

Since NCDOT can only provide these funds to municipalities, Pack Square Conservancy and NCDOT requested that we accept the money from the state and pass it through to the Conservancy. The City will enter into a contract with the Conservancy for the $25,000. This grant requires no match and will not cost the City any out-of-pocket costs.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

RESOLUTION BOOK NO. 27 – PAGE 334

I. RESOLUTION NO. 03-40 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR NEW HAW CREEK ROADWAY IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

In April 2001, City Council recommended that a task force be established to work on pedestrian safety issues within the Haw Creek Valley. The Task Force consists of City and NCDOT staff in addition to community residents. The group developed the first phase of the plan, which includes installing sidewalk from Arco Road north to Beverly Road on New Haw Creek Road and on Avon Road.

This agreement (which requires no match) will allow the City to accept money from NCDOT in the amount of $150,000 to go toward roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

While these funds cannot be used to install sidewalk on New Haw Creek Road, they will be used to install curb and gutter, resurface the street and install storm drainage pipes and structures needed to complete the sidewalk. This funding is from the NCDOT Small Urban Funds, which was limited at the time of our application to $150,000. (Currently the maximum amount of the grant is $250,000.) These funds are limited to improvements on State maintained roadways.

In Fiscal Year 2003-04 staff will request an additional $250,000 for funds to extend the project from Arco Road south to the main entrance to Haw Creek on New Haw Creek.

In February 2003, City staff was notified that the City was awarded a TEA 21 Enhancement Grant in the amount approximately $172,000 to install sidewalk on New Haw Creek Road and Avon Road. This $150,000 was used as a match for the project in addition to $40,000 from the City and $5,000 from the Haw Creek Community Association. The City's portion of the project is currently budgeted in the Capital Improvement Program.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for roadway improvements to New Haw Creek Road from Arco Road north to Beverly Road.

RESOLUTION BOOK NO. 27 – PAGE 335

J. RESOLUTION NO. 03-41 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF PEDESTRIAN SIGNALS

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) to install pedestrian signals at three locations.

This agreement will allow for the installation of pedestrian signals at the following locations: (1) US 25 (Hendersonville Road) and Wal-Mart/Deerfield; (2) US 70 (Tunnel Road) and Riceville Road; and (3) US 25 (Biltmore Avenue) and Victoria Road.

The NCDOT estimates the amount for this installation will be approximately $43,000, all of which is allocated for this project in the Transit Services Department budget.

City staff recommends City Council authorize the City Manager to sign a municipal agreement with NCDOT for the installation of pedestrian signals at three locations.

RESOLUTION BOOK NO. 27 – PAGE 336

K. ORDINANCE NO. 3007 - ORDINANCE AMENDING CHAPTER 19 OF THE CODE OF ORDINANCE TO ALLOW THE CITY MANAGER TO ESTABLISH AN APPEAL PROCESS FOR PERSONS RECEIVING A CIVIL PENALTY BY A CITY OF ASHEVILLE EMPLOYEE

Summary: The consideration of an ordinance authorizing the City Manager to institute and appeals process for the adjudication of parking citations and late penalties.

The City of Asheville currently handles parking appeals on a case-by -case basis. Citizens who think they have justifiable reasons for a parking citation to be dismissed have either filled out a City of Asheville Parking Services Appeals form or made their request orally or in letterform. In an effort to provide that all citizens can avail themselves of this process and that it be clearly posted in the City Code of Ordinances for their reference, staff recommends City Council adopt an ordinance allowing the City Manager to establish an appeal process for persons receiving a civil penalty.

Staff requests that City Council approves the ordinance.

ORDINANCE BOOK NO. 20 – PAGE 250

L. RESOLUTION NO. 03-42 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR A GRANT FOR A POLICE DEPARTMENT TRAFFIC UNIT

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit.

Aggressive driving is one of the top complaints received by Asheville Police Officers. The types of aggressive driving violations that are most problematic in the City of Asheville are speeding, red light/ stop sign, erratic lane changes, following too closely and driving while impaired. A dedicated traffic unit would be able to help reduce the incidences of aggressive driving through targeted enforcement, educational programs and focused traffic studies aimed at reducing the number of accidents on high incidence roads.

The Governor's Highway Safety Program offers a four-year grant with graduated match requirements in the personnel, equipment and additional costs categories. The Asheville Police Department is requesting $474,438 in grants from the Governor's Highway Safety Program to hire and train four officers and one supervisor, and to purchase five vehicles and computer equipment for the unit in the first year. The first year of the grant there is a 25% match on equipment and training, but there is no match for personnel. The match is $71,365.82 for the first year, which will require an appropriation of $71,365.82 from the Contingency account. Upon notification of grant award, a budget amendment will be brought to Council for the full amount of the grant award, including the City's local match. The second year request is for $202,109.72, with a local match of $51,921.43. The third year request is for $209,971.07 with a local match of $106,379.54. In the fourth year the City is required to cover 100% of the grant, which will be $218,146.87.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire and train a traffic unit with four officers and one supervisor to reduce the incidence of aggressive driving in the City of Asheville.

RESOLUTION BOOK NO. 27 – PAGE 337

M. MOTION SETTING A PUBLIC HEARING ON APRIL 8, 2003, TO CONSIDER THE ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS FOR 2003-04

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT

RESOLUTION NO. 03-43 - RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO PLASTICARD LOCKTECH INTERNATIONAL

Mayor Worley opened the public hearing at 5:20 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution approving an economic development incentive grant to Plasticard Locktech International for an expansion of operations into the city limits and creation of new jobs. This public hearing was advertised on March 14, 2003.

Plasticard Locktech International (PLI) specializes in printing on plastic and is the largest producer of plastic hotel keycards in the nation. The company was founded in the area in 1988 and has grown steadily ever since. PLI is now located on Pond Road (outside the city limits) in a facility they own. The company is proposing to purchase and relocate operations into a building located in the Sweeten Creek Industrial Park (inside the city). The expansion would involve an investment of $2.275 million in building improvements and new equipment and creation of 16 new jobs with an average hourly wage of $12.23 plus benefits.

Comparing this project to the criteria established in the City of Asheville Economic Development Incentive Policy, Council has, preliminarily, determined to award a grant of $25,000 payable in equal installments of $5,000 over 5 years commencing after all capital investment and new jobs are placed in service. A performance agreement setting these and other terms and conditions must be mutually accepted and executed by the company and City and approved, along with the grant, at a formal public hearing.

Staff recommends City Council accept and execute the proposed Performance Agreement and offer the economic development incentive grant to Plasticard Locktech International under the terms and conditions in the Performance Agreement.

Mr. Mark Goldberg, representing PLI, spoke in support of the economic development incentive grant.

Upon inquiry of Councilman Peterson, Mr. Goldberg explained the many fringe benefits offered by PLI, which does include health care benefits.

Mayor Worley closed the public hearing at 5:25 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 03-43. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 338

B. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY, TOTALING 17.58 ACRES, KNOWN AS BILTMORE PARK TOWN CENTER WEST, PHASE I, LOCATED ON THE WEST SIDE OF SCHENCK PARKWAY AND SCHENCK CRESCENT FROM CENTRAL BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT, AND TO CONSIDER THE SITE MASTER PLAN APPROVAL

ORDINANCE NO. 3008 - ORDINANCE TO REZONE A PORTION OF PROPERTY, TOTALING 17.58 ACRES, KNOWN AS BILTMORE PARK TOWN CENTER WEST, PHASE I, LOCATED ON THE WEST SIDE OF SCHENCK PARKWAY AND SCHENCK CRESCENT FROM CENTRAL BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT, AND TO CONSIDER THE SITE MASTER PLAN APPROVAL

Mayor Worley opened the public hearing at 5:26 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone a portion of property, totaling 17.58 acres, known as Biltmore Park Town Center West, Phase I, located on the west side of Schenck Parkway and Schenck Crescent from Central Business District to Urban Village District, and to consider an amendment to the Master Plan for the Biltmore Park Town Center Urban Village. This public hearing was advertised on March 14 and 21, 2003.

On January 31, 2003, Biltmore Farms submitted a request to rezone a portion of property (PIN No. 9645-01-46-4610) from Central Business District to Urban Village District in the extraterritorial jurisdiction area in the southern part of the City. In conjunction with this, an amendment is required for the Biltmore Park Town Square Urban Village Master Plan.

The proposed urban village addition to the Town Center Master Plan totals 17.58 acres. This area will be used to develop 175 residential units (town homes, condominiums and apartments) and 238,000 square feet of commercial and office space. The development will be housed in roughly 12 new buildings arranged on new streets and blocks created in the urban village area. New streets will be built with cross streets and stub streets as needed for future expansion phases. Two parking garages are proposed as well as several surface lots and on street parking. Public spaces will be provided via the pedestrian sidewalk zones and adjacent open space areas. The Master Plan will also comply with all other Urban Village District guidelines.

The proposed development will be developed as a part of the previously approved totals for the Town Center project of 320 residential units, 350,000 gross square feet of commercial space, 200,000 square feet of office space and 150,000 other non-defined square feet of space.

Access to the Town Center project is by Schenck Parkway and the signalized intersection at Long Shoals Road. The project is expected to be constructed within a timeframe comparable to the N. C. Dept. of Transportation improvement project on Long Shoals Road.

The Town Center Master Plan area will include several acres of open space made up of park areas, greenway trails and connections to the wider Biltmore Park development.

The Urban Village zoning is established to create mixed-use higher density development that is economically vital and pedestrian oriented. Urban Village guidelines encourage vibrant streetscapes and a full range of retail and office uses as well as a variety of housing types throughout the development area.

The Planning and Zoning Commission met on March 5, 2003, and voted 6-0 to recommend approval of the rezoning request and amendments to the Master Plan. Staff also supports the rezoning request. The Technical Review Committee conditions will be met for this project.

City staff recommends City Council (1) consider the rezoning of a 17.58 parcel of land from Central Business District to Urban Village District and (2) consider amendment to the Biltmore Town Center Master Plan.

Upon inquiry of Councilman Dunn, Mr. Glines said that the N. C. Dept. of Transportation is currently acquiring the right-of-way on Long Shoals Road.

Upon inquiry of Councilman Ellis, Mr. Glines said that once the project is completed it will have an estimated tax value of approximately $50 Million.

Upon inquiry of Councilman Peterson, Mr. Shuford explained that they have an agreement with Biltmore Farms that as the phases are completed in Biltmore Park they will petition for voluntary annexation.

Mr. Walter Plaue was concerned about losing valuable residentially-zoned property to high priced housing, which is not doing anything to help our shortage of affordable housing in Asheville.

Mayor Worley closed the public hearing at 5:42 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3008, to rezone a portion of property, totaling 17.58 acres, known as Biltmore Park Town Center West, Phase I, located on the west side of Schenck Parkway and Schenck Crescent from Central Business District to Urban Village District. This motion was seconded by Councilman Ellis and carried unanimously.

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Councilwoman Jones moved to approve the amendment to the site master plan for Biltmore Park Town Center West, Phase I. This motion was seconded by Councilman Ellis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 3695 SWEETEN CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3009 - ORDINANCE TO REZONE PROPERTY LOCATED AT 3695 SWEETEN CREEK ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 5:44 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone property located at the northwest corner of the intersection of Sweeten Creek Road and Royal Pines Drive from RM-8 Residential Multi-Family Medium Density District to Commercial Business I District. This public hearing was advertised on March 14 and 21, 2003.

The applicant, Roger Chipman, is requesting a rezoning from RM-8 to CB I for properties totaling 0.4-acre located at the intersection of Sweeten Creek Road and Royal Pines Drive (PIN Nos. 9654.10-36-2520 and 9654.10-36-1485) in order to develop the properties for uses permitted in the CB I District. The purpose of the CB I District is to provide for medium-density business and service uses serving several residential neighborhoods

The properties are located inside the City limits in an area that has a variety of uses and zoning. There is RM-8 zoning to the north and RS-4 to the west, both containing a mix of single and multi-family residences. To the south across Royal Pines Drive, the zoning is CB II and properties contain an office and a gas station/convenience store. Across Sweeten Creek Road the land use is single-family residential that is under Buncombe County's Limestone Township zoning.

There are two existing buildings on the site, both of which are currently residences and the site has frontage on both Sweeten Creek Road and Royal Pines Drive. Sweeten Creek Road is highly traveled north-south thoroughfare that provides direct access to a number of commercial uses as well as access to residential development s and individual residences. Properties located to the south across Royal Pines Drive are commercial in nature and use Royal Pines Drive for access.

The site is located at the intersection of a major north-south thoroughfare and an east-west connector street, Royal Pines Drive, which already provides access to a number of commercial uses across the street. The site can also provide the surrounding neighborhood small-scale commercial uses that the residents can walk to without having to cross busy streets.

CB I zoning also provides for a more appropriate transition from RS-4 and RM-8 to CB II than those residential districts directly abutting CB II. Any development of the property would also be required to meet the standards of the Unified Development Ordinance, including parking and buffering standards.

City staff feels CB I is an appropriate zoning category for the properties and recommends approval of the request to rezone 3695 Sweeten Creek Road from RM-8 to Community Business

I. The Planning and Zoning Commission at its March 5, 2003, meeting voted 6-1 to recommend approval of the rezoning as well.

Mr. Gerald Green, representing the owner, felt the property is more suitable for an office component. The character of the area has been changing over the past few years and he urged Council to vote in favor of the rezoning.

Mayor Worley closed the public hearing at 5:48 p.m.

Upon inquiry of Councilman Peterson, Mr. Pettibone said that the buffer requirements would depend on what the owner will use the property for.

Councilman Peterson was concerned that since the Sweeten Creek Road Widening Project is on the N.C. Dept. of Transportation's (NC DOT) Transportation Improvement Plan, that more commercial property will be developed along that stretch of road and it will cost more for NC DOT to acquire the right-of-way, thus reducing the amount of money that can be used for other Asheville transportation projects. Planning & Development Director Scott Shuford replied that if we had an actual design for the road and knew what the taking would be, or what setbacks would be required, they would be in a position to measure set-back and development requirements off that design. However, the Sweeten Creek Road Widening Project is probably 7-8 years out and we don't have a projected right-of-way for it at this time. He did understand Councilman Peterson's concern that there might be a potential for a strip commercial pattern along Sweeten Creek Road but assured him that City staff doesn't feel that would be appropriate. However, given the location of this request, the lot is deep enough that if it is widened it probably will be able to continue to be used for small scale office or commercial use.

Councilwoman Jones was concerned that we were rezoning another piece of multi-family residential property and asked for a report on the amount of acreage contained in each of the different zoning classifications. Mr. Shuford said that we have been fortunate to develop and encourage some mixed-use districts, such as the Neighborhood Corridor District and the Urban Village District. He said that he would provide that information to Council as well.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3009. This motion was seconded by Councilman Peterson and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE FLEXIBLE FONT SETBACKS IN PEDESTRIAN-ORIENTED AREAS IN A VARIETY OF NON-RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3010 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE FLEXIBLE FONT SETBACKS IN PEDESTRIAN-ORIENTED AREAS IN A VARIETY OF NON-RESIDENTIAL ZONING DISTRICTS

Mayor Worley opened the public hearing at 6:00 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for more flexible front setbacks in pedestrian-oriented areas in a variety of nonresidential zoning districts. This public hearing was advertised on March 14 and 21, 2003.

This code amendment provides for reduced front setback requirements in a variety of nonresidential zoning districts if pedestrian oriented design features are utilized. A definition of pedestrian oriented design is included as part of this ordinance. In effect, the incentive of a reduced front setback is provided as an option for developers if certain design standards are met and there is no conflict between the reduced setback and any scheduled road widening.

Using an example of the proposed Red Lobster building, Mr. Shuford explained how this code amendment would apply.

Affected districts include: Neighborhood Business District, Office II District, Office/Business District, Community Business I District, Community Business II District, Resort District, Institutional District, Highway Business District, Regional Business District, River District, Commercial Industrial District, and Industrial District.

On March 5, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:08 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3010. This motion was seconded by Councilman Dunn and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTIONS OF INTENT TO ANNEX THE DEAVERVIEW ROAD AREA, THE CROWELL ROAD AREA, THE SMOKY PARK HIGHWAY AREA, THE SAND HILL ROAD AREA AND THE HENDERSONVILLE ROAD AREA AND SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Mr. Carter Pettibone, Urban Planner, said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population

The City of Asheville has initiated annexations for the past three years – six areas in 2001, five areas in 2002 and seven areas in 2003. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

It's now time for the City to consider the next phase of annexations for 2004. City staff has identified the following five areas with the potential for being annexed: (1) the Deaverview Road area; (2) the Crowell Road area; (3) the Smoky Park Highway area; (4) the Sand Hill Road Area; and (5) the Hendersonville Road area.

Mr. Pettibone said that under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. Those dates are as follows:

Adoption of Resolutions of Intent	March 25, 2003
Adoption of Plans of Services	April 8, 2003
Staff-Sponsored Public Informational Meeting	May 15, 2003
Public Hearings	May 27, 2003
Adoption of Annexation Ordinances	June 10, 2003
Effective Date of Annexations	June 30, 2004

Mr. Pettibone stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 15th day of May, 2003, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 27th day of May, 2003, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

He explained that the following five areas were considered with a variety of factors: (1) location; (2) smaller size than we typically annex; (3) commercial/industrial properties; (4) areas that did not have a lot of residential properties; and (5) areas that were well served with water and sewer:

Deaverview Road – This includes two convenience stores and one single-family at the intersection of Deaverview Road and Pisgah View Road. This contains four lots totaling 1.14 acres. The estimated population is two. If the property is annexed, it would bring in $1,442.66 in annual property tax revenue.

Crowell Road – This includes a lodging facility and auto repair facility on Crowell Road near the intersection of Smoky Park Highway and I-240 interchange. This contains two lots totaling 1.9 acres. The estimated population is zero. If the property is annexed, it would bring in $13,010.44 in annual property tax revenue.

Smoky Park Highway – This brings in whole of split-jurisdictional commercial property into the City in the Enka area. This contains one lot totaling 0.3 acres. The estimated population is zero. If the property is annexed, it would bring in $656.14 in annual property tax revenue.

Sand Hill Road – This is a small shopping center south of the BASF plant in the Enka area. This contains four lots totaling 4.2 acres. The estimated population is zero. If the property is annexed, it would bring in $4,612.06 in annual property tax revenue.

Hendersonville Road – This is a large area, mainly commercial and industrial, with a few multi-family properties and one single-family in the Arden area. This contains 39 lots totaling 85.5 acres. The estimated population is 38. If the property is annexed, it would bring in $112,406.64 in annual property tax revenue. This will require a capital expenditure for water and sewer, which will be the addition of two fire hydrants.

City staff recommends City Council adopt the resolutions of intent to begin the annexation process.

Upon inquiry of Councilman Dunn, Mayor Worley said that City Council will make the determination on whether to annex all or some of these areas on June 10, 2003. Adoption of the resolutions of intent will direct City staff to start gathering specific information and start the process to involve the public.

When Councilman Dunn asked how many small businesses were affected by these annexations, Mr. Pettibone said that he would provide Council with that breakdown, and in fact, that information is part of the calculations that City staff does to determine the use of the property for qualification for annexation.

Councilman Mumpower asked if these property owners are aware of possible annexation. Mr. Pettibone said that property owners are notified 30 days prior to the public information meeting. He explained that after the resolutions of intent are adopted, the next step would be a more detailed analysis in the Plans for Services. If Council chooses to proceed, then the property owners are notified.

Upon inquiry of Councilman Peterson, Mr. Pettibone said that the State requires the City to calculate the population based on census data.

Councilman Mumpower suggested that City staff contact the largest manufacturing plant in the Hendersonville Road area (Day International) to see how many people they employ and see what their circumstances are since the City has a prior history of adding to manufacturers' difficulties with a heavier tax burden at inappropriate times.

Councilman Dunn asked for a report identifying every small business that these annexations will affect, the type of business and how many people they employ. If we double their taxes, they can move out of the Asheville area entirely.

Councilman Peterson said there is a question of fairness. Some of the businesses along Hendersonville Road are in the City, pay City taxes, and receive City services. But the businesses across the street or just up the street are enjoying City services without paying for them. We have to consider whether the businesses in the City are being put at a competitive disadvantage because the businesses that are right on the edge of the City are benefiting from those services and not paying for them.

Councilman Mumpower agreed that annexation is one of the least pleasant tasks for City Council to consider, but it is a fairness issue. He suggested staff meet with manufacturing plants early on in the process to provide them with information on our impact on them and to find out their current status. City Manager Westbrook responded that the City has done just that in a previous annexation. He said that City staff met with a group of businesses using one of their conference rooms as a central area to meet.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 03-44 - RESOLUTION OF INTENT TO ANNEX THE DEAVERVIEW ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 03-44. This motion was seconded by Councilman Mumpower and carried unanimously.

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RESOLUTION NO. 03-45 - RESOLUTION OF INTENT TO ANNEX THE CROWELL ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Ellis moved for the adoption of Resolution No. 03-45. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 03-46 - RESOLUTION OF INTENT TO ANNEX THE SMOKY PARK HIGHWAY AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Mumpower moved for the adoption of Resolution No. 0-46. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 03-47 - RESOLUTION OF INTENT TO ANNEX THE SAND HILL ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Mumpower moved for the adoption of Resolution No. 03-47. This motion was seconded by Councilman Ellis and carried unanimously.

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RESOLUTION NO. 03-48 - RESOLUTION OF INTENT TO ANNEX THE HENDERSONVILLE ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 15, 2003, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 27, 2003, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 03-48. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 6:30 p.m., Mayor Worley announced a short break.

B. RESOLUTION NO. 03-49 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DOWNTOWN DEVELOPMENT AGREEMENT WITH THE GROVE PARK INN RESORT INC. FOR TWO REDEVELOPMENT SITES

City Attorney Oast said that this is the consideration of a resolution authorizing the Mayor to execute a downtown development agreement with the Grove Park Inn for two redevelopment sites.

The Grove Park Inn (GPI) has proposed developing two sites owned by the City generally as contemplated in the approved Pack Square Renaissance Plan. These sites are:

- Phase I – A mixed use (but primarily residential) project to be located at the corner of Market and College Streets consisting of a single tower development up to the same height as the Jackson Building.
- Phase II – A substantially larger mixed use project incorporating a parking garage, office, retail and residential uses to be generally located on the block bounded by Marjorie Street, Davidson Street, Eagle Street and Spruce Street. This building would not exceed the height of City Hall.

In summary, GPI is requesting an opportunity to perform due diligence on these sites in order to determine the feasibility of developing them as proposed. If development proves feasible, the GPI would then proceed with obtaining all necessary reviews and approvals in order to begin the construction process for each phase of development. The design of these projects will be coordinated with the Pack Square Conservancy and the Downtown Commission, as well as with the City of Asheville. Public hearings would be required prior to any conveyances of property.

He then went into more detail by saying that GPI is talking about acquiring City-owned property and the Phase II site is the major and most defining public area in the City. One factor in this issue is that in 2001 the City entered into an agreement with the Pack Square Conservancy who undertook to devise a redevelopment plan for the Pack Square area, which plan has been approved by City Council. Another factor was that the City needs to have continued high quality development in the downtown in order to continue the revitalization process which began in the late 1980's and early 1990's. We also saw this as an opportunity to make improvements in infrastructure in this area, like road alignment, road construction, and provisions for other public amenities consistent with the Pack Square Conservancy plans. There was also the issue of an interface with the South Pack Square area, which we think is the next area that will be developed in the downtown. In January of 2003, City staff met with the Pack Square Conservancy Board and representatives of the GPI presented the project. The Conservancy Board was generally supportive of it and we are continuing to move forward with that concept.

Using a map, he roughly outlined the Phase I and Phase II areas. He explained the proposal is to develop two sites near City-County Plaza with mixed use office/commercial/residential buildings of significant size. They are not far along enough in the process to determine what kind of mix of office/commercial/residential uses will be there. These properties are owned by the City and as far as he knows, there are no legal restrictions that would limit the City's ability to convey them to a private developer. The legal authority for doing a project of this nature is called the Downtown Development Agreement Act (N. C. Gen. Stat. sec. 160A-458.7).

GPI is seeking some indication of the City's interest in moving forward with the proposal. In a project this size, they are not far enough along to produce a lot of specific information, so City staff is seeking an approval of project in concept. GPI would like to have an expression of Council's willingness to consider selling property for development. City staff is requesting Council's direction in participating with public amenity/parking/infrastructure improvements in the area. We are not in a position to tell Council what those improvements are at this point, but there are some opportunities for staff to investigate further.

In summary, he said they are looking to Council for the direction to move forward to see if we can make this, or come up with a framework, to make this project work.

City Attorney Oast said the proposed agreement covers these basic points:

(1) Statement of intent to cooperate;

(2) Outline responsibilities in due diligence process by both the City in exploring opportunities for the public part of this project and the GPI. GPI will need to investigate things like financial feasibility, do some work on the site to determine whether the property can actually be built on, etc.;

(3) Recognize that there are other interests in the Pack Square/City-County Plaza area. Most obviously that includes the Pack Square Conservancy. We have met and discussed this with them and we think their input it important and any agreement should include a structure for involving that input. Other interests which will have a structure for input involve: the Public Art Board, the Downtown Commission, and the general public (which includes the development corporations in the South Pack Square area that are very interested in what happens in their area and how this project will interface with that);

(4) Identify key issues. Those key issues include things like building size and building design. The Pack Square Conservancy has design review responsibilities for Phase I and depending on the exact location for Phase II as

well. Even if Phase II is not within the Pack Square area, we think it would be appropriate to include the Conservancy in some of the design considerations for that site as well. Another key issue is the kinds of infrastructure improvements that might be needed to support a project of this nature, some realignment of City streets, some rerouting of electrical and water lines, etc. Another key issue is the inclusion of public amenities. Since we are doing a lot of work in the Pack Square area and since the Conservancy has already produced a design for this, this will provide a vehicle to perhaps construct some of those public amenities. Another key issue includes parking. There may be other issues we can identify, but we need the opportunity that this agreement will present, in order to do that;

(5) Outline tentative "critical path". Those are the things that need to happen in the sequence they need to happen in. The first step in a project of this nature is to enter into a Downtown Development Agreement and then enter into options to convey the property. We can't do that without a public hearing. Another critical path item is to structure the public participation process and the timing of when that would occur, including the public hearings required for the conveyance of the property. We need to outline a list for getting the design work on this project completed and coordinating whatever is done on the private side with what needs to be done on the public side. Another critical path would also include some sequence of construction. We are interested in making sure the construction interferes as little as possible with traditional public uses of the area, like the Bele Chere Festival, First Night, and other traditional public festivals;

(6) Outline responsibilities in development process. Primarily the GPI would be responsible for design, building and construction of its projects. The City would be responsible for promptly processing approval and promptly performing inspections, etc.; and

(7) Establish conditions precedent to performance on both sides. We think it's important to have design approval so we know what the building will look like before we decide to do the project. Secondly, that we have satisfactory information that the financing to do the project is in place before we move ahead with it. And, thirdly, we want to make sure appropriate indemnities and insurance are in place.

City Attorney Oast said the reason we are asking for Council's go-ahead at this point is that the GPI needs time/opportunity to explore the financial feasibility, do title work, site investigations. The City needs time to obtain appraisals, explore opportunities for public improvements/amenities and we need to develop structure for involving public in a meaningful way, including the Pack Square Conservancy, Downtown Commission, Public Art Board and the general public.

He emphasized to Council that Council's approval at this meeting is a limited commitment. It does not obligate the City to sell property or approve the project. The proposed agreement does not obligate the GPI to buy property or build the project. What it does is authorizes the City to work together with the GPI to see if we can come up with a feasible project that will be in the best interest of the citizens of Asheville, including all of the people with interests in this very public area, to make this a better place and to continue the revitalization of downtown.

When City Attorney Oast said that the agreement is not in final form and is still being worked on to include in more detail the provisions outlined above, Councilman Peterson was concerned that Council is being asked to authorize the agreement when he just received the draft copy of the 15-page document via email today. He felt it was premature in requesting approval because (1) there wasn't adequate time for Council to review the agreement; and (2) the agreement will change. City Attorney Oast responded that the Pack Square Conservancy has a very important interest in this area and we have always understood that. The primary change to the draft before Council will be to recognize that in an explicit way. The terms are pretty much what has been outlined earlier.

Mr. W. Louis Bissette, Jr., attorney representing the GPI, felt this proposed project is an incredible opportunity for the City, its taxpayers and the Pack Square Conservancy to help them achieve its goals. The two projects have to work together. If the GPI project goes forward, we certainly want the Pack Square Conservancy project to succeed and will assist them in every way that we can. This step is the first step in a process that could greatly enhance our downtown and particularly this end of downtown. The GPI, like the City, is not committing to do anything. We need an indication from the City that, along certain general guidelines, the City is interested in pursuing this project with us. We have to go now and spend a substantial amount of money in doing our due diligence, not only on the property itself, but also the feasibility of the projects that the GPI is looking at. The GPI is very optimistic that they will be feasible and that they can proceed. That is what we are asking for in this agreement. The agreement before Council is the culmination of what he and the City Attorney have been working on for some time and we think it generally outlines the process. It does not commit either party to move forward. But, it does give the GPI and its investors the knowledge that the City and the Pack Square Conservancy are in this with us. He felt the agreement is pretty much as the two parties have negotiated and there are some changes, which they have talked to the Pack Square Conservancy's attorney Jones Byrd about that we are willing to go along with. If the development agreement is approved, all three attorneys will get together and iron out the final version. There will not be any substantive changes. The changes will merely formally add the Pack Square Conservancy's rights and obligations into this contract. He hoped Council would approve the development agreement because they are looking forward to working with the City, the Pack Square Conservancy and other interested groups, to make this project a reality.

Councilman Mumpower felt these are exciting changes for downtown Asheville; however, he was concerned about the size of the Phase II footprint compared to the City Hall Building. Some buildings that have been built around the City Hall have had a less than positive impact on the site, vision, etc. He questioned that if we allow them that large a parameter, are we creating a potential problem for ourselves. Planning & Development Director Scott Shuford responded. He said he didn't think we would be creating a problem because City Council will have final approval of the design. All that the scale aspects included in this agreement are intended to do is to set some general parameters and understanding so that we don't get into a situation where they may come back with something that would certainly be far out-of-scale or for that matter perhaps too small for feasibility. There is a desire on the Phase II site to have a fairly substantial structure because that is a large piece of property for a downtown to have opportunity for development. In addition, certainly in Phase I and almost certainly in Phase II, there is going to be design review and approval by the Pack Square Conservancy, in accordance with their guidelines. There will be a substantial amount of public input and technical and other review before a final building design would be approved. If some reason there is a need to make some adjustments, he was sure the agreement could be modified, but the idea is to create a basic parameter.

Upon inquiry of Councilman Peterson, Mr. Bissette explained to Council the exact locations of Phase I and Phase II.

When Councilman Dunn asked whose decision it was to limit the height of the Phase II building, Mr. Bissette said the Planning staff felt that a too tall building would be detrimental to the overall aesthetic look of the City and we agreed with those height restrictions.

Mr. Jones Byrd, attorney representing Pack Square Conservancy, said that he has seen the agreement in rough draft form. The Conservancy has certain rights and certain obligations that they want to fulfill. They have been in the process of raising money, putting together design guidelines and making the project in the Pack Square Renaissance area a reality. Some of the design issues raised are part of a design review process that is contained in the Conservancy Agreement that the City and the County have with the Conservancy. When you look at this agreement, we believe there are several things that need to be changed just to make sure that the procedure going forward is compatible with the obligations and the rights of the Conservancy. He said that he has talked to Mr. Bissette and City Attorney Oast and they are going to make sure that changes occur to make sure that everything is subject to the Conservancy agreement. This is a wonderful opportunity for the City and the Conservancy wants to make sure that it's done right.

Councilman Ellis asked Mr. Byrd if he felt comfortable at this point that if Council authorizes this to go forward that the Conservancy and the goals of the Conservancy can be protected. Mr. Byrd said he didn't have a concern about that. From the conversations he has had with Mr. Bissette and City Attorney Oast, these are probably some changes that with a little more time would have been make anyway, or there may be some simple ways to make everything in this proposed draft agreement subject to the terms of the one the City is already a party to with the Conservancy and Buncombe County. He felt everyone would work very hard to make that work.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved to authorize the Mayor to execute a downtown development agreement with the Grove Park Inn for two redevelopment sites, with the understanding that the City Attorney, Mr. Bissette and Mr. Byrd will meet to iron out any details of the agreement and that the major considerations as embellished by the City Attorney above, be included in the agreement. This motion was seconded by Councilman Dunn.

Mr. Christopher Fielden said that the areas are the heart of our City and public land. He felt this is taking the public's land and selling it to a corporation, with the corporation benefiting. He felt the recently enacted solicitation ordinance in the downtown area has done nothing to benefit the low income people, only the tourists and wealthy. He said we have a lack of affordable housing, lack of shelters, and lack of youth centers, so he suggested Council take this land and use it for the people's benefit, since it's the people's land. He questioned if there would be affordable housing in this project. He heard that they will be developing a structure for meaningful public input, but questioned who is the public that is referring to and what does meaningful mean. He felt City Council should enrich the life of Asheville and not tourist industry.

Mr. Water Plaue agreed with Councilman Peterson in that City Council should take time to read and understand the agreement prior to giving the Mayor authority to sign it.

Ms. Hazel Fobes was concerned that the GPI didn't bring anything to the meeting to show the design of the buildings. She stressed that Council needs to understand what they are voting on first. She pointed out that there isn't always a need to put a building on a piece of land that has grass on it.

City Attorney Oast responded to several questions/comments from Councilman Peterson, some being, but are not limited to: explain the options and what that does and does not commit the City to; does the City receive money to sell options and if so, how is that money applied and what happens if the agreement is terminated by either party; is the City making a commitment to pay for a public parking facility for a private commercial development; what does "unreasonably withheld" mean with regard to building design approval; if Council felt the building was not compatible or aesthetically not compatible with downtown, would that be reasonable; does the GPI agree to pay for those improvements that reflect reasonable project impacts on public infrastructure; and what happens if either side terminates the agreement.

The motion made by Councilman Ellis and seconded by Councilman Dunn carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 359

C. RESOLUTION NO. 03-50 - RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE TO (1) CANCEL THE APRIL 1, 2003, WORKSESSION; AND (2) ADD A COMMUNITY MEETING ON APRIL 29, 2003, AT 7:00 P.M., AT THE WEST ASHEVILLE COMMUNITY CENTER LOCATED AT 970 HAYWOOD ROAD, ASHEVILLE N.C.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 03-50. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 360

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 28 – March 13, 2003: Mario Garcia Sr. (Police), Mary Ellen Eley (Streets) and Steve Bosma (Police).

The following claims were received by the City during the period of March 14-20, 2003: Jose Molina Lopez (Water), Charter Communication (Water), Susan Turner (Water), Barbara Field (Water) and Don Martell (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Gary Semlak

Mr. Gary Semlak, Vice-Chair of the Water Efficiency Task Force, understands the reason for stopping the tours at the water treatment facilities is for national security and thanked City Council for directing staff to find another suitable location for this very important water education program. He hoped that when this matter is revisited in October that a determination is made that the North Fork Reservoir is a feasible tour site again and hoped that that new site will not preclude tours ever happening again at North Fork. He rebutted some of the comments made at the March 18, 2003, worksession which cast a negative tone over the tours.

Comments by Hazel Fobes

Ms. Hazel Fobes spoke about the procedure used at the March 18, 2003, worksession in which City Council gave direction to City staff to temporarily cease tours at the North Fork

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Reservoir and the Mills River Water Treatment Plant. She felt the process was not proper in that no public comment was solicited. The Water Efficiency Task Force supports the Water Education Programs. She said that when the matter comes back up before Council in October, they would be given a fair and concise report about the effects of discontinuing these important water quality education tools.

Councilman Mumpower said that it was City Council's consensus to err on the side of safety with temporarily ceasing the tours, not against educating students.

Councilwoman Jones said that City Council does need to follow our democratic process. She did think City Council should have taken a vote on temporarily ceasing the tours at a formal session. She felt it's up to City Council to work harder to hear voices that we may disagree with and we must be open to our citizens for having a safe place to say that.

Comments by Christopher Fielden

Mr. Christopher Fielden explained how he witnessed several incidents of police brutality within the past week. He felt that it was important that the City acknowledge that police brutality happens. He said that in his opinion, the crowd was not violent.

Councilman Mumpower suggested Mr. Fielden email some of the Council members with his concerns and maybe they can pursue them together. He said that he met with some officers and the City Manager in a follow-up on some of the concerns that have been voiced similar to Mr. Fielden. He was encouraged by what he heard from the officers and he encouraged people to take a measured look at some of the things that happened that day. He didn't believe anyone in a leadership position on our police force or on City Council would support police brutality but there were laws broken that day that placed our officers in a difficult position.

Closed Session

At 8:25 p.m., Councilwoman Jones moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session The statutory authority is contained in N. C. Gen. Stat. sec. 143-318.11 (a) (4). This motion was seconded by Councilman Ellis and carried unanimously.

At 8:57 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:57 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – April 8, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Terry M. Bellamy (maternity leave)

PLEDGE OF ALLEGIANCE

Retired Air Force veteran Dr. Joe Wayne Burton led City Council in the pledge of allegiance.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE MONTH OF APRIL 2003, AS "CHILD ABUSE PREVENTION MONTH"

Councilwoman Jones read the proclamation proclaiming April, 2003, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING THE MONTH OF APRIL 2003, AS "FAIR HOUSING MONTH"

Mayor Worley read the proclamation proclaiming April, 2003, as "Fair Housing Month" in the City of Asheville. He presented the proclamation to Mr. Bob Smith, Executive Director of the Asheville-Buncombe Community Relations Council, and Ms. Brown, Asheville-Buncombe Community Relations Council Board member, who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 25, 2003

B. RESOLUTION NO. 03-51- RESOLUTION AUTHORIZING THE SALE OF A PORTION OF THE AIR RIGHTS ADJACENT TO 21 BATTERY PARK AVENUE TO 21 BATTERY PARK, LLC

Summary: The consideration of a resolution authorizing the Mayor to convey air rights adjacent to 21 Battery Park Avenue to 21 Battery Park, LLC, in the amount of $9,000.

On March 25, 2003, the City Council of the City of Asheville directed the City Clerk to advertise for upset bids regarding an offer to purchase air rights to City owned property adjacent to 21 Battery Park Avenue (PIN Nos. 9648.18-30-1581 and 9648.18-30-1416) for the sum of $9,000. The notice ran in the Asheville

Citizen-Times on March 28, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No upset bids were received in response to said advertisement.

Approval of the resolution will authorize the sale of the property to 21 Battery Park, LLC, for the amount of $9,000.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey air rights adjacent to 21 Battery Park Avenue to 21 Battery Park, LLC, in the amount of $9,000.

RESOLUTION BOOK NO. 27 – PAGE 361

C. RESOLUTION NO. 03-52 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY ON KILDARE PLACE IN THE MT. CARMEL COMMUNITY FROM JIM NORRIS

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Kildare Place in the Mount Carmel community.

A bid has been received from Melvin James Norris in the amount of $26,500 for the purchase of property on Kildare Place in the Mount Carmel community.

The land on Kildare Place is an irregular shaped, un-zoned, residential lot comprising 0.91 acre±. It is level at street grade and slopes down from front to rear. The property was acquired from the now defunct Carolina Water Service, Inc. The property was determined to be surplus and has been available for sale since that time. The current appraisal on the subject parcel by Joseph Moore is $26,000.

Mr. Norris owns the property adjacent to the subject property where he resides.

Approval of the resolution will initiate the sale of the property through the upset bid process as approved by N. C. Gen. Stat. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase property on Kildare Place.

RESOLUTION BOOK NO. 27 – PAGE 362

D. RESOLUTION NO. 03-53- RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE A VACANT LOT AT THE CORNER OF LUFTY AND DRAKE STREETS FROM NEIGHBORHOOD HOUSING SERVICES

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property on Lufty Street in the West Asheville community.

A bid has been received from Neighborhood Housing Services of Asheville (NHS) in the amount of $9,500 for the purchase of land on Lufty Street in the West Asheville community.

The property on Lufty Street is a rectangular shaped residential zoned lot comprising 0.17 acre±. It is level at street grade and slopes down from front to rear. The property was acquired in 1929. It has been declared surplus and has been available for sale since that time. The bid from NHS in the amount of $9,500 is not less than the appraised value of $9,500. NHS proposes to construct an affordable house on the property for sale. The proposed construction is consistent with the policy of encouraging infill development.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase property on Lufty Street.

RESOLUTION BOOK NO. 27 – PAGE 363

E. RESOLUTION NO. 03-54 - RESOLUTION ACCEPTING THE NEW STREET NAME "OZARK SPRING LANE" LOCATED OFF BELL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Ozark Spring Lane."

Riverwood Real Estate Development Company, owner of lots off of Bell Road, has petitioned the City of Asheville to accept the street name " Ozark Spring Lane." The new street will begin at Bell Road and end at cul-de-sac on Ozark Spring Lane.

City staff recommends adoption of the resolution accepting the new street name "Ozark Spring Lane."

RESOLUTION BOOK NO. 27 – PAGE 364

F. RESOLUTION NO. 03-55 - RESOLUTION FINDING THE UNOPENED ALLEY OFF GAY STREET IS NOT PART OF AN ADOPTED STREET PLAN

Summary: The consideration of a resolution finding that an unopened alley off Gay Street is not part of an adopted street plan.

Timothy Walsh submitted to the City a Declaration of Withdrawal for unopened alley off Gay Street. The purpose of the request is to make the property more useful. The alley is not used as an ingress or egress nor has it ever been used as such. Mr. Walsh's request for a resolution from Council finding that the unopened alley off Gay Street is not part of the street plan adopted under G. S. 136-66.2 is supported by the legal research performed by the law firm of McGuire, Wood & Bissette, P.A., certifying that the three criteria set forth below have been met.

N. C. Gen. Stat. sec. 136-96 permits the filing of a Declaration of Withdrawal of any street dedicated to public use and not utilized within 15 years from and after dedication.

In order to withdraw a street from public dedication, N. C. Gen. Stat. sec. 136-96 requires:(1) that the street must have been dedicated to public use; (2) the person desiring to withdraw, must be the original dedicator or someone claiming under the original dedicator; and (3) that the street not have been opened and used by the public for 15 years from and after the dedication. The statute goes on to state that upon request, the City shall adopt a resolution stating whether the street is or is not part of the street plan adopted under G. S. 136-66.2.

Public Works Department staff has consulted with all appropriate City departments and determined that the unopened alley off Gay Street as set forth is not part of an adopted street plan and is not a City maintained right-of-way.

City staff recommends City Council adopt the resolution finding that the unopened alley off Gay Street as shown in Plat Book 2, Page 105, is not part of an adopted street plan.

RESOLUTION BOOK NO. 27 – PAGE 365

G. **RESOLUTION NO. 03-56 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT EARTH DAY 2003**

RESOLUTION NO. 03-57 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT PINK RIBBON CELEBRATION

RESOLUTION NO. 03-58 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT HARDLOX CAFÉ JEWISH FOOD FESTIVAL

RESOLUTION NO. 03-59 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT SISTERS ON STAGE

RESOLUTION NO. 03-60 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT SUNSET STAMPEDE

RESOLUTION NO. 03-61 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT ASHEVILLE AREA ARTS COUNCIL'S WALK INTO HISTORY

RESOLUTION NO. 03-62 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT 2003 BREWGRASS FESTIVAL

RESOLUTION NO. 03-63 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT 2003 BELE CHERE FESTIVAL

RESOLUTION NO. 03-64 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT 4TH OF JULY CELEBRATION AND FIREWORKS

RESOLUTION NO. 03-65 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT ASHEVILLE DOWNTOWN ASSOCIATION'S 2003 EVENTS

RESOLUTION NO. 03-66 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT 2003 GOOMBAY! FESTIVAL

RESOLUTION NO. 03-67 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT 2003 GREEK FESTIVAL

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Earth Day 2003, Pink Ribbon Celebration, Hardlox Café Jewish Food Festival, Sisters on Stage, Sunset Stampede, Asheville Area Arts Council's Walk into History, Annual Brewgrass Festival, Bele Chere 2003, Asheville's 4th of July Celebration, Asheville Downtown Association events, Asheville Goombay Festival, and Asheville Greek Festival.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

Earth Day 2003, scheduled for April 19, 2003, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world.

The Pink Ribbon Celebration, scheduled for May 27, 2003, is an event to raise funds for the American Cancer Society in conjunction with the Grape Escape wine bar.

The Hardlox Café Jewish Food Festival is a celebration of Jewish cuisine and heritage and is scheduled for October 19, 2003.

Sisters on Stage is an event to raise funds for Helpmate, an organization committed to assisting battered women. This year's event is scheduled on May 3, 2003.

The Sunset Stampede is a run and event that will raise funds for Big Brothers/Big Sisters. The event is scheduled on May 3, 2003.

The Asheville Area Arts Council's Walk into History is an event designed to showcase the Urban Trail and to bring Asheville's history alive with characters and performances at many of the stations. This year's event is scheduled for October 25-26, 2003.

For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. This year's event is scheduled for September 13, 2003.

For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the Downtown area. This year the request is being made for July 24-26, 2003. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.

For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 22-24, 2003. The 2003 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 26-28, 2003. The 2003 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Resolution No. 03-56 - **RESOLUTION BOOK NO. 27 – PAGE 366**
Resolution No. 03-57 - **RESOLUTION BOOK NO. 27 – PAGE 368**
Resolution No. 03-58 - **RESOLUTION BOOK NO. 27 – PAGE 371**
Resolution No. 03-59 - **RESOLUTION BOOK NO. 27 – PAGE 372**
Resolution No. 03-60 - **RESOLUTION BOOK NO. 27 – PAGE 375**
Resolution No. 03-61 - **RESOLUTION BOOK NO. 27 – PAGE 377**
Resolution No. 03-62 - **RESOLUTION BOOK NO. 27 – PAGE 379**
Resolution No. 03-63 - **RESOLUTION BOOK NO. 27 – PAGE 381**
Resolution No. 03-64 - **RESOLUTION BOOK NO. 27 – PAGE 385**
Resolution No. 03-65 - **RESOLUTION BOOK NO. 27 – PAGE 387**
Resolution No. 03-66 - **RESOLUTION BOOK NO. 27 – PAGE 389**
Resolution No. 03-67 - **RESOLUTION BOOK NO. 27 – PAGE 391**

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING ON THE ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS FOR 2003-04

Mayor Worley opened the public hearing at 5:16 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a public hearing on the City's Consolidated Action Plan for 2003/04, allocating federal Community Development Block Grant (CDBG) and HOME funds.

The City expects to have available $1,764,368 in CDBG funds and $1,505,345 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2003. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 21 CDBG-assisted and 15-HOME assisted projects.

If approved, the funding will assist in adding or preserving 244 affordable housing units in the City and 114 units in the rest of the Consortium area. CDBG funds will also help provide 250 Asheville residents with employment or business training and as many as 3,000 residents with other needed services. CDBG will also continue to support revitalization of the WECAN and South Pack Square neighborhoods.

Notice of the public hearing and a summary of the draft plan was published on March 24, 2003. A 30-day public comment period is required by federal regulations. The final plan must be submitted to Dept. of Housing and Urban Development by May 15, 2003.

Ms. Caplan then summarized the funding and then briefly reviewed with Council the details of the proposed projects.

City staff recommends City Council hold the public hearing on April 8, 2003. Adoption of the resolution authorizing submission the City's Consolidated Action Plan for 2003/04 will be brought before Council at it's April 22, 2003, formal meeting.

Mayor Worley closed the public hearing at 5:23 p.m.

Mayor Worley said that City Council will vote on this issue at it's April 22, 2003, City Council meeting.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-68 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONSTRUCTION DOCUMENTS WITH WOOLPERT, LLC, FOR FURTHER DEVELOPMENT OF AZALEA ROAD PARK

Mr. Jim Orr, Superintendent of Parks & Public Facilities, said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Woolpert LLP to prepare construction documents for Azalea Road Park.

The City of Asheville Parks and Recreation Department is continuing the development of Azalea Road Park. In June of 2000, the City of Asheville selected Woolpert LLP from a Request for Proposal (RFP) process to develop a feasibility study, provide a master plan and prepare construction documents for Azalea Road Park. At the present time, the first two components of the RFP process have been completed. The final portion, construction documentation, is needed in order to continue the development of the park. The construction documents would be for the parking lots, restroom/concession building, two soccer fields, playground area, greenway trails and a No Impact Analysis (required since a portion of the park will be built in the flood plain). The construction document portion of the contract with Woolpert will cost $152,249.

City staff recommends that City Council authorize the City Manager to enter a contract with Woolpert LLP to prepare the construction documents for further development of Azalea Road Park.

When Councilman Peterson asked if these construction documents were part of some planning for a new bridge or anything connected to the part of the property for an inert dump, Mr. Orr said no, that this is only a park plan.

Upon inquiry of Councilman Peterson about bridges crossing the Swannanoa River, Mr. Orr said that in the master plan there are two pedestrian bridges and one vehicular bridge with a pedestrian crosswalk.

Upon inquiry of Councilman Dunn, Mr. Orr said that the cost of this portion of the contract comes from the Tourism Development Authority grant, the Lewis family grant, the Parks and Recreation Trust Fund and Pepsi-Cola. He further explained that as much work that can be done in-house is, however, due to the large scope of the project it would take a considerable amount of man-hours. Also, two major components of the $153,000 contract would be for the No Impact Analysis that City staff is not capable of performing and there is no structural engineer on staff to handle development of the building design. In addition, there are so many environmental issues that are tied to the development of the soccer fields that it becomes too large of a project to do in-house.

Mr. Paul VanHeden asked what Pepsi-Cola is getting out of their donation. Mr. Orr said that their donation is for name recognition for developing the soccer complex. Mayor Worley said that Pepsi-Cola has traditionally been a supporter of many community events and youth facilities throughout this community. In fact, Councilwoman Jones said that Pepsi-Cola donated $1,000 to the Asheville High School's Girls Basketball Team in order to purchase their rings.

Upon inquiry of Councilman Dunn, Mr. Orr said that we hope to have the building, playground and parking lot finished in the fall of 2004.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 03-68. This motion was seconded by Councilwoman Jones and carried unanimously.

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B. RESOLUTION NO. 03-69 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING ENTERING INTO A LEASE WITH SUPER SOD FOR APPROXIMATELY 47 ACRES OF CITY-OWNED PROPERTY LOCATED ACROSS FROM THE MILLS RIVER WATER TREATMENT PLANT

Field Services Coordinator Ed Vess said that this is the consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed Lease with Super Sod, a division of Patten Seed Company, for approximately 47 acres of land on Mills River.

The land on Mills River is a portion of the property acquired by the City of Asheville for the Mills River Water Treatment Plant. It is located across the river from the treatment plant northwest of the confluence of the Mills and French Broad Rivers. It is not currently in use by the City and can be used for agricultural purposes without interfering with the operation of the Water Treatment Plant provided appropriate requirements and controls are incorporated into the lease for protection of the environment.

Super Sod has offered to enter into a three-year lease with option to renew for two additional three-year terms at a rent of $6,000 per year. Staff recommends that a CPI annual adjustment be included in the lease. The proposed lease would require a 50' buffer along Mills River. Super Sod would utilize the tillable land, about 42-43 acres for growing sod and mow the non-wooded portions of the buffer area to maintain weed control. The proposed lease may be terminated by either party upon six months written notice. In the case of default, the Lessor may terminate the lease if the default is not cured after ten days notice.

Approval of the resolution will authorize the City Clerk to publish a Notice of Intent to enter into the Lease.

Water Resources Department and Planning Department staff recommend adoption of the resolution directing the City Clerk to publish a Notice of Intent regarding a proposed Lease with Super Sod, a division of Patten Seed Company, for approximately 47 acres of land on Mills River.

City Manager Westbrook said that the $6,000 revenue would go to the Asheville-Buncombe Regional Water Authority.

Upon inquiry of Councilwoman Jones, Mr. Vess said that the employees at the water treatment plant take a water sample everyday and if there is anything not acceptable in the water, we would know about it very soon.

Upon inquiry of Councilman Peterson, Mr. Vess explained why the City is leasing the property opposed to selling it.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 03-69. This motion was seconded by Councilman Peterson and carried unanimously.

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C. REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE FOLLOWING FIVE AREAS PROPOSED FOR ANNEXATION WHICH ARE GENERALLY KNOWN AS (1) THE DEAVERVIEW ROAD AREA; (2) THE CROWELL ROAD AREA; (3) THE SMOKY PARK HIGHWAY AREA; (4) THE SAND HILL ROAD AREA; AND (5) THE HENDERSONVILLE ROAD AREA

Urban Planner Carter Pettibone said that the Annexation Services Plan is being submitted for Council's approval for the following areas: Deaverview Road area, Crowell Road area, Smoky Park Highway area, Sand Hill Road area, and Hendersonville Road area.

City Council approval of this document is the second step in the annexation process that began on March 25, 2003, when Council adopted the resolutions of intent to annex these five areas.

Upon review and approval by City Council, the Plan will be made available for public review. The follow steps will complete the annexation process.

Approval of Annexation Services Plan	April 8, 2003
Public information meeting	May 15, 2003
Public hearings	May 27, 2003
Adoption of annexation ordinances	June 10, 2003
Effective date of annexations	June 30, 2004

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major water and sewer lines, and any proposed extensions; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of N. C. Gen. Stat. sec. 160A-48 (basically contiguity and urbanization).

3) A statement setting forth the plans of the municipality for extending to the annexation area each major municipal service performed within the municipality. Specifically, (a) police protection, fire protection, solid waste collection and street maintenance on the date of annexation; and (b) extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such service to individuals lots or subdivisions.

4) The method under which the municipality plans to finance extension of services into the area to be annexed.

5) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed.

6) A statement showing how the proposed annexation will affect the City's finances and services, including City revenue change estimates.

He then reviewed with Council the specifics of how each area qualifies for annexation.

Mr. Pettibone then explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will require expansion of the Police Department. Extending service into the proposed annexation areas will require operational adjustment in two primary areas (1) configuration of patrol districts covering the proposed annexation areas so as to provide for effective manpower deployment and a balanced response time to calls for service; and (2) filling vacancies in sworn personnel positions to accommodate the anticipated increase in demand for police services. He explained how each area would be served by an expansion of a particular district. Based on the projected population increase at the time of annexation, it will be necessary to add two police officers to maintain the current ratio of one officer to 423 residents. The plan of services calls for the addition of these two officers, at the annual cost of $70,000 plus associated capital costs, on or before January 1, 2005.

Fire protection: The additional land area, street mileage, dwelling units, businesses and improvements will require the hiring of one additional Deputy Fire Marshal at an annual cost of $37,000 plus associated capital costs for equipment on or before January 1, 2005. The N.C. Gen. Statutes require the City to offer existing fire service entities contract opportunities, which allow for the continued service of annexed areas by existing rural fire departments. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the suburban/rural fire department may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending fire protection; therefore, the City has developed a plan that incorporates alternative solutions to extending fire protection to annexed areas.

Solid waste collection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Sanitation Division. New customers would receive the automated collection service. Compensation would be offered to private solid waste hauler to offset economic loss as required by the statutes. Therefore, there will be costs to the City associated with the purchase of new rollout containers and potential "economic loss" payments to affected contractors.

Street maintenance services: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Street Maintenance Division. Existing personnel and equipment are planned to serve the proposed additions to the City maintenance system; therefore, no specific personnel and equipment additions will be made. Streets are resurfaced on a scheduled rotation established by classification, construction type, use, condition and inspections. The following are private and state maintained streets planned for inclusion for maintenance on the scheduled rotation for the Hendersonville Road area: 0.29 mile of Buck Shoals Road and 0.38 mile of Walden Drive.

Water distribution: On the effective date of annexation, all residents, businesses and property owners within the proposed five annexation areas that are adjacent to existing water facilities will receive service on a basis substantially equal to all current portions of the City. The following four areas require no water line improvements: Deaverview Road area, Crowell Road area, Smoky Park Highway area and Sand Hill Road area. In the Hendersonville Road area, potable water and fire protection service are available to all parcels in this annexation area on substantially the same way as other parts of the City, however, in an effort to further enhance fire protection coverage, two fire hydrants are proposed to be installed within this annexation area. This water system improvement is planned for completion by June 30, 2006.

Sewer collection: No sanitary sewer system improvements are required or proposed or planned for any of the five proposed areas.

Administrative and other municipal services: The City provides a full range of services. Basically key professional and department directors specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and reaction and various other municipal activities and functions. The City is active in minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities.

Financial Impact:

Revenue: Total ad valorem property tax revenue - $128,364; Total state utility tax revenue - $14,234; Total local option sales tax - $49,400; Total Powell Bill allocation - $2,082; and Total fees, permits, licenses and charges for services - $1,683. Total revenue - $195,763.

Annual recurring expenditures: Police (two additional officers) - $70,000; Fire (rural fire department contracts expected to be in place for at least 5 years and the hiring of one Deputy Fire Marshall) - $55,775; Solid waste - $133; and Street lighting - $2,160. Total recurring expenditures - $128,068.

Annual capital expenditures: Police - $75,000 (vehicles and associated capital equipment for the additional two police officers); Fire - $30,000 (vehicles and associated capital equipment for the additional Deputy Fire Marshall position); Water lines - $3,500; Rollout containers - $160; Street lighting - $2,820. Total one-time annual capital expenditure - $11,480.

Mr. Pettibone explained the impact on insurance rates to property owners and commercial properties.

Mr. Pettibone then reviewed with Council the following amendments to the Plan:

(1) Revision to page 35 under "Impact on Insurance Rates." The volunteer fire departments should read: West Buncombe VFD – 9/6; Enka VFD – 9/5; and Skyland VFD – 4.

(2) Revise the Deaverview Road Annexation Area "Present and Proposed Boundaries Map" and the "Generalized Land Use Map" to be consistent with the boundary line map attached to the Resolution of Intent.

(3) Replace all Water & Sanitary Sewer Systems Maps with ones that have been stamped and approved by a licensed engineer. He pointed out that even though the Water & Sewer Sanitary Systems Maps in the Plan before Council are not stamped, they have been reviewed by a licensed engineer.

  (a) Revision to the Deaverview Road "Water & Sanitary Sewer Systems Map" boundary line change to be consistent with map attached to Resolution of Intent.
  (b) Revision to the Sand Hill Road "Water & Sanitary Sewer Systems Maps" because it did not show a subdivision that occurred since the date of the Resolution of Intent (March 25, 2003).

Mr. Pettibone asked City Council to adopt the resolutions approving the report of plans for the five annexation areas, as amended.

Mr. Pettibone responded to various questions/comments from Council, some being, but are not limited to: explain how homeowners and commercial properties might save on their insurance rates; can the City guarantee the Insurance Service Office (ISO) rating of 3 in the future; what is the criteria for how the ISO rating is determined;

Upon inquiry of Councilman Dunn, Police Chief Annarino explained the police ratio per resident and how Asheville determines that ratio vs. how other large cities determine that ratio. He said that he would provide Council with additional information regarding sworn and non-sworn positions and how we compare to other cities. He did note that if Asheville were to convert the non-sworn officers (who do clerical and technical work) back to sworn positions, our ratio would be significantly higher than other cities in North Carolina.

Councilman Dunn said that there is a perception that we don't have enough police officers to handle the "little" stuff. Police Chief Annarino responded that it is a balancing act but a lot of it is perception and there will always be issues.

Councilman Ellis pointed out that there are savings to residents being annexed, e.g. garbage collection and insurance rates. In addition, the resident may be entitled to deductions on their income tax if they fall within a certain tax bracket. Also, once annexed, the residents have the opportunity to vote in City Council elections and determine who will be their elected representatives.

Councilman Peterson said that a lot of the proposed annexation areas are commercial and asked what kind of police services would be provided for those businesses. Police Chief said that in addition to the basic law enforcement services, we would work with them on crime prevention, environmental design review, community watches and we can offer safety security seminars for their employees. In addition, we have an expert on staff that can be called in for a comprehensive security analysis of their business.

When Councilman Dunn questioned if we can provide garbage collection to all the properties being annexed, Mr. Pettibone replied yes.

Mr. Fred English, Haw Creek resident, spoke against annexation in that the City needs to give current City residents service before trying to add more residents.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 03-70 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE DEAVERVIEW ROAD AREA

Councilman Peterson moved for the adoption of Resolution No. 03-70, as amended. This motion was seconded by Councilman Ellis and carried unanimously.

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RESOLUTION NO. 03-71 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE CROWELL ROAD AREA

Councilman Ellis moved for the adoption of Resolution No. 03-71, as amended. This motion was seconded by Councilwoman Jones and carried unanimously.

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RESOLUTION NO. 03-72 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE SMOKY PARK HIGHWAY AREA

Councilwoman Jones moved for the adoption of Resolution No. 03-72, as amended. This motion was seconded by Councilman Ellis and carried unanimously.

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RESOLUTION NO. 03-73 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE SAND HILL ROAD AREA

Councilwoman Jones moved for the adoption of Resolution No. 03-73, as amended. This motion was seconded by Councilman Ellis and carried unanimously.

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RESOLUTION NO. 03-74 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE HENDERSONVILLE ROAD AREA

Councilman Peterson moved for the adoption of Resolution No. 03-74, as amended. This motion was seconded by Councilman Ellis and carried on a 6-1 vote with Councilman Dunn voting "no".

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VI. OTHER BUSINESS:

Reopening of Park at Vance Monument

Councilman Peterson asked for an update about the possibility of re-opening the park at Vance Monument soon. He asked how far City staff was along in bringing the Council some changes to address safety concerns in some of our urban parks, like people being back a certain distance, or limiting the number of people in the park.

City Attorney Oast said that details have not been developed to any significant degree yet. But, to the extent we are able to implement changes that don't require City Council action, staff will let Council know and then move ahead with that action.

Claims

The following claims were received by the City of Asheville during the period of March 21-27, 2003: Janice Molnar (Water), Tom Steward (Water), Annie Mae Martin (Streets), Budweiser of Asheville (Civic Center), Arlene Wilson (Water), Lawrence Grillo (Parks & Recreation), Johan Par Forsberg (Water) and Henry Peters (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City received a Complaint for Declaratory Judgment on March 8, 2003, from Carol Ann Winter and Albert Ganzenhuber. The nature of the proceeding is to declare Ordinance No. 2988, the rezoning ordinance in the Broadway Corridor North of Magnolia Street, as invalid. This matter will be handed by outside counsel.

The City received a lawsuit on April 3, 2003, from Peggy Griffin. The nature of the proceeding is a complaint for medical expenses resulting from a motor vehicle accident with City employee Melanie Elizabeth Robbins, who was driving a City vehicle. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fisher Caudle, west Asheville resident, voiced concern over the deplorable neighborhood conditions due to the lack of management of the Housing Authority and of the Pisgah View Apartments. This has been an on-going issue for three years. Property owners' rights around the Apartments are being discriminated against and their property values severely hurt by the continued allowance of blatant on the street drug dealings. Trash on the street by these dealers and their visitors is outrageous. Pisgah View Apartments are over 60 years old and far exceed the government mandate for sale and redevelopment. It should be bulldozed and rebuilt for single-family affordable homes not controlled by the Housing Authority. With the enhancement of the new French Broad River Park, the time to redevelop this property is now. If the goal of rebuilding single-family homes on that property cannot be achieved, at the very minimum, he asked Council to consider calling for the resignation of the current Executive

Director of the Housing Authority and the Pisgah View General Manager, who cannot seem to fulfill their management duties. The amount of public housing in Asheville and it's inherit abuses is a disgrace to the taxpayers and providing housing is simply not a function of government. This warrants immediate action to circumvent the very real possibility of a class action lawsuit for neighborhood discrimination and property rights violations. He asked Council to act swiftly and accordingly to clean up their neighborhood.

Mr. Kevin Nuttall, representing the Lighthouse Group, read a prepared statement of concerns regarding police tolerance, Constitutional freedoms, historical records, action by City Council to sell off our history and public parks, and the recent closing of Vance Monument to the public.

Mr. Fred English, Haw Creek resident, supported the Police Department's closing off Vance Monument.

Mr. Paul VanHeden, west Asheville resident, urged City Council to open up the park at the Vance Monument.

Mr. Don Yelton presented City Council with a book entitled "Heartstone, Celebrating the Emergent Ecologic Century" by the Environmental Leadership Center of Warren Wilson College. He suggested Council read the article entitled "Social Justice Meets Environmental Ethics" by Peter Marin. He urged City Council to take the lead in changing its meeting day and time so as not to conflict with the Buncombe County meetings.

Closed Session

At 6:53 p.m. Councilman Mumpower moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in N. C. Gen. Stat. sec. 143-318.11 (a) (4). This motion was seconded by Councilman Ellis and carried unanimously.

At 7:11 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:11 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 15, 2003 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Vice-Mayor Terry M. Bellamy (maternity leave)

CONSENT:

Budget Amendment for Senior Opportunity Center

Summary: The consideration of a budget amendment, in the amount of $10,174, from the Land-of-Sky Regional Council, Area Agency on Aging, to make improvements to the Senior Opportunity Center entrance.

The State of North Carolina provides senior center general-purpose funds through the Land-of-Sky Regional Council, Area Agency on Aging. This year, the City has received $10,174, which will be used to improve the entrance of the Senior Opportunity Center. This project will include the construction of a drop-off driveway, landscaping and a small outdoor picnic/sitting area. The City is responsible for a matching amount of $1,130, which will be covered through in-kind project management and labor.

City staff recommends City Council approve the budget amendment to make improvements to the Senior Opportunity Center.

Naming of Greenways

Summary: The consideration of a resolution naming existing greenways within the Asheville area.

Over the past several years, the Parks and Recreation Department and the Asheville Greenway Commission have been working on the construction of a number of greenways based upon the Greenway Master Plan. The Commission is recommending naming greenways after bodies of water located near the trail sites. The reason for this is to link one of the benefits of greenways to water quality issues. Greenways provide excellent buffers for purification of water systems. The Parks and Recreation Department and the Asheville Greenway Commission recommend City Council approval of the following names for existing greenways:

Glenn's Creek Greenway (Weaver Boulevard)
Reed Creek Greenway (Broadway)
French Broad River Greenway (French Broad River Park)
John P. Gregg Greenway (French Broad River Park IV)

City staff recommends City Council name the existing greenways in the Asheville area as recommended by the Parks and Recreation Department and the Asheville Greenway Commission.

Parking Deck Property Purchase

Summary: The consideration of approval to proceed with acquisition of two properties for Battery Park Parking Facility.

Since 2000, the City has been working to assemble the real estate necessary to proceed with the construction of the public parking facility in the Battery Park area. Council has approved the project and conceptual plans for the project, and there has been significant public review and consideration of them. The budget for the project has been approved.

The options for two of the properties expire this month. These properties have been under contract since 2000, but we have delayed closing on them for reasons related to financing, and because of the status of negotiations for other properties needed for the project. As originally proposed, the City anticipated getting all of the required properties under contract and closing on them at about the same time, and coordinating the closings with the public introduction of the project. As things have developed, however, the project has been public for some time, and the closings are occurring over time. We believe that negotiations for the land are such that we can recommend closing on the two properties under contract at this time.

The basic terms are as follows:

Property A (Harris estate, owner) Acquisition Price - $650,000
(reduced by $175,000 in option payments credited against purchase price)

Property B (Revell estate, owner) Acquisition Price - $867,000
(option payments of $30,000 credited against purchase price)

The City will acquire a fee simple interest in both properties. The City has already acquired the leasehold interest in the building on Property A, formerly occupied by the Flying Frog restaurant. The parking lot operated onto these properties will continue in operation until construction starts, anticipated to be in September.

Since budgetary authority for these property acquisitions already exists, no separate resolution is necessary. If Council approves moving ahead with the purchase in accordance with these terms, a motion to that effect is requested.

Finance Director Bill Schaefer responded to various questions from Councilman Peterson regarding the financial aspect of the parking deck.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ASHEVILLE CITY PLAN 2025

Planning & Development Director Scott Shuford said that this is the consideration of a resolution adopting the Asheville City Plan 2025 as the official comprehensive plan for the City of Asheville.

This culminates a two year planning and public participation process that has been overseen in great detail by a 60 member committee (the City Plan Advisory Committee – CPAC) and has involved nine public forums, one major community meeting, and innumerable CPAC meetings, focus group meetings and public presentations. The effort to involve the public in developing this plan has been unprecedented in the City's history and has included surveys, television presentations and announcements, outreach to specific groups (particularly groups that might typically be underrepresented at standard public forums, including minority groups and business organizations), media coverage, newspaper editorials, and other inventive methods of capturing public input. The reward for this effort has been over 1,000 specific comments from the public that have been carefully evaluated by CPAC and included in the plan.

The Asheville City Plan 2025 will serve as guide for development approvals, rezonings, code amendments, infrastructure improvements, legislative action requests, and other City efforts. However, the plan is not an end into itself – it is a guide for specific actions, with the individual consideration and implementation of these actions being the method by which the plan will be put into effect.

The Asheville City Plan 2025 replaces the Asheville City Plan 2010, adopted in 1987.

The Planning and Zoning Commission recommended approval of Asheville City Plan 2025 as the official comprehensive plan for the City on March 27, 2003, by a unanimous vote (5-0), subject to the amendments. City staff also recommends approval of the plan as proposed for amendment.

After reviewing the background, Mr. Shuford explained the demographic changes.

Land use and transportation issues include (1) Asheville has tripled in land area over the past 50 years; (2) Asheville's density (persons per square mile) has decreased by 50% over the past 50 years; and (3) we have moved from an urban development pattern to a suburban development pattern. The costs associated with a suburban development pattern are that it's expensive to serve, has environmental problems and encounters convenience costs. A house that costs $150,000 in Asheville can be purchased for $116,000 in Greensboro according to a Coldwell Banker study.

He explained how mass transit requires 8-16 units per acre for efficient service, how Asheville's development pattern forces reliance on the automobile, that NC DOT projects that 80% of the traffic on the new I-26 Connector will be local traffic, and that there is a huge pressure on arterials and interstates. Current development patterns are not sustainable and we need to seek opportunities to recover an urban development pattern.

Land use ideas include (1) incorporate "green building" concepts; (2) preserve open space, historic resources; (3) promote affordable housing; (4) more urban villages; (5) higher density/greater zoning flexibility; and (6) coordinate land planning with Buncombe County.

Transportation ideas include: (1) missed use development pattern; (2) transit; (3) synchronize traffic signals; (4) walkable and bikeable infrastructure; and (5) construct I-26 Connector consistent with community recommendations.

He then reviewed the economic trends in Asheville. Economic development ideas include (1) high tech workforce; (2) reserve industrial land; (3) better use of our educational institutions; (4) develop and improve standards for new economy: arts and crafts; low impact; (5) use quality of life to attract/retain business; (6) regional industrial development; (7) more innovation in "branding" – creating an image for Asheville; (8) create a "wired" community and affordable (high speed internet access) bandwidth focusing on grass-roots e-business; and (9) support local businesses.

Air quality ideas include (1) high density, mixed use, walkable communities; (2) regional cooperation to reduce air pollution; (3) lobby for solutions to air quality problems; (4) develop, improve and enforce industry standards for air pollution; (5) promote mass transit; (6) City fleet use alternative fuels; and (7) green building techniques.

Water quality ideas include: (1) City to continue to work with RiverLink to develop/implement master plan; (2) regional cooperation to reduce water pollution; (3) develop, improve and enforce industry standards for water pollution; (4) improved stormwater management regulations; and (5) green building techniques.

Mr. Shuford then explained smart growth. Long range planning includes transformation of commercial corridors; transit-supported density; walkable and bikeable; tax equity; strong neighborhoods; parks, open space and conservation areas; compatible, high quality infill development; strong Center City; flexible development regulations; improved intergovernmental coordination; effective City services; regional economy; development in character with community; compact urban form; clean air and water; skill-based entrepreneurial economy; green building tools and incentives; effective public participation; affordable housing; preservation of historic and natural resources; and connected, efficient and attractive streets.

Upon inquiry of Councilman Dunn, Mayor Worley said that the 2025 Plan is a guide that can be amended, noting that the implementation of that guide is up to City Council.

Councilwoman Jones stressed the need for a public campaign once the Plan is adopted, to make sure that the community is moving in the same direction.

There was a brief discussion of how the 300-page Plan may be condensed.

It was the consensus of Council to hold the public hearing on April 22, 2003. After hearing comments from the public, City Council will then give further direction to staff of changes, concerns and comments regarding the adoption of the 2025 Plan.

Councilman Mumpower agreed with moving forward with a public hearing, with the understanding that he has some real serious concerns about content and strategic direction of the plan in its current form.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on April 22, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Conditional Use Permit Required for Drive-Through Facilities in the Central Business District

Urban Designer Alan Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to require a conditional use permit for drive-through facilities in the Central Business District.

This code amendment would establish a requirement for the issuance of a conditional use permit for drive-through facilities in the Central Business District. Wachovia Bank recently received approval for a drive-through facility on Coxe Avenue from the Asheville Downtown Commission. In approving this facility, the Commission noted that drive-through uses contribute to the "suburbanization" of downtown and, while necessary on occasion, needed heightened review and public input. The Commission asked staff to promptly prepare a code amendment to make drive-through facilities a conditional use in the Central Business District.

On March 14, 2003, the Asheville Downtown Commission recommended approval of the proposed amendment by a vote of 8-1. At the Planning & Zoning Commission meeting held on April 2, 2003, the Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

After Council discussion on drive-throughs in the Central Business District, Councilman Mumpower suggested Mr. Glines be prepared to respond to questions similar to: within the past three years, how many buildings have built drive-throughs in the Central Business District; what are the pros and cons associated with drive-throughs in the Central Business District; and is air quality an issue with drive-throughs.

Councilwoman Jones suggested a longer-term research project of pointing out the economics of a business with a drive-through vs. a business without a drive-through.

After hearing comments from Council, Planning & Development Director Scott Shuford said that he would look to amend the ordinance to give a little more flexibility in the application of the regulations.

Permit Bed & Breakfast Inns to Utilize Accessory Structures for a Limited Number of Guest Rooms

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to permit Bed & Breakfast Inns to utilize accessory structures for a limited number of guest rooms.

This code amendment would permit bed and breakfast inns to utilize accessory structures for a limited number of guest rooms. The current code requirements do not permit carriage houses or other outbuildings to be used for guest accommodations for bed and breakfast inns. Since heritage tourism is an increasing and very positive component of our tourism industry, this amendment has both practical and economic development implications.

On April 2, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Establishment of a new Urban Residential District

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish a new high density, infill zoning classification called Urban Residential District.

Frequently in community meetings and planning forums and most recently, the forums for the City Plan 2025 comprehensive plan process, citizens have identified the need for:

- access to appropriately scaled mixed use neighborhood services located close to home
- improved pedestrian facilities, projects that relate to the street and attractive streetscapes
- more affordable housing throughout the community and a greater variety of housing choices
- broader transportation options

One of the most pressing problems facing the City of Asheville is the need for affordable housing. The Urban Residential District (URD) has been developed to increase opportunities for the development of affordable housing and a mix of other housing types by allowing for an increase in density, scale, and use in areas of the city where infrastructure can accommodate higher density, infill development. It is intended that the URD be located on significant transit corridors and/or in areas planned for high growth.

Providing residential units is the primary goal of the URD, however, it is recognized that there is significant need for basic commercial retail, office use, and other activities that support residential uses in proximity to high density residential areas. The URD recognizes this and incorporates other non-residential uses on a limited basis. The proposed URD is an opportunity to incorporate the City Council adopted Smart Growth and sustainable development goals that have been identified by the community during the last decade.

The URD will encourage pedestrian activity by creating safe and inviting streetscapes with comfortable walking amenities. Traffic flow will be improved by limiting curb-cuts and requiring cross access between parcels. The URD will also make public transit a viable option by increasing density (i.e., the number of potential riders) in neighborhoods that are or can be served by the bus system.

Some of the long term benefits from developing any corridor in this pattern will be to build a livable community, strengthen the area's tax base, reduce driving trips on roadways, support mass transit, improve air quality and reduce sprawl.

The URD is not being developed with a particular corridor or area of the City in which it is to be applied. However, staff has been in preliminary contact with Mountain Housing Opportunities and the West End Clingman Avenue Neighborhood regarding the possible application of this new zoning designation in certain areas of this neighborhood.

At the Planning and Zoning Commission meeting on April 2, 2003, the Commission approved the creation of the Urban Residential District by a vote of 7-0. Staff also supports the adoption of this district.

When Councilman Dunn asked if the Coalition of Asheville Neighborhoods (CAN) has reviewed this amendment, Planning & Development Director Scott Shuford said that this amendment has been circulated but they have not had any response from CAN. Mr. Shuford that that staff is prepared at anytime to talk to any group or individual who might have questions regarding this amendment.

Councilman Peterson suggested a couple of amendments to the proposed ordinance regarding balconies and some flexibility in the uses permitted over the ground floor.

At the request of Councilman Dunn, Mr. Shuford said that he would provide Council with the regulations regarding grand opening signs.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these public hearings on the April 22, 2003, formal City Council agenda.

BOARDS/COMMISSIONS

It was the consensus of City Council to have the City Clerk arrange for interviews for vacancies on the Board of Adjustment.

It was the consensus of City Council to ask the Board/Commission Committee to discuss the possible reduction in membership of the Civic Center Commission. In addition, it was the consensus of City Council to re-advertise for the two vacancies on that Commission.

It was the consensus of City Council to have the City Clerk re-advertise the vacancy on the Regional Water Authority.

CLOSED SESSION

At 4:32 p.m., Councilman Mumpower moved to go into closed session to establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate – G. S. 143-318. 11 (a) (5). This motion was seconded by Councilman Dunn and carried unanimously.

At 5:15 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:15 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 22, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Terry M. Bellamy (maternity leave)

PLEDGE OF ALLEGIANCE

Retired Air Force veteran Ira Taylor led City Council in the pledge of allegiance.

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING KIM FROHMAN AS THE RECIPIENT OF THE BILL FULP AWARD AND PARKS AND RECREATION VOLUNTEER OF THE YEAR 2003

Mayor Worley read the proclamation proclaiming Kim Frohman as the recipient of the Bill Fulp Award and Parks & Recreation Volunteer of the Year 2003. He presented the proclamation to Mr. Frank Fishburne, Chair of the Recreation Committee, on behalf of Ms. Frohman.

B. PROCLAMATION PROCLAIMING MAY 2003 AS "MOTORCYCLE AWARENESS MONTH" IN THE CITY OF ASHEVILLE

Councilman Mumpower read the proclamation proclaiming May 2003, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Eldon Moore who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 27-MAY 3, 2003, AS "MUNICIPAL CLERKS WEEK"

Mayor Worley read the proclamation proclaiming April 27-May 3, 2003, as "Municipal Clerks Week " in the City of Asheville. He presented the proclamation to City Clerk Maggie Burleson who thanked City Council for their support.

II. CONSENT:

Councilman Mumpower asked that Consent Agenda Item "G" be removed from the Consent Agenda for separate discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 8, 2003, AND THE WORKSESSION HELD ON APRIL 15, 2003

B. RESOLUTION NO. 03-75 - RESOLUTION AUTHORIZING THE SALE OF PROPERTY ON KILDARE PLACE TO MELVIN JAMES NORRIS

Summary: The consideration of a resolution authorizing the Mayor to convey property on Kildare Place in the Mt. Carmel community to Melvin James Norris in the amount of $26,500.

On April 8, 2003, the City Council directed the City Clerk to advertise for upset bids on Kildare Place. The advertisement ran in the Asheville Citizen-Times on April 11, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Melvin James Norris in the amount of $26,500 was not upset and the sale to Melvin James Norris should be approved.

Approval of the resolution will authorize the sale of the property to Melvin James Norris for the amount of $26,500.

City staff recommends adoption of the resolution authorizing the Mayor to convey property on Kildare Place to Melvin James Norris in the amount of $26,500.

RESOLUTION BOOK NO. 27 – PAGE 400

C. RESOLUTION NO. 03-76 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A LEASE WITH SUPER SOD FOR APPROXIMATELY 47 ACRES OF CITY-OWNED PROPERTY LOCATED ACROSS FROM THE MILLS RIVER WATER TREATMENT FACILITY

Summary: The consideration of a resolution approving a lease with Super Sod, a division of Patten Seed Company, for approximately 47 acres of land on Mills River.

On April 8, 2003, the City Council authorized publication of a notice of intent to lease 47 acres of land on Mills River to Super Sod. A notice of intent was duly published in the Asheville Citizen-Times on April 11, 2003.

Super Sod has offered to enter into a three-year lease with option to renew for two additional three-year terms at a rent of $6,000 per year. Staff recommends that a CPI annual adjustment be included in the lease. The proposed lease would require a 50' buffer along Mills River. Super Sod would utilize the tillable land, about 42-43 acres for growing sod, and mow the non-wooded portions of the buffer area to maintain weed control. The proposed lease may be terminated by either party upon six months written notice. In the case of default, the Lessor may terminate the lease if the default is not cured after ten days notice.

Approval of the resolution will authorize the Mayor to execute the lease with Super Sod for the approximately 47 acres of land at Mills River.

Planning Department staff and the Water Resources Department staff recommend adoption of the resolution authorizing a lease with Super Sod for approximately 47 acres of land on the Mills River.

RESOLUTION BOOK NO. 27 – PAGE 401

D. RESOLUTION NO. 03-77 - RESOLUTION AUTHORIZING SUBMISSION OF THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2003-04 TO THE U.S. DEPT OF HOUSING AND URBAN DEVELOPMENT

Summary: This is the consideration of a resolution authorizing submission of the City's Consolidated Annual Action Plan for 2003/04 to the US Dept. of Housing and Urban Development.

The City expects to have available $1,764,368 in CDBG funds and $1,505,345 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2003. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 21 CDBG-assisted and 15-HOME assisted projects.

If approved, the funding will assist in adding or preserving 244 affordable housing units in the City and 114 units in the rest of the Consortium area. CDBG funds will also help provide 250 Asheville residents with employment or business training and as many as 3,000 residents with other needed services. CDBG will also continue to support revitalization of the WECAN and South Pack Square neighborhoods.

Notice of the public hearing and a summary of the draft plan were published on March 24, 2003. A 30-day public comment period is required by federal regulations. A public hearing was held on April 8, 2003, and no comments were made. The final plan must be submitted to Dept. of Housing and Urban Development by May 15, 2003.

RESOLUTION BOOK NO. 27 – PAGE 402

E. ORDINANCE NO. 3011 - BUDGET AMENDMENT FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $10,174, from the Land-of-Sky Regional Council, Area Agency on Aging, to make improvements to the Senior Opportunity Center entrance.

The State of North Carolina provides senior center general-purpose funds through the Land-of-Sky Regional Council, Area Agency on Aging. This year, the City has received $10,174, which will be used to improve the entrance of the Senior Opportunity Center. This project will include the construction of a drop-off driveway, landscaping and a small outdoor picnic/sitting area. The City is responsible for a matching amount of $1,130, which will be covered through in-kind project management and labor.

City staff recommends City Council approve the budget amendment to make improvements to the Senior Opportunity Center.

ORDINANCE BOOK NO. 20 - PAGE 257

F. RESOLUTION NO. 03-78 - RESOLUTION NAMEING EXISTING GREENWAYS WITHIN THE CITY OF ASHEVILLE

Summary: The consideration of a resolution naming existing greenways within the Asheville area.

Over the past several years, the Parks and Recreation Department and the Asheville Greenway Commission have been working on the construction of a number of greenways based upon the Greenway Master Plan. The Commission is recommending naming greenways after bodies of water located near the trail sites. The reason for this is to link one of the benefits of greenways to water quality issues. Greenways provide excellent buffers for purification of water systems. The Parks and Recreation Department and the Asheville Greenway Commission recommend City Council approval of the following names for existing greenways:

Glenn's Creek Greenway (Weaver Boulevard)
Reed Creek Greenway (Broadway)
French Broad River Greenway (French Broad River Park)
John P. Gregg Greenway (French Broad River Park IV)

City staff recommends City Council name the existing greenways in the Asheville area as recommended by the Parks and Recreation Department and the Asheville Greenway Commission.

RESOLUTION BOOK NO. 27 – PAGE 403

G. **MOTION AUTHORIZING CITY STAFF TO PROCEED WITH THE ACQUISITION OF TWO PROPERTIES FOR THE BATTERY PARK PARKING FACILITY** – This item was removed from the Consent Agenda for separate discussion.

H. **RESOLUTION NO. 03-79 – RESOLUTION AUTHORIZING AN INSTALLMENT PURCHASE CONTRACT BETWEEN RBC CENTURA BANK AND THE CITY OF ASHEVILLE TO FINANCE THE PURCHASE OF TWO REFUSE TRUCKS AND 9,200 ROLL CARTS**

Summary: The consideration of a resolution authorizing the installment financing of the purchase of two refuse trucks and 9,200 associated roll carts.

The City of Asheville Capital Improvement Plan 2002/03 to 2007/09 includes authorization in Fiscal Year 2002/03 for the installment purchase of two automated side-loader refuse trucks and associated roll carts

The Finance Department sought proposals from eleven firms to finance the purchase of the above listed equipment. Proposals were received from eight firms, the best of which was submitted by RBC Centura Bank, - - 2.07% for four years.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and RBC Centura Bank for the purchase the two refuse trucks and 9,200 roll carts and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

City staff recommends City Council adopt the resolution authorizing the installment financing.

RESOLUTION BOOK NO. 27 – PAGE 404

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA

MOTION AUTHORIZING CITY STAFF TO PROCEED WITH THE ACQUISITION OF TWO PROPERTIES FOR THE BATTERY PARK PARKING FACILITY

Summary: The consideration of approval to proceed with acquisition of two properties for Battery Park Parking Facility

Since 2000, the City has been working to assemble the real estate necessary to proceed with the construction of the public parking facility in the Battery Park area. Council has approved the project and conceptual plans for the project, and there has been significant public review and consideration of them. The budget for the project has been approved.

The options for two of the properties expire this month. These properties have been under contract since 2000, but we have delayed closing on them for reasons related to financing, and because of the status of negotiations for other properties needed for the project. As originally proposed, the City anticipated getting all of the required properties under contract and closing on them at about the same time, and coordinating the closings with the public introduction of the project. As things have developed, however, the project has been public for some time, and the closings are occurring over time. We believe that negotiations for the land are such that we can recommend closing on the two properties under contract at this time.

The basic terms are as follows:

Property A (Harris estate, owner)	Acquisition Price - $650,000
(reduced by $175,000 in option payments credited against purchase price)	
Property B (Revell estate, owner)	Acquisition Price - $867,000
(option payments of $30,000 credited against purchase price)	

The City will acquire a fee simple interest in both properties. The City has already acquired the leasehold interest in the building on Property A, formerly occupied by the Flying Frog restaurant. The parking lot operated onto these properties will continue in operation until construction starts, anticipated to be in September.

Since budgetary authority for these property acquisitions already exists, no separate resolution is necessary. If Council approves moving ahead with the purchase in accordance with these terms, a motion to that effect is requested.

Councilman Mumpower moved to authorize City staff to proceed with the acquisition of two properties for the Battery Park Parking Facility. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 8 ELKMONT DRIVE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT TO UTILIZE THE EXISTING BUILDING AND TO LIMIT THE PERMITTED USES OF THE PROPERTY

ORDINANCE NO. 3012 - ORDINANCE REZONING PROPERTY LOCATED AT 8 ELKMONT DRIVE FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3013 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO UTILIZE THE EXISTING BUILDING AND TO LIMIT THE PERMITTED USES OF THE PROPERTY

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Carter Pettibone, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a request to rezone property located at 8 Elkmont Drive from RS-4 Residential Single-Family Medium Density District to Community Business I District/Conditional Use and a request to issue a conditional use permit to utilize the existing building and to limit the permitted uses of the property.

On January 1, 2003, the applicant, Marshall James, submitted an application to rezone the property located at 8 Elkmont Drive (PIN No. 9730.12-86-0069), in which he proposed rezoning the entire property to CB I. The Planning and Zoning Commission, at its March 5, 2003, meeting, voted to continue the public hearing on the matter in order for the applicant to amend his application to a conditional use rezoning that specified the possible proposed uses for the property. At its following meeting, the Commission voted to recommend approval of the conditional use rezoning request.

The property, which totals 0.22 acre, is located in the City limits in close proximity to Merrimon Avenue (City Exhibit 3 – Location Maps). The existing land uses and zoning in the area include single-family residences to the north zoned RS-4 and commercial uses to the east, south, and west zoned CB I. The site is located behind a lot that has frontage on Merrimon Avenue, which is a major thoroughfare with sufficient capacity to handle uses allowed in the CB I District.

The property is split-zoned with the majority of it zoned CB I and the remainder zoned RS-4 (City Exhibit 3 – Site Plan). The location of the split in zoning on the property also results in the building on the property being split zoned as well. At the time of the city-wide zoning change in 1997, the dividing line between CB I and RS-4 was drawn essentially as a straight line corresponding to one or two properties deep along Merrimon Avenue. The odd shape of the lot and the fact that the dividing line went through the existing structure did not seem to be taken into account at that time. This division line also existed with the zoning categories in existence prior to 1997 where the majority of the lot was zoned Commercial Highway (CH) and the remainder residential (R-1).

Originally, the applicant had applied for a standard rezoning for the RS 4 portion of the property. Due to concerns raised by a neighbor and the Planning and Zoning Commission, the applicant has amended his application to that of a conditional use rezoning for the entire property.

The following conditions are proposed by the applicant:

- The existing building on the property would remain and use of it would be limited to certain uses permitted in the CB I District as listed below.
- Commercial driveway access will be provided at the southern end of the site nearest to Merrimon Avenue in the location of the current driveway.
- Buffers will be provided as required by the Unified Development Ordinance (UDO) depending on actual use of the property.
- Ground-mounted signage will be limited to the standards of the most restrictive type for commercial uses (NB standards - 8' in height) and shall not be internally lit.

The permitted uses would be limited to the following:

- Residential uses
- Adult day care home
- Child day care home
- Family care home
- Barber and beauty shops
- Clinics
- Florists
- Home occupations
- Instructional services
- Offices
- Studios, gallery, and workshop for artists, craftspeople, designers, photographers

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the UDO. City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

Any redevelopment of the property would need to receive technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering, and other City Departments as part of a Level I site plan review. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

Any redevelopment project must comply with all City standards in regards to maximum clearing and grading, erosion control, and maximum slope. Very little clearing or grading is expected since the existing building would be retained and minimal off-street parking would be required due to the building's square footage.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

Most of the site is currently zoned CB I and with the proposed conditions the existing building would remain as giving the appearance and scale of a residential structure. The property would also need to be buffered from adjoining residential properties. The driveway access to the property behind it that is partially located on the site would also remain. As the appearance and intensity of the property will not change significantly, little to no harm is anticipated to the value of the adjoining properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The applicant has proposed that the existing residential structure on the property be converted to a commercial use. As a result, the building would continue to fit into the neighborhood as it currently does now. Parking would be located away from the residential neighborhood on the southern portion of the site nearest to Merrimon Avenue and be screened as required by the UDO.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

Any proposed development would be required to comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

Any redevelopment of the property would need to receive technical approval from applicable City Departments, which include representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works. Due to its relatively small scale, redevelopment of the property is not expected to generate additional requirements in these areas.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

It is anticipated most of the traffic to the site would be from Merrimon Avenue, which is a major thoroughfare with sufficient capacity to handle uses allowed in the CB I District. The site's access will be from the southern portion of the site closest to Merrimon Avenue to minimize the traffic impacts to the surrounding residential neighborhood. A vast majority of the traffic flow to the site will not enter into the neighborhood, as customers would be turning into the property first.

In addition, the driveway to the commercial property across Elkmont Drive at the corner of Elkmont and Merrimon Avenue is almost directly across the street from this site's driveway.

Rezoning the entire lot to Community Business I District/Conditional Use would allow the property owner the opportunity to adaptively reuse the existing building for limited small-scale commercial uses as proposed by the conditional use permit. This would be opposed to removing the existing building to construct a new building that may not be in scale with the neighboring residential properties to the north and that could be used for any use permitted in the CB I District. Any development of the property would also be required to adhere to the proposed conditions and meet all applicable standards of the UDO.

In consideration of the above, the adjoining zoning and land uses in the area to the south and west of the site, and the site's proximity to the Merrimon Avenue thoroughfare, the proposed request appears to be consistent with the intent and purpose of the UDO. The Planning Staff recommends approval of the conditional rezoning request as proposed for 8 Elkmont Drive. The Planning and Zoning Commission, by a vote of 6-0, also recommends approval.

Mr. Gerald Green, representing the applicant, spoke in support of this conditional use zoning and permit explaining why he felt it was good for the neighborhood and the City as a whole.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:32 p.m.

Councilman Peterson felt that this would not conflict with Council's policy of minimizing commercial intrusion into residential areas. He felt that the property to the west and east is residential so the impact of this conditional use rezoning is fairly minimal.

Councilman Mumpower moved to adopt Ordinance No. 3012 to rezone property located at 8 Elkmont Drive from RS-4 Residential Single-Family Medium Density District to Community Business I District/Conditional Use. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 259

Councilman Ellis moved to adopt Ordinance No. 3013, to issue a conditional use permit to utilize the existing building and to limit the permitted uses of the property, subject to the following conditions: (1) The existing building on the property would remain and use of it would be limited to certain uses permitted in the CB I District as listed above by Mr. Pettibone; (2) Commercial driveway access will be provided at the southern end of the site nearest to Merrimon Avenue in the location of the current driveway; (3) Buffers will be provided as required by the UDO depending on actual use of the property; and (4) Ground-mounted signage will be limited to the standards of the most restrictive type for commercial uses (NB standards - 8' in height) and shall not be internally lit. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 261

B. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT THE CORNER OF NEW LEICESTER HIGHWAY AND ELIADA HOME ROAD (GOOCHES ROAD) FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND HIGHWAY BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE,

AND ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED CVS PHARMACY AND DRIVE-THROUGH

ORDINANCE NO. 3014 - ORDINANCE REZONING PROPERTY LOCATED AT THE CORNER OF NEW LEICESTER HIGHWAY AND ELIADA HOME ROAD (GOOCHES ROAD) FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND HIGHWAY BUSINESS DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3015 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PROPOSED CVS PHARMACY AND DRIVE-THROUGH

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:36 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning and Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Shuford said that this is the consideration of a request to rezone property located at the corner of New Leicester Highway and Eliada Home Road (Gooches Road) from RS-6 Residential Single-Family Low Density District and Highway Business District to Community Business II District/Conditional Use and a request to issue a conditional use permit for a proposed CVS pharmacy and drive-through.

On March 3, 2003, the representatives of CVS submitted a request to conditionally use rezone 5 lots totaling 1.55 acres to construct a 10,880 square foot drugstore with a drive-through (City Exhibit 3 – Location Map). The requested zoning change includes: one parcel that is split zoned Highway Business and RM-6 fronting Leicester Highway, two parcels zoned RM-6 fronting Eliada Home Road and a portion of two parcels fronting Old County Home Road (City Exhibit 3 – Landscape Plan). The applicant is requesting a rezoning of these parcels to a Community Business II zoning designation that would allow the proposed use.

The project site is currently located within the City's extraterritorial jurisdiction area and is scheduled to be annexed by the City of Asheville in June of 2003.

The Community Business II zoning allows medium- to high-density business and service uses serving several residential neighborhoods. A wide range of neighborhood services is allowed in this district. Community Business II districts should be sensitive to a significant pedestrian population while providing safe and adequate vehicular access. In this district, buildings may be up to 45,000 square feet and may be one or several stories tall. Drive-through facilities are allowed in this district. Parking is to be placed at the side or rear of the structure.

Parcels to the south and east of the site are Commercial and zoned Highway Business and Community Business II. The parcel to the north of the site is also commercial, but is not located within the City's jurisdiction. Parcels to the west of the site consist of single-family homes and are zoned RM-6.

The requested zoning to Community Business II is compatible with the goals of the 2010 Plan, which indicates this area as a developing commercial node surrounded by medium-density residential development. The 2025 Plan coincides with the uses of the 2010 Plan with an emphasis on pedestrian related amenities. The proposed zoning is also consistent with the established zoning south of the site towards Patton Avenue, also zoned Community Business II.

The conditional use master plan calls for a 10,880 square foot building, a double-drive through and 53 parking spaces. Access to the site will be from New Leicester Highway and Eliada Home Road (Gooches Road). A 12- foot travel lane is shown parallel to New Leicester Highway looping around to the front of the building. A 25-foot type "C" landscape buffer is required along the south and west sides of the proposed development adjacent to residential uses. A reduced buffer, to consist of a privacy fence and evergreen plantings, will be installed along the entire western and southern property boundaries.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (sec. 7-16-2 (c)). Staff's preliminary review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The City of Asheville Technical Review Committee reviewed the proposed use and found no health or safety concerns, other than the loop drive. The project is required to meet the technical standards set forth in the UDO, the Asheville Standards and Specifications Manual and the NC Building Code.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

Most properties along New Leicester Highway in this vicinity are commercial uses. The properties located on Old County Home Road will not be rezoned in order to protect the single-family fabric of the area. The development will be buffered from the adjacent residential developments. In addition to the buffer the developer is required to provide, existing topography and landscaping will provide a natural screening to the neighborhood.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   Most properties along New Leicester Highway are commercial uses. The properties located on Old County Home Road will not be rezoned in order to protect the single-family fabric of the area. The development will be buffered from the adjacent residential developments. In addition to the buffer the developer is required to provide, existing topography and landscaping will provide a natural screening to the neighborhood.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed use is immediately adjacent to commercial uses of similar scale and it will be buffered from residential uses by landscaping, fencing and topography.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The requested zoning to Community Business II is compatible with the goals of the 2010 Plan, which indicates this area as a developing commercial node surrounded by medium-density residential development. The 2025 Plan coincides with the uses of the 2010 Plan with an emphasis on pedestrian related amenities. The proposed zoning is also consistent with the established zoning south of the site towards Patton Avenue, also zoned Commercial Business II. The proposed project also incorporates Smart Growth goals by providing needed services in the vicinity of area residents. This proposal also uses new zoning tools in order to promote compatible lands uses through the conditional use process.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed development site is located along a major thoroughfare, which has adequate infrastructure services. In addition, the project received technical approval from the Technical Review Committee, which includes representatives of the Water Resources Department, Metropolitan Sewerage District, Engineering, the Fire Department, and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The site is served by a traffic signal at the intersection of New Leicester Highway and Eliada Home Road. Comments received from Engineering staff at the Technical Review Committee meeting did not foresee any undue traffic congestion or hazards being created from this development. A Traffic Impact Analysis was prepared and reviewed by the City Engineering Department following the Technical Review Committee. No additional traffic concerns were identified.

On March 17, 2003, the proposed project was reviewed by the Technical Review Committee who recommended the project move forward to the Planning and Zoning Commission with conditions. Prior to the Planning and Zoning Commission meeting the developers addressed the conditions with staff and resubmitted revised plans.

Using elevation drawings (City Exhibit 4), Mr. Shuford explained that the building has been designed to replicate the design for the Merrimon Avenue CVS Pharmacy.

The Planning and Zoning Commission met on April 2, 2003, to review the proposed project. The Commission expressed concern about stormwater management issues and requested that staff work with the applicant to identify an alternative method for addressing this issue in order to minimize the potential for future retrofit expenses on the part of the property owner and to provide reasonable stormwater management at the time of project completion.

On April 2, 2003, the Planning and Zoning Commission voted 5-2 (members voting against desired the applicant to meet all current City stormwater management requirements) and recommended approval of the conditional use proposal and site plan with the following conditions. Staff also recommends approval with conditions, along with the stormwater issue resolution currently under discussion between the applicant and staff. Mr. Shuford said that staff has contacted the developer to discuss stormwater issues raised at the Planning and Zoning Commission meeting. Based on these discussions, the developer has agreed to make every effort to meet the City's stormwater regulations.

1. All Technical Review Committee conditions be met.
2. The entire loop drive shall be built with real brick pavers or stamped colored asphalt with an 22' aesthetically enhanced speed table at the proposed pedestrian crossing near the corner of the building and a sidewalk connection to the public sidewalk using this crossing. Associated signage for the crossing is to be approved by the Engineering Department.
3. The applicant shall meet City of Asheville stormwater management standards or provide equivalent protection as determined by the City Engineer.

With regard to Condition No. 3 above regarding stormwater, Mr. Shuford explained that the real concern of the City Engineer is the velocity of the stormwater leaving the site and City of Asheville standards require that stormwater must meet a pre-development velocity rate. He said that he has just met with the applicant and they have agreed on the following amended Condition No. 3: "The applicant shall design and install stormwater management systems to not exceed pre-development velocity conditions for run-off leaving the project site."

Councilman Peterson asked if there are any other stormwater management standards or requirements that the developer will not be meeting when the annexation takes effect on July 1, 2003. Mr. Shuford said that our City Engineer was concerned about one issue and that was the velocity of the stormwater leaving the site. It was his understand that with the revised Condition No. 3, the concern of the City Engineer has been addressed.

Mr. Shuford responded to Councilwoman Jones when she asked if the City was relaxing some of our stormwater regulations for this project. He said that the applicant wanted a more specific condition other than "equivalent protection as determined by the City Engineer." There was an indication last week that there was not a lot of difference between what the applicant was going to put into the site (to meet the County standards since the project is located in the extraterritorial jurisdiction area) and our stormwater standards or its equivalent, as determined by the City Engineer. Again, he said it was his understanding that this revised Condition No. 3 will meet the City Engineer's concern.

Mr. Shuford responded to Councilman Peterson's question regarding a retention pond vs. underground storage.

Councilman Dunn asked what makes the loop drive dangerous. Mr. Shuford said that part of the project involves the installation of sidewalks along New Leicester Highway to make the property more pedestrian accessible. Placing the loop drive right up against the building with potential cross-points for pedestrians creates an automatic pedestrian/vehicle conflict point. To resolve that, what was decided upon was to put a paver-type of treatment to serve as an indication to any motorist using that loop drive to slow down -- that they are in an area that is different.

Councilman Dunn asked why a Traffic Impact Analysis (TIA) was required for one building on a road the size of New Leicester Highway. Mr. Shuford explained that a TIA is required on any development that generates a certain number of trips in the peak hour and this project generated that volume.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that it might be worthwhile to specify a condition limiting the second loop drive to drop-off box only.

Mr. Craig Justus, attorney representing the developer CVS Pharmacy, explained how they have been working with the City since the inception of this project in January of 2003. They asked at the beginning what the stormwater requirements would be and the City said none, since the project is located outside the City limits. Then shortly before the Planning & Zoning Commission meeting, concerns were raised about future potential Environmental Protection Agency rules, so they addressed the stormwater issue. He noted that the City's stormwater manual is for proposed developments within the City limit and not for developments in the extraterritorial jurisdiction properties. He said that it would cost approximately $80,000 to put in a stormwater system that complies with the City's stormwater requirements. After discussions with City staff, the revised language in Condition No. 3 is now agreeable to the developer. Another concern was raised by staff at the Planning & Zoning Commission meeting with regard to the loop drive safety issue. After discussion, they agreed to Condition No. 2 adding the brick pavers or stamped color asphalt (Applicant Exhibit 1) at the proposed pedestrian crossing. This will be an additional cost of $10,000 but they didn't mind that addition because it will add value to the project. He then explained how they wish to be good neighbors and how he felt this is a good project at this location.

Councilman Dunn questioned CVS's engineer and architect on how much extra money they had to spend to satisfy the City's requests in order to approve of the project, in particular the building façade and the stamped colored asphalt. He felt that sometimes it's more of a "if you don't do this, we won't allow that" and he didn't like that confrontation feeling.

Councilman Peterson explained that the reality is that in two and one-half months this property will not only be in the City, but the properties around it will be in the City as well. He felt City Council has a responsibility to provide protection to the soon-to-be City residents and now allow something to be built that is going to suddenly damage the surrounding property owners. In response, the applicant's architect showed (Applicant Exhibit 2) where the storm pipes would be located and how they will comply with Condition No. 3 as amended.

Councilman Ellis wondered if the developer has considered a pervious parking lot. Mr. Justus responded that they looked at doing some pervious paving near the dumpster area, but their history with pervious paving is that it is very distinctively different than impervious and in terms of aesthetics, they are not pleased with it. But, he said he would look at the pervious parking lot in south Asheville Councilman Ellis mentioned and re-consider it.

Councilman Mumpower asked if the applicant felt that there were one set of rules in the beginning and then the rules changed. Mr. Justus said that in the ebb in flow of negotiation of a conditional use permit, there are things that may come into play that you hadn't taken into account. In this instance there was that ebb in flow and a constant changing environment, which they are trying to react to. He said if they weren't satisfied with the conditions, the project would not move forward. But, he said that at this point in time they are satisfied.

Upon inquiry of Councilman Peterson, City Attorney Oast said that this area was part of the involuntary annexation process, which began back in 2002 and will be effective June 30, 2003.

Upon inquiry of Councilman Mumpower, Mr. Jeremy Schumacher, project architect, explained why the exterior windows would have little or no impact on the internal floor space.

When Mr. Schumacher said that this building design could be a template that CVS Pharmacy could use in other communities, Councilwoman Jones pointed out that the investment that CVS is putting into Asheville now could also benefit CVS in the future in terms of having that template to show another customers.

When Councilman Dunn asked about the timeline for the project, Mr. Justus replied that they started with their preliminary application meeting in January and felt the timeline was reasonable, again noting they were satisfied.

Mr. Fred English, Haw Creek resident, felt that CVS is trying to be a good neighbor and the City should not require them to adhere to the City's stormwater regulations since they are not in the City yet.

Mr. Alan Ditmore, Leicester resident, felt that birth control providers should be exempt from all zoning regulations.

Mr. Paul Van Haden felt the City should be enforcing more of the aesthetics of the building.

Ms. Evon Peterson, former resident on Old County Home Road, thanked City Council for looking ahead to the future of stormwater in this area.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:44 p.m.

Councilwoman Jones asked that a condition be added that the second lane will always be for drop-off purposes.

Councilman Mumpower moved to adopt Ordinance No. 3014 to rezone property located at the corner of New Leicester Highway and Eliada Home Road (Gooches Road) from RS-6 Residential Single-Family Low Density District and Highway Business District to Community Business II District/Conditional Use. This motion was seconded by Councilman Peterson and carried unanimously.

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Councilman Mumpower moved to adopt Ordinance No. 3015, to issue a conditional use permit for a proposed CVS pharmacy and drive-through, subject to the following conditions: (1) All Technical Review Committee conditions be met; (2) The entire loop drive shall be built with real brick pavers or stamped colored asphalt with an 22' aesthetically enhanced speed table at the proposed pedestrian crossing near the corner of the building and a sidewalk connection to the public sidewalk using this crossing. Associated signage for the crossing is to be approved by the Engineering Department; (3) The applicant shall design and install stormwater management systems to not exceed pre-development velocity conditions for run-off leaving the project site; and (4) The outside drive-through lane shall be for drop-off purposes only. This motion was seconded by Councilman Peterson and carried unanimously.

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At 6:50 p.m., Mayor Worley announced a short recess.

C. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR CITY OWNED PROPERTY LOCATED AT RICHMOND HILL FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED ARMORY AND A PARKS AND RECREATION APPROVED RECREATIONAL FACILITY

ORDINANCE NO. 3016 - ORDINANCE REZONING PROPERTY LOCATED AT RICHMOND HILL FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3017 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PROPOSED ARMORY AND A PARKS AND RECREATION APPROVED RECREATIONAL FACILITY

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:12 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Ms. Shannon Tuch, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located at Richmond Hill from RS-2 Residential Single-Family Low Density District to Institutional

District/Conditional Use and a request to issue a conditional use permit for an associated Master Plan.

On February 28, 2003, the City of Asheville Parks and Recreation Department submitted a request to conditionally rezone the Richmond Hill Park property, in the Richmond Hill neighborhood in north Asheville, from its current RS-2 classification to Institutional/Conditional Use.

The conditional use rezoning request is for a large undeveloped parcel located between Richmond Hill Road and Riverview Church Road (PIN No. 9637.06-28-5877) totaling 183.07 acres (City Exhibit 3 – Location Map). The conditional use component of this application will be a site Master Plan showing the construction of 1 Armory multi-purpose building, 1 Armory maintenance and storage building, and 1 public gymnasium along with 5 parks and recreation designed ball fields with associated drives, parking areas, and pedestrian connections (City Exhibit 3 – Site Plan).

The project site is located within the City Limits and is surrounded primarily by vacant lots, agricultural land, and low density single family homes zoned RS-2, RM-6, and RM-8 all of which are located in the City's extraterritorial jurisdiction (ETJ). The primary access into the park is proposed through an extension off of Richmond Hill Drive with 2 secondary access points being proposed off of Riverview Church Road and at the current existing entrance off of Richmond Hill Road. It is the intent of the Master Plan to route the majority of the park traffic through the primary entrance to alleviate some of the traffic related issues around the existing entrance.

The majority of the site is a mixed evergreen/deciduous forest with active hiking/biking trails and an 18-hole disc golf course. The proposed site plan attempts to preserve as much of the existing healthy vegetation as is possible by locating the Armory and ball fields in areas where ground disturbance can be kept to a practicable minimum while relocating the existing disc golf course to another area of the park that can support this activity. In addition, future greenway connections, BMX facility, playground and other park amenities are delineated along with a wildlife preservation area to remain unaffected by the park development.

The project will provide a total of 300 parking spaces, bicycle parking, and a 30'wide Type "D" Landscape Buffer as required by the Unified Development Ordinance (UDO).

The RS-2 Residential Single-Family Low Density District is established to permit low density single-family dwellings and other compatible uses in recognition of environmental constraints and the need to preserve important resources while promoting a suitable environment for single-family living.

The Institutional District is established to reserve land for the development of major educational facilities, major medical facilities and other complementary uses such as, but not limited to, public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.

The Institutional classification is being sought after to allow for the construction and operation of a U.S. National Guard Armory division in need of relocation from their current diminishing site on Shelburne Road. The proposed plan will accommodate the division's 175 reservists who will be using the facility 1 weekend a month for (classroom) training and organizing. The approximate 12 acres (and buildings) dedicated to the Armory site will revert back to the City in the event that the Armory vacates the site. Due to the forced relocation, funding for the complete cooperative Armory/Park project will be 100% federally funded.

As part of the special requirements applied to Uses by Right Subject to Special Requirements, the project must meet a single condition for Government Buildings as found in section 7-16-1(c)(31) of the UDO:

b. **Shall not contain protective function, jails/detention facilities, or related facilities.**
There will be no protective function, jails/detention facilities, or related facilities in this development.

The Technical Review Committee (TRC) met on March 17, 2003, at which time the TRC made a positive recommendation that the project be forwarded to the Planning and Zoning Commission.

The Planning and Zoning Commission reviewed this project at their April 2, 2003, meeting where the Commission unanimously (7-0) recommended approval of the project with the following conditions:

1. Address all TRC conditions.
2. Disturbance of on-site vegetation shall be limited to areas shown on the site plan to the maximum extent practicable.
3. Site lighting, especially the ball field lights, shall be installed pursuant to a lighting plan that minimizes light trespass onto adjoining properties and utilizes the best available lighting practices and technology.
4. Games at the ball fields will not be scheduled during weekends of Armory use.
5. Continue to explore options to mitigate potential traffic hazards.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (Section 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The development is within standards of development practice set forth by the City of Asheville and other governmental units. In addition, the proposed building plans will be approved by N. C. Dept. of Insurance as City of Asheville property. Additional studies related to traffic and environmental issues are also being investigated.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The183 acre site's topography ranges in slope and vegetation. The development of largest impact is being sited to control land disturbing activity in an effort to preserve as much of the existing vegetation and slope as is practicable, including the areas around the periphery of the park which will serve to buffer the neighboring properties. Lower impact uses are being relocated to the more environmentally sensitive areas of the park with a large portion being preserved as a wildlife preservation area. In addition, Best Management Practices are being applied to control stormwater runoff and promote biofiltration in an effort to minimize impact on the existing tributaries on site and in the surrounding areas.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   There are a great number of studies demonstrating that close proximity to parks increase property values. In addition, a significant vegetative buffer is being preserved to help buffer the higher use areas from adjacent residential properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed plan shows the construction of 3 buildings over 183 acres, well below the density requirements for the current zoning designation. In addition, the buildings will be buffered substantially by vegetation, distance, and topography to have a minimal influence on adjacent properties. Lastly, an active recreation area and passive park are highly complementary to the character of the neighborhood.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed plan supports the Asheville City Plan 2025 through the cooperative efforts between the City of Asheville and a not-for-profit partner to develop facilities and deliver services to the community. In addition, the Best Management Practices (BMP) outlined by the application of pervious parking materials and bioretention/bioswale as proposed on the site Master Plan also address the goals outlined in the Comprehensive 2025 plan. Similarly, the plan also supports the Asheville City Plan 2010 by improving the City's recreational system through the construction or acquisition of new facilities at appropriate locations, including North Asheville. Lastly, the proposed site plan satisfies the smart growth goals of the City through identifying and preserving open space and natural areas through the application of the conditional use rezoning tool.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   This project is located in an established neighborhood with sufficient infrastructure to support the uses. In addition, a greenway system is being investigated in order to create an alternative transportation link to the park. Preliminary review has not revealed any significant problems in respect to utilities and the City's traffic engineer is examining options to improve emergency vehicle access.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. The proposed Master Plan shows the creation of a new primary access point into the park routing traffic away from the existing problematic entrance at the end of Richmond Hill Road. The City's Parks and Recreation and Engineering Departments are studying the situation in an attempt to alleviate any current and/or future traffic issues along Richmond Hill Drive and are exploring options that may include:

   1) Providing a sidewalk along the primary vehicular access route as it passes through any residential areas (this includes Richmond Hill Drive from Pearson Bridge Road to the park).
   2) Providing traffic calming on the same segment. This would include some sort of intersection improvement at Richmond Hill Drive and Pearson Bridge Road, such as a neighborhood traffic circle or other calming element for both streets. It would also

include traffic calming elements spaced every 300-500 feet up Richmond Hill Drive, such as speed humps and islands.

The Planning and Zoning Commission and City staff recommend approval of the zoning change from RS-2 Residential Single-Family Low Density District to Institutional District/ Conditional Use and approval of the associated conditional use permit as proposed by the applicant, subject to the following conditions:

1. Address all TRC conditions
2. Disturbance of on-site vegetation shall be limited to areas shown on the site plan to the maximum extent practicable.
3. Site lighting, especially the ball field lights, shall be installed pursuant to a lighting plan that minimizes light trespass onto adjoining properties and utilizes the best available lighting practices and technology.
4. Games at the ball fields will not be scheduled during weekends of Armory use.
5. Continue to explore options to mitigate potential traffic hazards.

Upon inquiry of Councilman Dunn, Superintendent of Parks Jim Orr said that approximately 30-40 acres will be set aside for two good quality disc courses. The current disc course is very well used and is praised as being a better course throughout the country. He explained that the 20 acres consists mostly of the area in between fairways to keep the natural setting. Approximately 600-700 people use the course in a two-month period of time if the weather is good. They do not pay a fee to play, but they have a membership with their own organization. The use was identified back in August of 2000 as a viable sporting activity and the disc golf group did the sweat equity and the City provided them with space and helped them with certain parts of some events. The disc golf group basically designed and built the golf course themselves and since the City will be disturbing the course and because it is so popular, that if it's relocated, the Parks & Recreation Dept. felt the disc golf group should design the relocated course and the City build it. The additional disc golf course requested by the disc golf group was proposed mainly due to the popularity and because the topography in this particular location in Western North Carolina lends itself to be a type and style of a golf course that normally you would not see elsewhere. The request was made and the City is looking into it.

Mr. Anthony Butzek, the City's Traffic Engineer, responded to various questions from Councilman Peterson regarding sidewalks and traffic calming on Richmond Hill Drive. He said that since these improvements are not for the park itself it was not possible at this time have those improvements paid by federal funds. Therefore, the recommendations in No. 7 will be a high priority for the City should the residents support those.

Upon inquiry of Councilman Ellis, Mr. Orr said that this is just like any other park that they have been given direction on to complete. They will go to as many outside funding sources to get parts of other structures completed. In addition, they are also looking at a community-built playground that will be in the park.

Councilman Mumpower felt comfortable in replacing the existing disc golf course but was concerned with the building of another one since that sport has a narrow utility in terms of our collectively community. Mr. Orr responded that development costs are very minimal. The costs incurred would be to purchase the basket locations and that particular apparatus for approximately $300-400. In the past on the existing course, the disc golf group has gotten donations for the individual holes to offset that expense. He did not have any cost breakdown of the City maintenance on the course, but it would be very minimal and only anticipates a crew going in and perhaps cutting down dead trees and doing some debris removal. This is not exclusive utilization for disc golfers, but can also be used by bird-watchers, hikers, bikers or joggers. The existing course brings tourists to Asheville.

Upon inquiry of Councilman Peterson, Mr. Orr said that there has been a need for additional ball fields in north Asheville for over 20 years and the fields will be regulation little league fields.

Mr. Alan Ditmore, Leicester resident, opposed the building of the new Armory. He felt that dense residential use is the best use for this property.

Ms. Hazel Fobes hoped that this new park would include exercise areas.

Ms. Virginia Jordan was concerned that with all the recreation uses proposed, the children participating will be exposed to an Army complex.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 7:52 p.m.

Councilman Mumpower asked if, after the disc golf courses are built, this would be a permanent dedication of use of that acreage. Mr. Orr said we do have flexibility if the interest goes away.. We have an arrangement with the WNC Disc Golf Association as a co-sponsored activity and until we see any type of evidence that that activity diminishes greatly, we would continue the agreement.

For Council's information, City Attorney Oast said that it's his understanding that if this is approved, the current Armory on Shelburne Road will be closed.

Col. Bill Johnson, Facilities Manager for the North Carolina Army National Guard, gave a brief background on why the Amory is requesting this conditional use rezoning and permit. In summary, a re-organization study of the units in the National Guard was performed. As a result of that study, a new unit would be coming to Asheville and they needed additional parking spaces and needed to expand on about 12-15 acres. The existing site had 12 acres, however, the N.C. Dept. of Transportation took approximately 3 acres for the interstate, leaving them with 9 acres. Looking at the state geographically, they determined Asheville was a good site to bring the new unit because they assist in different emergency situations, such as flooding (that our Military Police Units help out) and blizzards (where our vehicles are used). The facility that we currently have will revert back to the City and there will only be one readiness facility in Asheville. He said that this is a Military Police unit and basically they assist combat forces to help circulate refugees, etc. Their normal training is conducted at Fort Jackson, S.C., with the exception of paper-work training. The only training that will be conducted at this Asheville facility on a drill weekend will be a paper-work type of an exercise.

Councilman Mumpower said that the existing Amory has probably had different units stationed in it and questioned that even though the Military Police Unit is there now, what is the possibility that it may change in the future. Col. Johnson said that the planning cycle is now out to 2009 with no proposed changes. The next extension will be to 2014. He didn't foresee any changes in that particular unit in the future. He did point out that there was a Military Police unit located here years ago. That reverted to a Quarter Master Battalion Headquarters and now has reverted back to Military Police.

When Councilman Mumpower asked if he was correct in stating that the facility could not be used to incarcerate people, Col. Johnson said he didn't perceive that. Ms. Tuch pointed out that a condition in the Uses by Right Subject to Special Conditions states that the development "shall not contain protective function, jails/detention facilities, or related facilities." Col. Johnson said that he was not aware of any potential for any jail-type facility.

Upon inquiry of Councilman Peterson about the types of vehicles driving to and from the facility, Col. Johnson said Monday-Friday seven or eight staff will be driving their personal vehicles. On a drill weekend, the largest vehicle will be a 5-ton truck or humvees.

When Councilman Peterson asked if the public might use any space in the facility, Col. Johnson (City Exhibit 4 – Conceptual Diagram) said that if an agreement is worked out as a joint use of this facility, the public will be able to use the gymnasium, classrooms, restrooms and parking spaces at no cost. The only time the facility is used heavily is on the drill weekend, which is normally one weekend a month.

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that this property is not suitable for residential development due to the topography and problems with water and sewer.

Mayor Worley spoke in support of this excellent partnership between the National Guard and the City.

Councilman Peterson moved to adopt Ordinance No. 3016 to rezone property located at Richmond Hill from RS-2 Residential Single-Family Low Density District to Institutional District/Conditional Use. This motion was seconded by Councilman Mumpower and carried unanimously.

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Councilman Peterson hoped the City will look as soon as practical at traffic calming and sidewalks on Richmond Hill Drive as recommended by the City's Traffic Engineer in Condition No. 7.

Councilman Ellis moved to adopt Ordinance No. 3017, to issue a conditional use permit for a proposed Armory and a Parks and Recreation approved recreational facility, subject to the following conditions: (1) All Technical Review Committee conditions be met; (2) Disturbance of on-site vegetation shall be limited to areas shown on the site plan to the maximum extent practicable; (3) Site lighting, especially the ball field lights, shall be installed pursuant to a lighting plan that minimizes light trespass onto adjoining properties and utilizes the best available lighting practices and technology; (4) Games at the ball fields will not be scheduled during weekends of Armory use; and (5) Continue to explore options to mitigate potential traffic hazards. This motion was seconded by Councilman Dunn and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER ADOPTION OF THE ASHEVILLE CITY PLAN 2025

Mayor Worley said that, as discussed at the April 15, 2003, worksession, City Council will not consider adoption of the plan at this meeting. The public hearing will be held to listen to public comments. After the public hearing, Council will need time to study the plan carefully, taking into consideration the comments. Then, at a future date undetermined, City Council will consider adoption of the plan.

Mayor Worley opened the public hearing at 8:13 p.m.

Planning & Development Director Scott Shuford said that this is consideration of a resolution adopting the Asheville City Plan 2025 as the official comprehensive plan for the City of Asheville. This public hearing was advertised on April 11 and April 18, 2003.

This culminates a two year planning and public participation process that has been overseen in great detail by a 60 member committee (the City Plan Advisory Committee – CPAC) and has involved nine public forums, one major community meeting, and innumerable CPAC meetings, focus group meetings and public presentations. The effort to involve the public in developing this plan has been unprecedented in the City's history and has included surveys, television presentations and announcements, outreach to specific groups (particularly groups that might typically be underrepresented at standard public forums, including minority groups and business organizations), media coverage, newspaper editorials, and other inventive methods of capturing public input. The reward for this effort has been over 1,000 specific comments from the public that have been carefully evaluated by CPAC and included in the plan.

The Asheville City Plan 2025 will serve as guide for development approvals, rezonings, code amendments, infrastructure improvements, legislative action requests, and other City efforts. However, the plan is not an end into itself – it is a guide for specific actions, with the individual consideration and implementation of these actions being the method by which the plan will be put into effect.

The Asheville City Plan 2025 replaces the Asheville City Plan 2010, adopted in 1987.

The Planning and Zoning Commission recommended approval of Asheville City Plan 2025 as the official comprehensive plan for the City on March 27, 2003, by a unanimous vote (5-0), subject to the amendments. City staff also recommends approval of the plan as proposed for amendment.

After reviewing the background, Mr. Shuford explained the demographic changes.

Land use and transportation issues include (1) Asheville has tripled in land area over the past 50 years; (2) Asheville's density (persons per square mile) has decreased by 50% over the past 50 years; and (3) we have moved from an urban development pattern to a suburban development pattern. The costs associated with a suburban development pattern are that it's expensive to serve, has environmental problems and encounters convenience costs. A house that costs $150,000 in Asheville can be purchased for $116,000 in Greensboro according to a Coldwell Banker study.

He explained how mass transit requires 8-16 units per acre for efficient service, how Asheville's development pattern forces reliance on the automobile, that NC DOT projects that 80% of the traffic on the new I-26 Connector will be local traffic, and that there is a huge pressure on arterials and interstates. Current development patterns are not sustainable and we need to seek opportunities to recover an urban development pattern.

Land use ideas include (1) incorporate "green building" concepts; (2) preserve open space, historic resources; (3) promote affordable housing; (4) more urban villages; (5) higher density/greater zoning flexibility; and (6) coordinate land planning with Buncombe County.

Transportation ideas include: (1) missed use development pattern; (2) transit; (3) synchronize traffic signals; (4) walkable and bikeable infrastructure; and (5) construct I-26 Connector consistent with community recommendations.

He then reviewed the economic trends in Asheville. Economic development ideas include (1) high tech workforce; (2) reserve industrial land; (3) better use of our educational institutions; (4) develop and improve standards for new economy: arts and crafts; low impact; (5) use quality of life to attract/retain business; (6) regional industrial development; (7) more innovation in "branding" – creating an image for Asheville; (8) create a "wired" community and affordable (high speed internet access) bandwidth focusing on grass-roots e-business; and (9) support local businesses.

Air quality ideas include (1) high density, mixed use, walkable communities; (2) regional cooperation to reduce air pollution; (3) lobby for solutions to air quality problems; (4) develop, improve and enforce industry standards for air pollution; (5) promote mass transit; (6) City fleet use alternative fuels; and (7) green building techniques.

Water quality ideas include: (1) City to continue to work with RiverLink to develop/implement master plan; (2) regional cooperation to reduce water pollution; (3) develop, improve and enforce industry standards for water pollution; (4) improved stormwater management regulations; and (5) green building techniques.

Mr. Shuford then explained smart growth. Long range planning includes transformation of commercial corridors; transit-supported density; walkable and bikeable; tax equity; strong neighborhoods; parks, open space and conservation areas; compatible, high quality infill development; strong Center City; flexible development regulations; improved intergovernmental coordination; effective City services; regional economy; development in character with community; compact urban form; clean air and water; skill-based entrepreneurial economy; green building tools and incentives; effective public participation; affordable housing; preservation of historic and natural resources; and connected, efficient and attractive streets.

Mr. Paul Godfrey, facilitator to the 2025 process, explained that City Council appointed 61 people and gave them a charge that they took seriously. The charge was to gather public input and use that public input in the development of a plan for the future of Asheville. They took the task to heart. The entire process was truly citizen-driven.

Mr. Alan Ditmore said the plan's goals are economic growth and quality of life. He disagrees with those goals noting that his goals are equality and sustainability.

Mr. Paul Van Haden suggested making sure there is adequate open space in the 2025 plan and suggested bringing back the trolley system.

Mr. Pat Whalen, member of CPAC, spoke about the 2-year process. He reiterated that they held nine public forums, one major community meeting, and innumerable CPAC meetings, focus group meetings and public presentations. They tried very hard to give each resident in our community numerous opportunities for comment on the plan. The plan is not perfect, but it does represent thousands and thousands of hours of citizens' efforts and is a fair representation of the voices of the citizens of Asheville. The increased density the plan offers our City is our best chance to build and maintain a fiscally sound local government and to control our taxes.

Mr. Keith Thomson, member of CPAC, spoke in support of the 2025 Plan and reiterated the real effort that was made to include all comments. He pointed out that this plan is an on-going process.

Ms. Hazel Fobes, member of CPAC, said the Committee members accepted Council's challenge and everyone learned to listen to each other. She said they focused on the goals and pointed out how all four goals are interrelated. Even though the plan is not perfect, she said they are proud of what they accomplished and could present to Council.

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Mr. Mike Lewis, member of CPAC, commented on some of the concerns he has heard surrounding the 2025 Plan. He stressed that the Committee put as great an effort forth as they could to solicit public participation and felt that the Plan is community represented. Even though the plan is long, a lot of citizen input was incorporated and planning is complicated and is a tedious process. While he was sure that a lot of improvements could be made to the Plan, he hoped City Council would look at each improvement very carefully. Even though we need to look ahead to the future, realistically little will survive until 2025. But, that is the nature of plans that are applied to dynamic situations. If we as citizens accept Asheville's current economic as a standard by which to measure our community success, then we are in bad shape. That opinion reflects a lack of faith in the community and if we express that sort of hopefulness no one will bring a new business to this community and Asheville will become an economic wasteland. The 2025 Plan reflects a certain level of optimism that we can resolve our problems and that together we can generate a vibrant economy in Asheville. He urged Council to adopt the Plan fundamentally unchanged.

Ms. Barber Melton, member of CPAC, briefed Council on the hard work and many hours that the Committee devoted to bringing this Plan before Council. She supported the Plan and hoped Council would do the same.

Councilman Mumpower said that there are some members of Council that do have concerns. We are called on to vote on this document for a reason. We're part of the system of checks and balances and we have a responsibility to do that in a careful manner. It's not easy to speak against the good efforts of 61 to 600 people, but in fairness, some of us do have some concerns and we will try hard to address those concerns and try to craft a document that carefully addresses our future. It is a serous document, not only a guideline. Whatever plan we craft is going to be utilized as a guide and resource for a long time in the future, and he wants to make sure it can be used as a serious resource. Hopefully we can address concerns in a constructive fashion.

Councilwoman Jones was very encouraged to hear the speakers say how important the community building aspect of the development of the plan was.

Councilman Peterson said that Council has heard the comments at this hearing and noted that most of Council will be reviewing the entire document. If people have further concerns or views or support, he encouraged them to contact Council members. The public input isn't closed yet because City Council will be having a lot of discussion.

Councilman Dunn congratulated the CPAC for the hard work, but he has serious questions about the Plan. For an example, there is nothing in this plan about government and taxes. He suggested we name the 2025 Plan the City Vision 2025. Sometimes plans change and he doesn't want to see future leaders saddled with a document they wish they didn't have.

At 9:12 p.m., Mayor Worley closed the public hearing.

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REQUIRE A CONDITIONAL USE PERMIT FOR DRIVE-THROUGH FACILITIES IN THE CENTRAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 9:12 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to require a conditional use permit for drive-through facilities in the Central Business District. This public hearing was advertised on April 11 and 18, 2003.

This code amendment would establish a requirement for the issuance of a conditional use permit for drive-through facilities in the Central Business District. Wachovia Bank recently received approval for a drive-through facility on Coxe Avenue from the Asheville Downtown Commission. In approving this facility, the Commission noted that drive-through uses contribute to the "suburbanization" of downtown and, while necessary on occasion, needed heightened review and public input. The Commission asked staff to promptly prepare a code amendment to make drive-through facilities a conditional use in the Central Business District.

On March 14, 2003, the Asheville Downtown Commission recommended approval of the proposed amendment by a vote of 8-1. At the Planning & Zoning Commission meeting held on April 2, 2003, the Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Based on Council's comments from the April 15, 2003, worksession, Mr. Glines proposed the following two revisions under the design standards and operational standards:

a. Design standards. Drive-through facilities should typically be accessory to a principal use of the property on which they are located. In general, it is anticipated that drive-through facilities will be located in, under, or behind a principal structure that conforms to any applicable setback, height or design requirements. Drive-through facilities should be separated by a minimum linear distance of 500 feet along any street.

b. Operational standards: No more than one driveway per street frontage should generally be provided for drive-through facilities; driveways should be no wider than two travel lanes (24 feet) and should be limited to secondary streets wherever possible. Special care shall be taken to address vehicle-pedestrian conflict points in the location and design of the facility; pursuant to this, driveways for drive-through facilities shall not be located closer than 100 feet from any street intersection.

Mr. Glines responded to various questions raised at the April 15, 2003, worksession, some being, but are not limited to: within the past three years, how many buildings have built drive-throughs in the Central Business District; what are the pros and cons associated with drive-throughs in the Central Business District; and is air quality an issue with drive-throughs.

Mr. Glines responded to various questions/comments from Councilman Peterson, some being, but are not limited to: how would someone get approval to put in a drive-through; what is the definition of "accessory" and "principal use"; clarification of where a drive-through facility can be located on a principal structure; do all new buildings downtown have to be built with zero setbacks; how would this affect someone who has a large building and parking lot who wants to put an ATM at the edge of the parking lot; is an ATM a drive-through facility; and for buildings that have a drive-through facility and an ATM, like the First Union Bank downtown, will they be prohibited by the 500 feet restriction.

Councilman Peterson disagreed with the no more than one driveway per street frontage requirement because having a place where people come in on one side and go out the other has greater safety for pedestrians. He felt that allowing two driveways is safer than only allowing one.

Mayor Worley closed the public hearing at 9:40 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower explained why he felt this amendment would only be setting up another layer of control that doesn't serve a solid purpose.

Councilman Ellis, liaison to the Downtown Commission, spoke in support of the amendment and said that the Downtown Commission is trying to make the downtown pedestrian friendly. The more drive-throughs you have will attract people from a larger area into the urban area, where we don't need more cars. He feels this ordinance amendment addresses the problem very well. Since this will be a conditional use permit, future Council can have the option of making that determination and placing conditions if they warrant them. He said that City Council appointed the Downtown Commission and we should listen to them since they have studied this matter in great detail.

Councilman Dunn felt businesses should be able to use their property anyway they want. He doesn't think this amendment will make it safer for pedestrians. He felt this amendment does not serve the City as a whole.

Councilman Peterson felt this matter should be sent back to staff for improvements brought out at this public hearing.

Councilman Ellis moved to table this amendment and remand it back to City staff for further study. This motion was seconded by Councilwoman Jones and carried unanimously.

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PERMIT BED AND BREAKFAST INNS TO UTILIZE ACCESSORY STRUCTURES FOR A LIMITED NUMBER OF GUEST ROOMS

ORDINANCE NO. 3018 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCE TO PERMIT BED AND BREAKFAST INNS TO UTILIZE ACCESSORY STRUCTURES FOR A LIMITED NUMBER OF GUEST ROOMS

Mayor Worley opened the public hearing at 9:52 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to permit Bed & Breakfast Inns to utilize accessory structures for a limited number of guest rooms. This public hearing was advertised on April 11 and 18, 2003.

This code amendment would permit bed and breakfast inns to utilize accessory structures for a limited number of guest rooms. The current code requirements do not permit carriage houses or other outbuildings to be used for guest accommodations for bed and breakfast inns. Since heritage tourism is an increasing and very positive component of our tourism industry, this amendment has both practical and economic development implications.

On April 2, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 9:54 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3018. This motion was seconded by Councilwoman Jones and carried unanimously.

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At 9:55 p.m., Mayor Worley announced a short break.

G. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW URBAN RESIDENTIAL DISTRICT

Mayor Worley opened the public hearing at 10:05 p.m.

Urban Planner Shannon Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish a new high density, infill zoning classification called Urban Residential District. This public hearing was advertised on April 11 and 18, 2003.

Frequently in community meetings and planning forums and most recently, the forums for the City Plan 2025 comprehensive plan process, citizens have identified the need for:

- access to appropriately scaled mixed use neighborhood services located close to home
- improved pedestrian facilities, projects that relate to the street and attractive streetscapes
- more affordable housing throughout the community and a greater variety of housing choices
- broader transportation options

One of the most pressing problems facing the City of Asheville is the need for affordable housing. The Urban Residential District (URD) has been developed to increase opportunities for the development of affordable housing and a mix of other housing types by allowing for an increase in density, scale, and use in areas of the city where infrastructure can accommodate higher density, infill development. It is intended that the URD be located on significant transit corridors and/or in areas planned for high growth.

Providing residential units is the primary goal of the URD, however, it is recognized that there is significant need for basic commercial retail, office use, and other activities that support residential uses in proximity to high density residential areas. The URD recognizes this and incorporates other non-residential uses on a limited basis. The proposed URD is an opportunity to incorporate the City Council adopted Smart Growth and sustainable development goals that have been identified by the community during the last decade.

The URD will encourage pedestrian activity by creating safe and inviting streetscapes with comfortable walking amenities. Traffic flow will be improved by limiting curb-cuts and requiring cross access between parcels. The URD will also make public transit a viable option by increasing density (i.e., the number of potential riders) in neighborhoods that are or can be served by the bus system.

Some of the long term benefits from developing any corridor in this pattern will be to build a livable community, strengthen the area's tax base, reduce driving trips on roadways, support mass transit, improve air quality and reduce sprawl.

The URD is not being developed with a particular corridor or area of the City in which it is to be applied. However, staff has been in preliminary contact with Mountain Housing Opportunities and the West End Clingman Avenue Neighborhood regarding the possible application of this new zoning designation in certain areas of this neighborhood.

At the Planning and Zoning Commission meeting on April 2, 2003, the Commission approved the creation of the Urban Residential District by a vote of 7-0. Staff also supports the adoption of this district.

Based on comments from City Council at their April 15, 2003, worksession, the following revision was recommended under the Permitted Uses by adding: "Noise producing uses such as, but not limited to, restaurants, pubs, bakeries, and laundry establishments are restricted to 50% of the ground floor level but can be buffered by non-residential office uses on the remaining 50% of the ground level and on that portion of the second story that is directly above the noise producing use. Residential units must be provided on the remainder of the second story and subsequent stories." However, after further consideration, staff became concerned that we may be acquiring a variety of noise producing uses in this district in order to gain this extra additional office space and that is not the intent of the URD. The City Attorney was also concerned about the description of noise producing uses and that the vagueness could affect the validity of the ordinance since it's essentially up to the Planning staff on what is or is not a noise producing use. The City Attorney was more comfortable with the original wording leaving the market to drive what ultimately is built in the limited commercial area and letting the developer make the decision of whether or not it's appropriate use for that area, given that there are residential units above and around it. The other alternative to reverting back to the original language would be to try to develop some sort of more objective determinable criteria for distinguishing between what is compatible with the residential use and what isn't, like limiting operating hours to normal work hours.

Upon inquiry of Councilman Dunn, Ms. Tuch said that we have the same design alternative opportunity in the URD that is in the Neighborhood Corridor District.

Upon inquiry of Councilman Mumpower, Ms. Tuch said that the Neighborhood Corridor District actually had an incentives table that allowed for increased stories and increased density. In this ordinance, we have built in some of that incentive to begin with.

Councilman Mumpower asked how much input was received from the developers and the community. Ms. Tuch explained that this has been a work in progress for some time. It differs from the Neighborhood Corridor District in that we had an idea of where the district would be applied (Broadway Corridor) and the Broadway Corridor people had a lot of input into that new district wording. In this case, we do not have an area in mind in which to go to and ask for their input.

Councilman Peterson didn't think City staff circulated the proposed ordinance around enough to obtain public comment. The good thing about this URD is that a lot of this new district is based upon the Neighborhood Corridor District and that was a result of a lot of public input. He felt that if the different areas have input into crafting the new district, they will be more accepting of application of it in their neighborhood.

Planning & Development Director Scott Shuford said that this was a request of City Council to bring this forward and we had a good model of the Neighborhood Corridor District. Planning staff feels comfortable with the opportunity to create an URD with twice the density potential of any of our existing residential districts. With any of our ordinances we do share them early with the Coalition of Asheville Neighborhood representative.

Upon inquiry of Councilman Mumpower, Mr. Shuford said that the size of the area to which this new district would be applied will depend upon the circumstances. They anticipate the district being applied to corridors or clusters – not a single lot.

After a short discussion initiated by Councilman Peterson about shared and remote parking, it was staff's recommendation to amend the shared and remote parking sub-section by adding "Residentially zoned areas may not be used to provide shared or remote parking for this district except that non-residential uses in residential districts may be used" as the second to the last sentence in that sub-section.

Councilman Peterson suggested limiting non-residential uses to some percentage of the building.

After a short discussion, City Attorney Oast suggested amending (b) Permitted Uses (1) to read: "All non-residential non-office uses are restricted to the first story or ground level floor and shall not occupy more than 50% of the ground floor gross square footage. Note: The balance of ground floor gross square footage can be used for common areas supporting the principal residential use."

In addition, City Attorney Oast suggested amending (b) Permitted Uses (2) to read: "Non-residential non-office uses are restricted to 50% of the ground floor level but can be buffered by office uses on the remaining 50% of the ground level on that portion of the second story that is directly above the non-residential non-office use. Residential units must be provided on the remainder of the second story and subsequent stories. Provided that non-residential uses are limited to no more than 30% of the building."

Mr. Pat Whalen spoke in support of the new district, but noted that the biggest problem in mixed-use projects is the noise from bars letting out late at night.

City Attorney Oast said that the City has no ability to control the hours of operation of pubs. He did say he thought there is legislation pending that may give the City more authority over the operation of ABC permitted establishments. The noise ordinance would apply, however, it's not as easy to enforce as the hours of operation.

After a short discussion, it was the recommendation of Mr. Shuford and City Attorney Oast to delete pubs as a conditional use.

Mayor Worley closed the public hearing at 10:41 p.m.

Due to some language inconsistencies and the lateness of the hour, Councilman Mumpower moved to continue this matter until May 27, 2003. This motion was seconded by Councilman Ellis and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-80 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONTINUE WITH NEGOTIATIONS WITH THE NATIONAL GUARD ARMORY FOR THE DEVELOPMENT OF A NEW ARMORY AT RICHMOND HILL PARK

Superintendent of Parks Jim Orr said that the Parks and Recreation Department is requesting City Council approval to proceed with an agreement between the City of Asheville and the North Carolina National Guard for the development of a new Armory at Richmond Hill Park.

The Parks and Recreation Department, along with other City departments, has been working for several months with the North Carolina National Guard for the development of a new Readiness Center to be located on approximately 12 acres at Richmond Hill. The current location of the Armory on Shelburne Road is not meeting the needs of the National Guard Armory and will be closed. In an effort to try to address the Armory's needs and to enhance Parks and Recreation's services at Richmond Hill, the following issues have been tentatively agreed upon as part of the overall agreement between both parties.

1. The National Guard Armory will appropriate approximately $7 million to the overall project. This appropriation will not require any local match by the City of Asheville.
2. The National Guard Armory will develop the entrance road to both the Armory facility and the proposed ball field complex to meet City standards.
3. The National Guard Armory will rough grade four baseball/softball fields and one multi-purpose soccer/football field.
4. As part of the overall construction of the new Armory facility, a gymnasium will be available for public use operated by the Parks and Recreation Department.
5. Landscaping around the Armory facility will meet the City's requirements.
6. The entire Armory facility will be fenced.
7. A shared parking area will be constructed at the Armory site for the Armory's use and as overflow parking for the park area.
8. The final design of the Armory facility will be approved by the City of Asheville.
9. All conditions outlined through the conditional use zoning/conditional use permit process will be implemented.
10. Construction of all facilities will meet Federal, State and Local permitting requirements.
11. The property will revert back to the City of Asheville when the Armory decides to vacate the property.
12. The master plan will be developed over time to provide enhanced recreation opportunities.

This is an excellent opportunity to provide much-needed recreation facilities in the Richmond Hill area as well as a state-of-the-art Readiness Center for Asheville. In August 2000, a community meeting was held in the Richmond Hill area. The information gathered from this meeting was used to develop the master plan for this 187-acre property. Another community meeting was held on March 19, 2003, with over 75 people attending to share their issues and concerns. The issue was discussed at the Planning and Zoning Commission meeting on April 2, 2003. There was no opposition voiced at that meeting and they unanimously approved the conditional use zoning.

The Parks and Recreation Department is seeking City Council's approval to authorize the City Manager to continue with negotiations for this agreement. The final contract will be brought back to City Council for approval at a later date.

Upon inquiry of Councilman Peterson, Mr. Orr explained the mutual use of the facility similar to the existing one on Shelburne Road.

Councilman Peterson asked if there was an appraisal for the 12 acres. City Manager Westbrook replied not to his knowledge. He said the National Guard asked if there was any City-property they could use for a new Armory. He said that this property was available and we would be willing to enter into a partnership to get the park jump-started. He explained that due to the funding situation, it would be awhile before we could actually start on the park. The National Guard has been involved in this community in the past and, after negotiating, they agreed to help clear the ball fields and provide some associated parking. In addition, since there will be a larger unit stationed here, there will be an economic development aspect to it.

Regarding value, Mr. Orr also stated that without doing a full-blown appraisal, the City would be getting a lot more than what the actual value of the property would be. In fact, 4-5 years ago, the cost of the clearing and initial infrastructure of the park totaled over $400,000.

Upon inquiry of Councilman Peterson, City Manager Westbrook said there are no plans yet for the existing Armory on Shelburne Road, which will revert back to the City once the new Armory is built.

Mr. Orr said that after the Armory and ball fields are constructed, the City has agreed with the Armory that there would be no programming of the ball field complex on the weekend that the Armory staff would have their full fledged unit. This will alleviate congestion and traffic.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 03-80. This motion was seconded by Councilwoman and carried unanimously.

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B. RESOLUTION NO. 03-81 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Councilman Mumpower said that the terms of Darryl Hart (Regular), David Young (Regular), Chris Goodwin (Alternate) and Scott Fowler (Alternate) on the Board of Adjustment expired on January 21, 2003; however, City Council extended their terms until April 21, 2003.

On April 22, 2003, City Council interviewed Bradley Taylor, Richard Fort, Jane Mathews Jonathan Glover and Jerry Bailey. Raymond McClinton was unable to be interviewed on this date.

For the two Regular Members: Bradley Taylor received no votes, Richard Fort received 5 votes, Jane Mathews received 2 votes, Jonathan Glover received 1 vote and Jerry Bailey received 4 votes. Therefore, Richard Fort was appointed as a Regular Member to serve a three year term, term to expire January 21, 2006, and Jerry Bailey was appointed as a Regular Member to serve a three year term, term to expire January 21, 2006.

For the two Alternate Members: Bradley Taylor received 3 votes, Jane Mathews received 3 votes, and Jonathan Glover received 6 votes. Another vote was taken: Bradley Taylor received 3 votes and Jane Mathews received 3 votes. Therefore Jonathan Glover was appointed as an Alternate Member to serve a three year term, term to expire January 21, 2006, and the second vacancy for an Alternate member will be brought back to City Council when Vice-Mayor Bellamy returns from maternity leave. All appointments are until their successors have been appointed.

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VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of March 28-April 10, 2003: BellSouth (Water), Rhonda Anders (Streets), Clifton Wilkins (Streets), Cynthia Carnes (Fire), Francine Judon (Streets), Carolyn Allen (Civic Center), Francis R. Bowen (Streets) and Sherwin Pevaroff (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilwoman Jones announced an event at Hill Street Baptist Church on Sunday, April 27, 2003, at 6:00 p.m.

Mr. Kevin Nuttall, representative of the Lighthouse Group, spoke to Council about the closing of Vance Monument and the City's park policy, which he feels violates the Free Speech Clause of the First and Fourteenth Amendments.

Mr. Alan Ditmore, Leicester resident, felt that the local presence of the National Guard is a threat to the security of the local population.

Mr. Paul Van Haden spoke about the need for City Council to enforce the citizens' rights to free speech.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:14 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 29, 2003
West Asheville Community Center
970 Haywood Road
Asheville, N.C.

7:00 p.m. – Community Meeting

Present: Mayor Charles R. Worley, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Terry M. Bellamy (maternity leave)

The following topics/concerns were raised by residents and addressed by City Council and City staff: what can the Greeley Street community do to start a community watch program; what constitutes a single-family residence; why are homeowners held to higher standards than renters; there is a lot of noise from loud boom-boxes and speeding traffic on Greeley Street; wiring left by telephone company is a problem; sanitation crews who pick up yard waste don't pick all of it up but leaves a trail of waste in the street; street sweeper causes a tornado of dust and litter in the street is swept up into the air; does the noise ordinance address how late people can play loud music; need for pedestrian signal on Haywood Road across from Co-op; need for pedestrian sign on Haywood Road at Ingles; what is the process to get speed bumps on Greeley Street, Fairfax Avenue, Haywood Road and Brevard Road because people park their cars in the road forcing walkers into the street; cars are parked the wrong way on Haywood Road near the Trinity Methodist Church; loud boom-boxes on Haywood Road; prostitution and drug-dealing in front of 420 Haywood Road; Malvern Hills pool is a valuable community resource and hoped it would not be cut out of the budget this year; there is a need in the community for a place to ride trick bikes; garbage collection system should accommodate older and handicapped people; need for joint 911 system; need for more cooperation between City and County departments, in particular Police Department and Sheriff's Department; City Manager salary; concern over tax dollars spent on some art projects and could that money be used for something else; City needs to take care of what they have in Police Department so turnovers don't occur; concern with way Police Officers are evaluated; request for an external investigation of Police Department regarding misappropriation of City employee's time; praise for City's neighborhood walk program; support for additional Police officers in west Asheville; Pisgah View Apartment residents are tired of having their development being blamed for crime in the neighborhood; update on I-26 Connector; update on Haywood Road Corridor Plan; do landlords of rental properties have any obligation to homeowners; West End Bakery is wonderful addition to West Asheville; what can citizens do to become more involved in their community; and Police Department is a highly professional department and has dedicated officers.

Mayor Worley adjourned the meeting at 8:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 6, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy (participating via speaker phone); Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James E. Ellis and Councilman Brian L. Peterson

CONSENT:

Relinquishing Easement for Sanitary Sewer Project

Summary: The consideration of a resolution authorizing the Mayor to relinquish the City's easement crossing real property owned by Hershel T. Anderson and Lucy D. Anderson.

As part of the Brevard Road Annexation Phase III Contract "3" sanitary system improvements project, the City was required to provide sanitary sewer service to this property and other adjoining parcels. The City acquired an easement from the Andersons. The Andersons conveyed an easement to the City for the aforesaid purpose and the easement was recorded in Deed Book 2446 at Page 523 of the Buncombe County Register of Deeds Office. Subsequent negotiations with other affected property owners resulted in the revision of the horizontal alignment of the sanitary sewer line away from the Anderson's property. The City's Engineering Department has determined that this easement is no longer needed for this purpose or any other future needs.

The Engineering Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement interest.

Clerk to Advertise an Offer to Purchase Disposal Parcel 74 on Martin Luther King Jr. Drive

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74 in the East End/Valley Street Community for the appraised value of $12,000.

Disposal Parcel 74 is a residential lot located on the east side of Martin Luther King Jr. Drive at the intersection with Miller Street comprising 6,970 square feet. The lot is irregular in shape and sloping upward from street level. The bid from WNC Housing, Inc., equals the appraised value of $12,000. WNC Housing, Inc., proposed to construct a single family dwelling on the lot.

Approval of the resolution will establish the appraised value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74.

Extension of Contract as a State Regional Hazardous Materials Response Team

Summary: The consideration of a resolution authorizing the City Manager to extend an agreement with the N. C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region Six.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Rutherford County west to the Tennessee Border. Twenty counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-1995, and during the nine years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

The N. C. Dept. of Public Safety and Crime Control is now in the process of extending contracts with seven North Carolina governmental units in North Carolina for provision of regional hazardous materials emergency response.

The State of North Carolina provides funding that fully supports the operational costs of the program.

City staff recommends City Council authorize the City Manager to renew extension of the Regional Hazardous Materials Contract with the N. C. Dept. of Public Safety and Crime Control for Region Six.

Water Authority Bid Awards for Critical Needs Phase III Contracts 1 and 2

Summary: This is a review of the Regional Water Authority's bid awards for Contracts 1 & 2 of the Critical Needs Phase III Water Distribution System Improvements.

Contract 1 - Sealed bids were received and opened on Thursday, March 6, 2003, for the Authority's Critical Needs Phase III Contract 1. Nine bids were received for Contract 1 with Wheeler Construction Company, Inc., submitting the low bid of $751,689.00. Contract 1 includes the installation of approximately 14,400 linear feet of 8-inch and 6-inch ductile iron waterlines with all related appurtenances. A complete list of bidders follows:

Critical Needs Phase III – Contract 1
Engineer's Estimate: $ 900,000

COMPANY	BID
Wheeler Construction Company, Weaverville, NC	$ 751,689.00
Precision Contracting, Inc., Asheville, NC	$ 765,900.00
Buckeye Construction Company, Canton, NC	$ 883,544.75
Payne, McGinn & Cummins, Inc., Travelers Rest, SC	$ 887,137.28

Huntley Construction Company, Inc., Asheville, NC	$ 959,889.00
Steppe Construction Company, Inc., Mill Spring, NC	$ 983,425.00
T & K Utilities, Asheville, NC	$ 985,100.00
Hobson Construction Company, Inc., Arden, NC	$ 993,925.00
BC & D Construction, Cullowhee, NC	$1,164,300.00

This Contract is the second of three that will comprise the Authority's Critical Needs Phase III program and are funded by the $3 million high unit cost grant. The first contract, Contract 3, is being performed by Precision Contracting and is nearing completion. Critical Needs projects are focused at locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

The Office of Minority Affairs reviewed these bids and Wheeler Construction Company's bid complies with the requirements of the Minority Business Program. McGill Associates, P.A., the project engineers for Contract 1, have recommended award of this contract to the low bidder, Wheeler Construction Company.

Contract 1 has a liquidated damages clause of $250.00 per day for failure to complete the project in the time allocated. Construction on the project will occur in the months of May through September 2003.

Contract 2 - Sealed bids were received and opened on Thursday, March 6, 2003, for the Authority's Critical Needs Phase III Contract 2. Nine bids were received for Contract 2 with Wheeler Construction Company, Inc., submitting the low bid of $692,172.50. Contract 2 includes the installation of approximately 14,400 linear feet of 8-inch and 6-inch ductile iron waterlines with all related appurtenances. A complete list of bidders follows:

Critical Needs Phase III – Contract 2
Engineer's Estimate: $ 900,000

COMPANY	BID
Wheeler Construction Company, Weaverville, NC	$ 692,172.50
T & K Utilities, Asheville, NC	$ 751,975.00
Precision Contracting, Inc., Asheville, NC	$ 756,700.00
Payne, McGinn & Cummins, Inc., Travelers Rest, SC	$ 756,994.12
Steppe Construction Company, Inc., Mill Spring, NC	$ 802,795.00
Buckeye Construction Company, Canton, NC	$ 838,526.50
Hobson Construction Company, Inc., Arden, NC	$ 933,750.00
BC & D Construction, Cullowhee, NC	$1,118,000.00
Huntley Construction Company, Inc., Asheville, NC	$1,132,307.00

This Contract is the third of three that will comprise the Authority's Critical Needs Phase III program and are funded by the $3 million high unit cost grant.

The Office of Minority Affairs reviewed these bids and Wheeler Construction Company's bid complies with the requirements of the Minority Business Program. McGill Associates, P.A., the project engineers for Contract 2, have recommended award of this contract to the low bidder, Wheeler Construction Company.

Contract 2 has a liquidated damages clause of $250.00 per day for failure to complete the project in the time allocated. Construction on the project will occur in the months of May through September 2003.

This report is provided to City Council for information only.

Water Authority Bid Award for Mount Royal Water Storage Tank

Summary: This is a review of the Regional Water Authority's bid award for the contract known as Mount Royal Water Storage Tank to Hobson Construction Co. Inc., of Arden, North Carolina, as the lowest responsible bidder.

The Engineering Department developed construction documents and specifications for the contract known as Mount Royal Water Storage Tank.

The project was advertised in March and due to lack of interest bids could not be opened as originally scheduled. The project was re-advertised and this time four bids were received and opened on April 10, 2003. The Engineering Department received very competitive bids. The following is a complete list of bidders:

Company	Bid
Hobson Construction Co., Inc	$150,970.00
Cooper Construction Company	$174,200.00
Buckeye Construction Company	$183,892.00
Hickory Construction Company	$219,500.00

The construction time for this project is identified as 90 calendar days in the contract documents. All bids were reviewed by the Office of Minority Affairs for compliance with the City's minority business goals. The bid by Hobson Construction Company, Inc. was found to be in full compliance and was deemed as a responsive bid.

This report is provided to City Council for information only.

Special Worksession on Joint Planning Area Scheduled for Thursday, May 29, 2003, at 12:15 p.m., in the First Floor North Conference Room, City Hall Building

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE FROM THE HAW CREEK PEDESTRIAN SAFETY TASK FORCE

Mr. Calvin Underwood updated City Council on the progress of the Haw Creek Pedestrian Safety Task Force.

Mr. Underwood said that in April of 2001 City Council adopted a resolution establishing the Haw Creek Pedestrian Task Force. The Task Force consists of staff from the City and N. C. Dept. of Transportation as well as community representatives. Members include: Al Kopf, Bernie Arghiere, Bob Brummond, Calvin Underwood, Cathy Ball, Chris Pelly, Deloris File, Gerry Hardesty, Jim Orr, Kenneth Wilson, Scott Shuford and Tony Moore.

He said that the criteria for sidewalks in the Pedestrian Thoroughfare Plan include: ½ mile of school; ½ mile of community center; ½ mile of church; commercial or business center; along major corridor; and high use area/pedestrian generator.

The Task Force has (1) met monthly since July 2001; (2) developed short term goal – install sidewalk between Liberty, Park and School; (3) developed long-term goals – install greenway connections in the Valley; develop an educational/awareness program; and sidewalks the length of the Valley.

The good news is that the TEA 21 Enhancement Grant has been approved for the Avon Road sidewalk as well as New Haw Creek Road sidewalk from Beverly Road to Arco Road.

Regarding the Avon Road Project, the design is complete for approximately 1,100 linear feet of sidewalk by City staff, they have obtained easements for sidewalk, and they have received a TEA 21 grant to fund most of the project.

Regarding New Haw Creek Project of Beverly Road to Arco Road, the design is complete for approximately 1,700 linear feet of sidewalk by City staff; they have received $150,000 from N. C Dept of Transportation (NCDOT) Small Urban Funds for curb and gutter, resurfacing and storm sewer pipe, they have obtained all but three easements needed to construct the sidewalk; and they have received a TEA 21 Grant for most of the remaining funding.

Mr. Underwood explained the financial status of the current Phase I project which estimated costs are $507,000 What they need to complete Phase I is (1) $140,000; (2) in-kind services to complete the work, and (3) continued support for the Task Force.

Mr. Underwood said Phase II consists of (1) New Haw Creek from Arco to the end of the NCDOT right-of-way southwest of the intersection with Tunnel Road; and (2) Trinity Chapel Road.

Regarding the Trinity Chapel Road Project, the design is complete for approximately 1,800 linear feet of sidewalk by City staff, they are exploring options for funding; and they have obtained one of ten easements needed for construction. The estimated costs for this project is $280,000, which is unfunded.

Regarding the New Haw Creek Project of Arco Road to Tunnel Road, the design is in progress for approximately 1,200 linear feet of sidewalk by City staff; they are exploring options for funding; they are preparing easements for sidewalk; they are contracting for easement acquisition; and, the State Road qualifies for NCDOT Small Urban Funds, which were requested in Fiscal Year 2003-04 budget The estimated costs for this project is $400,000, which they have the potential of $250,000.

The current status of Phase II projects is that they anticipate $250,000 from the NCDOT Small Urban Fund money; and the City will need to complete design and easement acquisition.

Beyond Phase II is (1) continue to ask for Small Urban Funds from the NCDOT for $250,000 per year for New Haw Creek Road, (2) apply for TEA 21 Funds Bi-Annually; and (3) request additional City support either in funding or in-kind services.

Mr. Chris Pelly asked Council to direct the Public Works staff to stretch the available dollars as much as possible.

City Engineer Cathy Ball and Task Force member responded to various questions from Council.

On behalf of City Council, Mayor Worley thanked Mr. Underwood, Mr. Pelly and the entire Task Force for their efforts on this important issue.

FINAL REPORT FROM THE SUSTAINABLE ECONOMIC DEVELOPMENT TASK FORCE

Mr. Jack Cecil, Chair of the Sustainable Economic Development Task Force, gave the final report of the Task Force, which has a sunset date of June 30, 2003.

He said that in May 2000, City Council adopted the Sustainable Economic Development Strategic Plan and, at the same time, appointed an Implementation Task Force (ITF) of local citizens to make recommendations for its implementation. The three-year term of the ITF expires in June 2003. He outlined several implementation successes for not only the City of Asheville, but for other agencies as well.

Going forward they would suggest the City prepare for fundamental shift in economic base; capitalize on strongest asset (Quality of Place); collaborate with other agencies; seek public-private partnerships for redevelopment; build tax base, provide housing, enhance community with higher density, mixed use development in commercial areas; improve both inter and intra-city transportation and telecommunications access and connectivity; continue Task Force in advisory capacity; and focus areas where the City has an opportunity for impact: sustainable development pattern; new development tools – regulatory and financial; riverfront development; entrepreneurial/small business development; technology infrastructure; transportation; and creative/knowledge economic workforce.

The Task Force members have determined a need for continuing this effort and have developed a recommendation asking Council to continue the Task Force as an advisory group for Phase II of implementation for an additional two-year period, terms to expire June 30, 2005.

Further, existing Task Force members were asked if they would like to continue serving in this capacity. For any vacancies, the Task Force will seek Council approval of any potential replacements.

City staff recommends City Council approve the resolution and re-appoint the Sustainable Economic Development Implementation Task Force for an additional two-year period to serve in an advisory capacity to City Council and City staff.

Upon inquiry of Vice-Mayor Bellamy, Planning & Development Director Scott Shuford explained how the Sustainable Economic Development Strategic Plan correlates to the Asheville City Plan 2025.

Vice-Mayor Bellamy suggested more women be appointed to the Task Force.

Councilman Mumpower asked how City Council could be more supportive of the Task Force. Mr. Cecil hoped Council will be supportive when there is an appropriate opportunity to make investment of capital; being supportive of the Task Force; and commitment to the Plan itself.

Councilman Dunn asked what the Task Force feels about the merits of annexation and what are some of the negative impacts of the Sustainable Economic Development Plan. Mr. Cecil responded and invited Councilman Dunn and other Council members to attend the Task Force meetings to get various questions and/or comments addressed.

Councilwoman Jones suggested more small business people as well as people who represent the creative economy be appointed to the Task Force.

On behalf of City Council, Mayor Worley thanked Mr. Cecil and the Task Force for their hard work on this Task Force.

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Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on May 13, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Revision to the Requirements for Home Occupations

Mr. Scott Shuford, Director of Planning and Development, said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for home occupations.

This code amendment is a general "housekeeping" type amendment intended to clarify and simplify the wording of this section of the Unified Development Ordinance and to formalize prior interpretations of the code. For example, the existing subsections containing language about prohibitions against advertising and allowance of signage that may have seemed to be potentially conflicting are combined in one section for clarification purposes.

The two material changes to the code are listed below. Each codifies prior interpretations of the code.

- The revision of the parking requirements to establish a specific parking requirement and to allow someone who cannot park in the side or rear to have a home occupation (subsection f).
- The establishment of a specific limitation on the number of visitors allowed (subsection i).

The Planning and Zoning Commission recommended approval of this code amendment on April 2, 2003, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford responded to a question from Vice-Mayor Bellamy regarding artist's studios and said that he would amend the ordinance in order to allow incidental retail sales.

Mr. Shuford responded to Councilman Mumpower when he asked if there was a way to have the affected people review this amendment. Mr. Shuford said that they could send the ordinance to a number of people who have home occupations to review, but felt that that could not be accomplished prior to the scheduled public hearing next week. After further discussion, Councilman Mumpower felt the scheduled public hearing next week could proceed.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this public hearing on the May 13, 2003, formal City Council agenda.

AMENDMENTS TO THE SOLICITATION/SIDEWALK ORDINANCES

Solicitation Ordinance

City Attorney Oast said that this is the consideration of amendments to the ordinance regulating solicitation and panhandling.

Back in November of last year, Council adopted some amendments to the City ordinance regulating solicitation and panhandling, particularly in downtown and Biltmore Village. Council expressed some concern about the reach of these amendments, and requested staff to propose further amendments to address these concerns.

The November amendments prohibited panhandling of any sort within a designated "halo" of certain locations such as banks, cash dispensing machines, or bus stops. It also prohibited panhandling while intoxicated or after dark; and prohibited panhandling from people standing in lines, such as for a musical or theatrical performance. The November amendments also prohibited panhandling within certain high traffic areas of downtown and Biltmore Village, because of their high tourist presence.

This draft retains the "halo" limitation, but clarifies that it applies to ATMs and financial institutions, and reduces the size of the halo from 50 to 20 feet; it retains other location-specific prohibitions, such as bus stops and taxi stands, and lines for entertainment venues; it adds outdoor dining areas and outdoor merchandise areas to the list of locations where panhandling is prohibited. The ordinance retains substantially all of the "aggressive begging" prohibitions, and adds some clarification to the acts that constitute aggressive begging. Also retained are the prohibitions against panhandling at night or while intoxicated. The previous ordinance prohibited those activities on public property; this proposal is not limited to public property.

The most significant change is in the regulation of panhandling within the high traffic areas. The areas themselves are the same. However, within these areas, a person would be able to make use of non-verbal means to panhandle or ask for money, such as displaying a sign, an open musical instrument case, or an upturned hat. What is prohibited within these areas is the use of personally-directed words or gestures. Solicitation between mutual acquaintances or family members is excepted from this prohibition.

These amendments target the conduct that has been a problem, and the locations where those problems arise, and is based on ordinances from other cities that have been judicially upheld. With respect to the high traffic areas, the amendments do not prohibit panhandling, but essentially establish a different threshold for what constitutes "aggressive begging".

These amendments are being brought forward with some changes to the sidewalk vendor ordinance.

If Council desires to implement the changes described above, a motion to adopt the ordinance is recommended.

City Attorney Oast explained one suggested change to the proposed amendment, which will permit passive solicitation after dark.

Discussion occurred regarding aggressive, active or passive solicitation; why this ordinance is not applied city-wide; and the need for education of the ordinance.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Sidewalk Ordinance

Director of Downtown Development Sasha Vrtunski said that this is the consideration of a revised sidewalk ordinance to improve the administration and implementation of the ordinance.

In 1999, City Council approved revisions to the sidewalk ordinance, which regulated outdoor dining, merchandise, pushcarts and street entertainers on City sidewalks in downtown and Biltmore Village. Communities nationwide have discovered that active sidewalks augment downtown revitalization efforts and enhance downtown businesses. Asheville has been a leader in this area for the past ten years. Downtown currently has 21 restaurants with sidewalk dining, 4 retail shops that display merchandise, 12 pushcarts and approximately 70 street entertainers. These uses contribute to our vibrant downtown and help businesses expand their sales area, especially during the warmer months.

It has been four years since the last amendments to the ordinance and staff felt that there was a need to fine-tune the ordinance. Some of the changes are simply wording changes that will make the ordinance clearer for both the public and staff. Other changes are being recommended to you as substantive ways to streamline and improve the ordinance.

This is not a complete summary of changes, but the major proposed changes are as follows:

Street Entertainers - With the revisions to the solicitation ordinance, it will be allowable for anyone to passively solicit. To make the sidewalk ordinance compatible with the solicitation ordinance, permits would no longer be issued for street entertainers. The rules for Street Entertainers in Section 16-145 (general requirements) would still be in force. Currently, police officers provide enforcement for this ordinance, and would continue to do so. If these revisions are passed, the City Development office will notify all current street entertainers of the changes, including the entire list of rules for entertainers.

Amendments to 16-145 include:

- Perform no longer than one hour in a location, and wait an hour before returning to that location. Generally, there have not been conflicts between entertainers, but this requires entertainers to share locations in downtown, especially popular ones.
- Not perform at locations designated for community event or festival, unless permitted to play at the event or festival by the coordinator. This is not a new rule per se, but has been added to this section.
- Minimum distance of 40 feet between entertainers.
- Entertainers must comply with the solicitation ordinance and the noise ordinance, and all other federal, state and local laws.
- Removal of requirement for street entertainers to obtain a permit.

Pushcarts

- Pushcarts may not be enclosed such that the pushcart operator can stand inside it.
- Pushcart operator shall keep the immediate area within a 5-foot radius of his/her pushcart clean.
- If a permitted pushcart operator requests to move, then he/she shall submit a new application and fee.
- Hours of operation extended from 9 a.m. – 10 p.m. to 7 a.m. - 10 p.m.
- Pushcart operators cannot be absent from their location for more than 15 consecutive days during the months of April through September. These months represent the busiest season for downtown, and there is a high demand for pushcart locations in the core of downtown. Currently, there is a problem with people obtaining permits, using the location occasionally, sometimes not at all, and tying up the spot so that no other pushcart vendor can use it. In cases where a pushcart operator is not consistently operating their cart,

staff will be able to revoke their permit for non-use and allow another individual to place a pushcart on the location.

No changes to the Outdoor Dining and Merchandise section.

City staff recommends approval of the proposed sidewalk ordinance revisions.

Upon inquiry of Councilwoman Jones, Ms. Vrtunski said that a permit is $125/year and we have 11 pushcarts.

After a short discussion after Councilwoman Jones brought up the issue about pushcarts being displaced during Bele Chere, it was pointed out that the prohibition applies to all outdoor festivals, not just Bele Chere. However, Ms. Vrtunski said that she would talk to the Bele Chere Board and perhaps a compromise could be reached, noting that the spots are extremely competitive.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

MISCELLANEOUS

At the City Manager's suggestion, it was the consensus of City Council to delete the May 20, 2003, City Council worksession. Councilwoman Jones suggested devoting one Tuesday afternoon for the budget worksession next year.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:58 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 75

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Tuesday – May 13, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy (participating via speaker phone); Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Army veteran Wid Crain led City Council in the pledge of allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY RIVERLINK

Ms. Karen Cragnolin, Executive Director of RiverLink, presented the City with a check, in the amount of $212,835.32, from RiverLink for funds it raised to help pay for the construction of the French Broad River Park. She talked about the on-going partnership with the City and the community at large.

On behalf of the entire Council, Mayor Worley thanked Ms. Cragnolin and RiverLink for their work with the City of Asheville.

B. PROCLAMATION PROCLAIMING THE MONTH OF MAY, 2003, AS "MENTAL HEALTH MONTH"

Councilman Mumpower read the proclamation proclaiming the month of May, 2003, as "Mental Health Month " in the City of Asheville. He presented the proclamation to Ms. Jane Carter, Director of the Mental Health Association in Buncombe County, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING THE WEEK OF MAY 17-23, 2003, AS "NATIONAL SAFE BOATING WEEK"

Councilman Peterson read the proclamation proclaiming the week of May 17-23, 2003, as "National Safe Boating Week" in the City of Asheville.

II. CONSENT:

Councilman Ellis asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion.

Mayor Worley asked that Consent Agenda Item "B" be removed from the Consent Agenda due to a conflict of interest.

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A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 22, 2003; THE COMMUNITY MEETING HELD ON APRIL 29, 2003; AND THE WORKSESSION HELD ON MAY 6, 2003**

B. **RESOLUTION AUTHORIZING THE MAYOR TO RELINQUISH THE CITY'S EASEMENT CROSSING REAL PROPERTY OWNED BY HERSHEL T. ANDERSON AND LUDY D. ANDERSON** – This item was removed from the Consent Agenda due to a conflict of interest by Mayor Worley.

C. **RESOLUTION NO. 03-82 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 74 ON MARTIN LUTHER KING JR. DRIVE**

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74 in the East End/Valley Street Community for the appraised value of $12,000.

Disposal Parcel 74 is a residential lot located on the east side of Martin Luther King Jr. Drive at the intersection with Miller Street comprising 6,970 square feet. The lot is irregular in shape and sloping upward from street level. The bid from WNC Housing, Inc., equals the appraised value of $12,000. WNC Housing, Inc., proposed to construct a single family dwelling on the lot.

Approval of the resolution will establish the appraised value as the minimum price and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74.

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D. **RESOLUTION NO. 03-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE FOR REGION SIX**

Summary: The consideration of a resolution authorizing the City Manager to extend an agreement with the N. C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region Six.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Rutherford County west to the Tennessee Border. Twenty counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-1995, and during the nine years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

The N. C. Dept. of Public Safety and Crime Control is now in the process of extending contracts with seven North Carolina governmental units in North Carolina for provision of regional hazardous materials emergency response.

The State of North Carolina provides funding that fully supports the operational costs of the program.

City staff recommends City Council authorize the City Manager to renew extension of the Regional Hazardous Materials Contract with the N. C. Dept. of Public Safety and Crime Control for Region Six.

RESOLUTION BOOK NO. 27 – PAGE 408

E. RESOLUTION NO. 03-84 - RESOLUTION AMENDING THE CITY COUNCIL 2003 MEETING SCHEDULE TO (1) CANCEL THE MAY 20, 2003, WORKSESSION; AND (2) ADD A SPECIAL WORKSESSION ON MAY 29, 2003, AT 12:15 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., TO DISCUSS THE JOINT PLANNING AREA

RESOLUTION BOOK NO. 27 – PAGE 409

F. RESOLUTION NO. 03-85 - RESOLUTION EXTENDING THE TERM OF THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE FOR AN ADDITIONAL TWO YEARS

Summary: In May 2000, City Council adopted the Sustainable Economic Development Strategic Plan and, at the same time, appointed an Implementation Task Force (ITF) of local citizens to make recommendations for its implementation. The three-year term of the ITF expires in June 2003.

Going forward the Task Force suggested the City prepare for fundamental shift in economic base; capitalize on strongest asset (Quality of Place); collaborate with other agencies; seek public-private partnerships for redevelopment; build tax base, provide housing, enhance community with higher density, mixed use development in commercial areas; improve both inter and intra-city transportation and telecommunications access and connectivity; continue Task Force in advisory capacity; and focus areas where the City has an opportunity for impact: sustainable development pattern; new development tools – regulatory and financial; riverfront development; entrepreneurial/small business development; technology infrastructure; transportation; and creative/knowledge economic workforce.

The Task Force members have determined a need for continuing this effort and have developed a recommendation asking Council to continue the Task Force as an advisory group for Phase II of implementation for an additional two-year period, terms to expire June 30, 2005.

Further, existing Task Force members were asked if they would like to continue serving in this capacity. For any vacancies, the Task Force will seek Council approval of any potential replacements.

City staff recommends City Council approve the resolution and re-appoint the Sustainable Economic Development Implementation Task Force for an additional two-year period to serve in an advisory capacity to City Council and City staff.

RESOLUTION BOOK NO. 27 – PAGE 410

G. RESOLUTION NO. 03-86 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE AN UNNAMED ALLEY OFF CATAWBA STREET AND SETTING A PUBLIC HEARING ON JUNE 10, 2003

RESOLUTION BOOK NO. 27 – PAGE 411

H. RESOLUTION NO. 03-87 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY AT THE CORNER OF LUFTY AND DRAKE STREETS TO NEIGHBORHOOD HOUSING SERVICES

Summary: The consideration of a resolution authorizing the Mayor to convey property on Lufty Street in the west Asheville community to Neighborhood Housing Services in the amount of $9,500.

On April 8, 2003, the City Council directed the City Clerk to advertise for upset bids on property on Lufty Street. The advertisement ran in the Asheville Citizen-Times on April 11, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Neighborhood Housing Services in the amount of $9,500 was not upset and the sale to Neighborhood Housing Services should be approved.

Approval of the resolution will authorize the sale of the property to Neighborhood Housing Services for the amount of $9,500.

City staff recommends adoption of the resolution authorizing the Mayor to convey property on Lufty Street to Neighborhood Housing Services in the amount of $9,500.

RESOLUTION BOOK NO. 27 – PAGE 412

I. ORDINANCE ESTABLISHING FILING FEE FOR OFFICES OF MAYOR AND CITY COUNCIL – This item was removed from the Consent Agenda for discussion.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Peterson moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Ellis and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA

ORDINANCE NO. 3019 - ORDINANCE ESTABLISHING FILING FEE FOR OFFICES OF MAYOR AND CITY COUNCIL

Summary: The consideration of an ordinance setting the filing fee for candidates for City Council.

One of the recommendations that came out of the work of the Campaign Finance Reform Committee is to increase the filing fee for City Council candidates. State law, N.C.G.S. 163-294.2, establishes a minimum filing fee of $5.00, but permits the governing board to set the fee, provided that the fee is not less than $5.00 nor more than 1% of the annual salary for the office. Council has apparently never set the filing fee, and it is the minimum $5.00 provided for in the statute.

Currently, the annual salary for the Mayor is $13,772; the annual salary for Council members is $9,390. The Vice-Mayor makes $11,268, but the Vice-Mayor is selected from the members of Council, not by election of the people, and is not an office for which the filing fee is applicable. Car allowances are not salary, and are not included in these amounts. One percent of the Mayor's salary is $137.72; one percent of a Council member's salary is $93.90.

The proposed ordinance rounds those amounts down to $135.00 and $90.00 respectively. They can be any amount less than the 1% figures set forth above, but more than $5.00. The statutes contain a provision, N.C.G.S. 163-107.1(d), wherein the filing fee can be avoided through a petition-like procedure.

Since Council salaries increase periodically, Council may want to consider reviewing this ordinance each election year.

If Council wishes to increase the filing fee for candidates for the offices of Mayor and City Council for the City of Asheville, adoption of the ordinance is recommended.

After a brief discussion, Councilman Ellis moved to increase the filing fees for candidates for the office of City Council Member from $5.00 to $75.00 and to increase the filing fees for candidates for the office of Mayor from $5.00 to $100.00. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 286

RESOLUTION NO. 03-88 - RESOLUTION AUTHORIZING THE MAYOR TO RELINQUISH THE CITY'S EASEMENT CROSSING REAL PROPERTY OWNED BY HERSHEL T. ANDERSON AND LUDY D. ANDERSON

Due to a conflict of interest by Mayor Worley, Mayor Worley asked Councilman Peterson to preside over the meeting during this item.

Councilman Mumpower moved to excuse Mayor Worley from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Upon inquiry of Councilman Dunn, City Attorney Oast said he didn't feel there was a disqualifying conflict of interest for Councilman Dunn.

Summary: The consideration of a resolution authorizing the Mayor to relinquish the City's easement crossing real property owned by Hershel T. Anderson and Lucy D. Anderson.

As part of the Brevard Road Annexation Phase III Contract "3" sanitary system improvements project, the City was required to provide sanitary sewer service to this property and other adjoining parcels. The City acquired an easement from the Andersons. The Andersons conveyed an easement to the City for the aforesaid purpose and the easement was recorded in Deed Book 2446 at Page 523 of the Buncombe County Register of Deeds Office. Subsequent negotiations with other affected property owners resulted in the revision of the horizontal alignment of the sanitary sewer line away from the Anderson's property. The City's Engineering Department has determined that this easement is no longer needed for this purpose or any other future needs.

The Engineering Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement interest.

Vice-Mayor Bellamy moved to adopt Resolution No. 03-88. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 413

Councilman Peterson relinquished the gavel back over to the Mayor to preside.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON KNOB HILL FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Worley said that City Council received the following letter on Tuesday, May 13, 2003, from Michael and Shirley Wells: "The merits of rezoning the property located on Knob Hill Road are numerous. Rezoning the property would not only provide a buffer zone between the industrial area and the residential area that adjoins it, but would also fully utilize the available land as a means of providing for additional affordable housing. Rezoning the property would be a step forward, moving the community toward growth, with a new infusion of people able to liver closer to the Asheville area. The issues at stake today are the same issues that will be faced each and every time a piece of land falls into, what has been defined as, the 'Smart Growth' development pattern. There will be other properties that will come before the council with similar requests. As elected officials, your decision will be a difficult one; represent the best needs of the Asheville area or the best needs of the individual homeowner. Today, however, we will not ask you to make that decision. While we still believe our desire to build a quadraplex is justifiable, several homeowners in the neighborhood have made it clear that they are opposed to any growth to their community and frankly we have invested far too much time and energy in their irrational fears. Therefore, after much deliberation, we have chosen to withdraw our request to have the property located on Knob Hill Road rezoned. We appreciate all of the time and effort that has gone into bringing the request this far but would ask that you allow us to withdraw the petition."

B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 16 POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MOBILE HOME OVERLAY) TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3020 - ORDINANCE REZONING OF PROPERTY LOCATED AT 16 POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MOBILE HOME OVERLAY) TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:25 p.m.

Ms. Shannon Tuch, Urban Planner II, said that this is the consideration of a request to rezone property located at the southeast corner of the intersection of Brevard Road and Pond Road from RS-8 Residential Single-Family High Density District with a Mobile Home Overlay (MHO) to Highway Business District. This public hearing was advertised on May 2 and 9, 2003.

Susan G. and Darrell Fender, Ronald Gentry, Debra K. Gentry and Terry L. Gentry, applicants, are requesting to rezone the southeast corner of the intersection of Brevard Road and Pond Road (PIN No. 9627.16-93-0902) from RS-8 (MHO) to Highway Business District to allow for further development of the Brevard Road corridor. The existing land uses in the area include single-family residences and mobile homes to the north, east, and west of the subject property. However, these residential uses are zoned Highway Business District and are anticipated to change in use over time. Additional residential uses are located to the south of the site and are zoned RS-8, however, they remain underdeveloped or vacant. In addition, there are several commercial or commercial industrial uses to the north and west of the subject property that would be more compatible with a Highway Business use.

The purpose of the RS-8 district is to provide a high density per acre for single family dwellings but this designation appears to have been underutilized with no, or low density, residential development. The lack of high density single family residential development is likely due to the amount of commercial development and commercially zoned properties adjacent to the subject property or in the vicinity. The Highway Business District is established to address the needs of commercial development along major thoroughfares. The existence of an already established Highway Business corridor directs the future development of adjacent properties.

The site is located at the intersection of a major north-south thoroughfare and an east-west connector street, Pond Road, which already provides access to a number of commercial industrial uses to the west of the site.

A rezoning to Highway Business District would provide for appropriate continuity between the adjacent Highway Business zoned properties located along Brevard Road and would also serve as a compatible transition between the unzoned, undeveloped property on the east side of Brevard Road and the existing commercial industrial uses to the west of the subject property.

City staff feels Highway Business District is an appropriate zoning category for the property and recommends approval of the request to rezone the property to Highway Business District. The Planning and Zoning Commission at its April 5, 2003, meeting voted 7-0 to recommend approval of the rezoning as well.

Mr. William F. Wolcott III, listed agent for the property owners, spoke in support of the rezoning request.

Mayor Worley closed the public hearing at 5:32 p.m.

Upon inquiry of Councilman Peterson, Ms. Tuch explained the type of buffer required.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

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Councilman Ellis moved for the adoption of Ordinance No. 3020. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 287

C. PUBLIC HEARING TO CONSIDER A REVISION TO THE CONDITIONAL USE PERMIT FOR THE BROTHERTON AVENUE MULTI-FAMILY PROJECT LOCATED AT THE INTERSECTION OF BROTHERTON AVENUE AND VIRGINIA AVENUE

ORDINANCE NO. 3021 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR THE BROTHERTON AVENUE MULTI-FAMILY PROJECT LOCATED AT THE INTERSECTION OF BROTHERTON AVENUE AND VIRGINIA AVENUE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:33 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Carter Pettibone, Urban Planner II, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a revision to the Conditional Use Permit for the Brotherton Commons multi-family project to allow for revisions to the approved site plan for the project.

The project site, which is consists of two properties (PIN Nos. 9638.18-21-9316 and 9638.18-31-0773) currently owned by the City of Asheville, is located within the City Limits at the intersection of Brotherton Avenue and Virginia Avenue (City Exhibit 3 – Location Map). The subject properties are zoned RM-8 Residential Multi-Family Medium Density District/Conditional Use and are surrounded by a predominantly detached single-family neighborhood zoned RS-8.

Originally, this project was approved as a conditional use rezoning from RS-8 to RM-8 (CUZ) and a conditional use permit for the project was issued on May 28, 2002. The project then received conditional technical approval from the Technical Review Committee and the developer began site development. On February 28, 2003, the applicant, Jack Morse, submitted development plans for a revision to the conditional use permit for the Brotherton Commons project. The proposed project consists of 32 condominium units along with a community center, open spaces, and two parking areas. The Technical Review Committee (TRC) reviewed the plans at its March 17, 2003, meeting and recommended approval with conditions. Some of the TRC comments were addressed in subsequent revised plans.

Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

Originally, the site plan called for the 32 dwelling units on 7.36 acres to be housed in nine buildings and average 1,100 square feet in area. As now proposed, the 32 dwelling units will be consolidated in 6 buildings and average 1,064 square feet (City Exhibit 3 – Site Plan). The arrangement of the buildings has also been revised with fewer units fronting on Virginia Avenue and Brotherton Avenue. The two buildings fronting on Virginia Avenue will remain two stories in height and the remaining buildings will be three stories, which is similar to what was originally proposed (City Exhibit 3 – Building Elevations). No additional dwelling units or developed areas within the site are proposed and the density of the project will remain 4.35 units per acre. Twenty-two of the 32 units will be reserved as affordable units (City Exhibit 3 – Site Plan).

A two-story (one story with basement) community building was also proposed initially and has been changed to a smaller single-story multi-purpose community center that can be converted from open-air shelter to heated space. In the place of the area taken up by the larger community building, the developer is now proposing a community garden and playground area.

The size of the two parking areas have been increased; now proposed are 59 spaces up from the 48 original. The developer also now proposes double-loaded spaces and optional covered parking for some of the spaces in the larger parking lot located off Brotherton Avenue. As originally proposed the dwelling units will utilize the two parking areas and no individual driveways are proposed.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the Unified Development Ordinance (UDO). City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The project received conditional technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District (MSD), Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

The project complies with all City standards in regards to maximum clearing and grading, erosion control, and maximum slope for streets The project has been designed with consideration for the natural and topographic features on the site and the immediate vicinity and preserves significant

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natural areas. Development, the density of which is considerably less than permitted in RM-8, is also concentrated near the intersection of Virginia Avenue and Brotherton Avenue and is not proposed to the east and north, which is significantly steeper and more heavily wooded.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The project's density is below what is permitted by the either the site's RM-8 or the surrounding area's RS-8 zoning. Building design and scale has also been designed to be compatible with surrounding residential development.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The project has been designed to take advantage of the slope of the property by incorporating basement dwelling units in some buildings. The proposed density is consistent with the area's current development and the project is intended to be compatible with the character of the surrounding area.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

The proposed residential development is at a density lower than what is permitted by the existing zoning district and appears to be consistent with the 2010 Comprehensive Plan. The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The development will also meet some of the City's Smart Growth policies.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

The project received technical approval from the Technical Review Committee, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works. Tests of fire hydrants in the neighborhood indicate that recent improvements to the water infrastructure have been effective in resolving concerns about water flow for fire protection and water pressure.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Originally, as approved as part of the conditional use rezoning, it was thought that the traffic impact generated by the proposed use would not exceed the volume anticipated by single-family residential development. Since no additional dwelling units are proposed, no additional traffic is anticipated. The project has also been designed with pedestrian oriented characteristics.

The plan for the revision to the conditional use permit was reviewed by the TRC at it's March 17, 2003, meeting. The TRC identified a number of outstanding technical issues and recommended approval with the condition that these issues be addressed prior to final approval. At present, the applicant is working with the various City departments to address these outstanding conditions.

Since all the conditions have not been addressed at this time, City staff recommends approval with the following conditions:

- The site plan must be revised to identify forested areas to be preserved on the entire site and provision must be made to protect these areas.
- The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development and submit revised landscape plans.
- All plans must clearly and consistently identify areas to be set aside for permanent open space as required by the UDO.
- The developer must apply for a fee in lieu of sidewalks for the frontage of Brotherton Avenue not served by sidewalks.
- Fences to be used along Virginia Avenue or Brotherton Avenue are limited to four feet in height.
- All TRC comments are addressed.

Upon inquiry of Vice-Mayor Bellamy, Mr. Pettibone showed where the additional parking spaces would be located and how the landscaping will change.

When Councilman Dunn asked if the City awarded Community Development Block Grant (CDBG) funds for this project, Community Development Director Charlotte Caplan said that $397,000 of CDBG funds were allocated in 2000 for this project and $147,000 will come back as CDBG programming from the sale of the land.

Councilman Mumpower stated that he voted against the original conditional use permit because of traffic concerns and since there have been no changes to mitigate the traffic pattern, he would have to regretfully vote against the revised permit as well.

Upon inquiry of Councilman Mumpower about the developer paying a fee in lieu of installing sidewalks, Planning & Development Director Scott Shuford explained that due to the topography along Brotherton Avenue and the relatively few houses along that portion of dead-end road, a fee in lieu of was being requested. He said that this would not have to come back to Council in that it is a staff-administered process which must meet certain criteria.

When Councilman Peterson stated that it looks like a clear-cut forest on that site, Mr. Pettibone explained the previous landscaping (City Exhibit 4 – Brotherton Co-Housing Site Plan) plan vs. the new plan (City Exhibit 3 – Site Plan).

Mr. Jack Morse, developer, reiterated Mr. Shuford's comments about why they are applying for a fee in lieu of building sidewalks along Brotherton. He felt that the fee was in the ballpark of what it would cost to install a sidewalk. He said that he has met with the neighbors to outline the changes and he felt the changes were well received. He said that on a total of 7.5 acres, there is only disturbance on about 3 acres and that is where the buildings are located. He then explained the need for increased parking spaces.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:04 p.m.

Councilman Peterson felt the changes are fairly consistent with the original plan and meet the seven standards, but personally he didn't particularly like the way that the houses on Brotherton Avenue will have their backs toward the neighborhood. He felt staff needs to be aware that we are looking for something that is in character with the rest of the neighborhood.

Councilman Mumpower agreed with Councilman Peterson about the design of the project and felt there were many good things about the plan, but would have to vote against the revised permit just on the basis of consistency. He said the traffic issues that existed with the last plan have been enhanced with the addition of 11 more parking spaces.

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Councilman Dunn was also concerned about the traffic but recognized the need for affordable housing. He hoped that in the future when CDBG money is granted that projects be constructed quicker.

Councilwoman Jones moved for the adoption of Ordinance No. 3021 amending the Conditional Use Permit for the Brotherton Avenue multi-family project located at the intersection of Brotherton and Virginia Avenues, subject to the following conditions: (1) The site plan must be revised to identify forested areas to be preserved on the entire site and provision must be made to protect these areas; (2) The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development and submit revised landscape plans; (3) All plans must clearly and consistently identify areas to be set aside for permanent open space as required by the UDO; (4) The developer must apply for a fee in lieu of sidewalks for the frontage of Brotherton Avenue not served by sidewalks; (5) Fences to be used along Virginia Avenue or Brotherton Avenue are limited to four feet in height; and (6) All TRC comments are addressed. This motion was seconded by Vice-Mayor Bellamy and carried on 6-1 vote, with Councilman Mumpower voting "no."

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D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REQUIREMENTS FOR HOME OCCUPATIONS

ORDINANCE NO. 3022 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO REVISE THE REQUIREMENTS FOR HOME OCCUPATIONS

Mayor Worley opened the public hearing at 6:08 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for home occupations. This public hearing was advertised on May 2 and 9, 2003.

This code amendment is a general "housekeeping" type amendment intended to clarify and simplify the wording of this section of the Unified Development Ordinance and to formalize prior interpretations of the code. For example, the existing subsections containing language about prohibitions against advertising and allowance of signage that may have seemed to be potentially conflicting are combined in one section for clarification purposes.

The two material changes to the code are listed below. Each codifies prior interpretations of the code.

- The revision of the parking requirements to establish a specific parking requirement and to allow someone who cannot park in the side or rear to have a home occupation (subsection f).

- The establishment of a specific limitation on the number of visitors allowed (subsection i).

The Planning and Zoning Commission recommended approval of this code amendment on April 2, 2003, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

At Council's May 6, 2003, worksession an additional clarification was suggested in order to allow incidental retail sales. Staff suggests the following language be added to revise subsection (d): On premise retail sales shall not be a principal component of the home occupation; incidental retail sales of items directly associated with the principal home occupation may be allowed.

Upon inquiry of Mr. Chad Nesbitt, Mr. Shuford explained the ordinance amendment.

Upon inquiry of Mr. Bill Fishburne, Mr. Shuford said that this would not apply to an occasional Tupperware-type party.

Mr. Fred English, Haw Creek resident, felt this ordinance was not necessary.

Ms. Pat Wald briefly explained an incident where a school in the residentially zoned Beaverdam Road area was allowed after City Council had denied their rezoning request. Mr. Shuford explained the circumstances surrounding the rezoning noting that they are in the process of investigating Ms. Wald's concerns and they will report back to her.

Mayor Worley closed the public hearing at 6:21 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

After Councilman Mumpower questioned the limitation of six visitors, Mr. Shuford responded that a City staff member who has the experience of enforcing this ordinance suggested the number six. He felt six represents a reasonable amount of traffic volume and would be what you would typically see at any one time at perhaps at a dance class or musical lesson. He said they didn't research what other communities did in terms of that limit but would be happy to do that research if Council instructed him to do so.

Councilman Mumpower expressed his concerns about the six visitor limitation and wondered if we needed that provision in the ordinance or not. Mr. Shuford replied that in the absence of some specific quantitative study that manages to provide an exact number, it's really a policy issue for Council to decide whether six is a good number or not, or if Council wants to put that provision in or not. If a number is not put in, then you would have to rely on the good judgment of City staff to figure out what that provision means in terms of traffic impact.

Councilman Mumpower explained he was trying to make a case for affordable business for people who may not be able to afford the overhead.

As a compromise, Mayor Worley suggested the following revision to the second sentence of 7-16-1 (c) (32 (i): Pursuant to this, a maximum of six individuals per day will not be deemed to materially increase traffic.

Councilman Mumpower moved for the adoption of Ordinance No. 3022, with the following amendment to 7-16-1 (c) (32) (i) "The home occupation shall not materially increase the traffic that is found in its vicinity when the use is not in operation. Pursuant to this, a maximum of six individuals per day will not be deemed to materially increase traffic." This motion was seconded by Councilman Ellis and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3023 - ORDINANCE AMENDING THE SOLICITATION AND PANHANDLING ORDINANCE

City Attorney Oast said that this is the consideration of amendments to the ordinance regulating solicitation and panhandling.

Back in November of last year, Council adopted some amendments to the City ordinance regulating solicitation and panhandling, particularly in downtown and Biltmore Village. Council expressed some concern about the reach of these amendments, and requested staff to propose further amendments to address these concerns.

The November amendments prohibited panhandling of any sort within a designated "halo" of certain locations such as banks, cash dispensing machines, or bus stops. It also prohibited panhandling while intoxicated or after dark; and prohibited panhandling from people standing in lines, such as for a musical or theatrical performance. The November amendments also prohibited panhandling within certain high traffic areas of downtown and Biltmore Village, because of their high tourist presence.

This draft retains the "halo" limitation, but clarifies that it applies to ATMs and financial institutions, and reduces the size of the halo from 50 to 20 feet; it retains other location-specific prohibitions, such as bus stops and taxi stands, and lines for entertainment venues; it adds outdoor dining areas and outdoor merchandise areas to the list of locations where panhandling is prohibited. The ordinance retains substantially all of the "aggressive begging" prohibitions, and adds some clarification to the acts that constitute aggressive begging. Also retained is the prohibition against panhandling while intoxicated. The previous ordinance prohibited those activities on public property; this proposal is not limited to public property.

The most significant change is in the regulation of panhandling within the high traffic areas. The areas themselves are the same. However, within these areas, a person would be able to make use of non-verbal means to panhandle or ask for money, such as displaying a sign, an open musical instrument case, or an upturned hat. What is prohibited within these areas is the use of personally-directed words or gestures. Solicitation between mutual acquaintances or family members is excepted from this prohibition.

These amendments target the conduct that has been a problem, and the locations where those problems arise, and is based on ordinances from other cities that have been judicially upheld. With respect to the high traffic areas, the amendments do not prohibit panhandling, but essentially establish a different threshold for what constitutes "aggressive begging".

These amendments are being brought forward with some changes to the sidewalk vendor ordinance.

In response to some questions raised at the May 6, 2003, worksession, the following should serve as a general guide for how the solicitation ordinance will apply:

Passive Solicitation:	Use of signs, open instrument cases; not personally directed
Active Solicitation:	Asking another person for money directly
Aggressive Solicitation:	Asking another person for money in a threatening manner

Under the current ordinance, aggressive solicitation is prohibited City-wide; passive and active solicitation are permitted except in high traffic zones (part of downtown, Biltmore Village), where no solicitation of any kind is allowed.

Under the proposed ordinance, aggressive solicitation is still prohibited City-wide; passive and active solicitation are permitted except in the high traffic zones, where only passive solicitation will be permitted.

All of the location-specific prohibitions (intersections, ATMs, bus stops) will remain (with some clarification).

He suggested the proposed ordinance, Sec. (b)(1)j., be changed to permit passive solicitation after dark.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

When Councilman Dunn explained why he felt this ordinance should be City-wide, not just in the high traffic zones, City Attorney Oast explained that solicitation has certain constitutional recognition as a First Amendment right and our ability to regulate that conduct is accordingly restricted. He said that he reviews cases constantly and if he becomes aware of something he thinks Council would consider, he will bring it back. In addition, if other areas of the City become high traffic zones then the ordinance could be expanded to those areas.

When Councilman Mumpower if other cities prohibit activity panhandling city-wide, City Attorney Oast said that he found none in his research, but did find a few cities that prohibited panhandling in certain defined areas of their towns. That prohibition included solicitation of any sort whether for personal benefit, for a charity, or as consideration for musical talent.

Councilman Peterson pointed out that the ordinance does have several prohibitions city-wide, e.g., within 20 feet of an ATMs, blocking the path of a person, using profane or abusive language, under the influence of alcohol, etc.

Councilman Ellis asked if the owners of private parking lots, like Wal-Mart and K-Mart, have the ability to control solicitation on their property. City Attorney Oast responded that when the areas are large pieces of private property, but essentially perform a public function, they sometimes take on the characteristics of public forums, and even though it is private property, people do have certain First Amendment rights in those areas.

Councilman Dunn felt private property owners, like the Asheville Mall or a strip mall, should not have to pay security officers to enforce the panhandling laws. City Attorney Oast said that the previous ordinance prohibited solicitation on public property and this amendment is not limited to public property. He noted that private property owners have other remedies available to them, such as trespassing, etc. If it is aggressive solicitation, however, then the Asheville Police Department can do something about that.

Mr. Chad Nesbitt wondered why the City was amending their ordinance if there has been no threat to sue the City.

Mr. Fred English pointed out that K-Mart and Wal-Mart have their own security to enforce rules on their own property.

Councilman Ellis moved for the adoption of Ordinance No. 3023. This motion was seconded by Councilman Peterson and carried unanimously.

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B. ORDINANCE NO. 3024 - ORDINANCE AMENDING THE SIDEWALK ORDINANCE

Director of City Development Sasha Vrtunski said that this is the consideration of a revised sidewalk ordinance to improve the administration and implementation of the ordinance.

As a result of the City Council's worksession on May 6, 2003, Ms. Vrtunski suggested the following amendment be added as Section 16-144 (17) "Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595 (1) (b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exemption will be in effect until the time that the operator can no longer use the cart." She said this amendment would ensure that the one pushcart that does not comply with the size requirement would be allowed to continue operation. In addition, it ensures that all existing carts with permits will be allowed to continue operation.

When Councilman Dunn asked what would happen if the cart needed to be repaired, Ms. Vrtunski explained that if the new cart needed to be replaced, not repaired, it would have to be brought into compliance. Planning and Development Director Scott Shuford also responded that this is very common on zoning codes that if the use or the building is damaged or destroyed to 50% or more of its value then it has to be brought into compliance. For example, if you have a non-complying sign and the sign has to be replaced, it has to be replaced with a sign that would comply with the ordinance. He said the intent of this amendment is for the one cart that is out of compliance to continue to operate and be repaired, but it does fall apart or is unusable, it would have to comply with the ordinance at that point in time.

Ms. Vrtunski gave Council a brief background in the crafting of the ordinance. She said that in 1999, a Sidewalk Usage Team was formed consisting of several City departments. They held meetings with the Downtown Commission, Streetscape Commission, Asheville Downtown Association Issues Committee, Asheville Downtown Association Board, Merchants Action Coalition and held two large public forums in which 500 businesses and residents were invited to give input on this ordinance. In 1999, City Council approved revisions to the sidewalk ordinance, which regulated outdoor dining, merchandise, pushcarts and street entertainers on City sidewalks in downtown and Biltmore Village. Communities nationwide have discovered that active sidewalks augment downtown revitalization efforts and enhance downtown businesses. Asheville has been a leader in this area for the past ten years. Downtown currently has 21 restaurants with sidewalk dining, 4 retail shops that display merchandise, 12 pushcarts and approximately 70 street entertainers. These uses contribute to our vibrant downtown and help businesses expand their sales area, especially during the warmer months.

It has been four years since the last amendments to the ordinance and staff felt that there was a need to fine-tune the ordinance. Some of the changes are simply wording changes that will make the ordinance clearer for both the public and staff. Other changes are being recommended to you as substantive ways to streamline and improve the ordinance.

This is not a complete summary of changes, but the major proposed changes are as follows:

Street Entertainers - With the revisions to the solicitation ordinance, it will be allowable for anyone to passively solicit. To make the sidewalk ordinance compatible with the solicitation ordinance, permits would no longer be issued for street entertainers. The rules for Street Entertainers in Section 16-145 (general requirements) would still be in force. Currently, police officers provide enforcement for this ordinance, and would continue to do so. If these revisions are passed, the City Development office will notify all current street entertainers of the changes, including the entire list of rules for entertainers.

Amendments to 16-145 include:

- Perform no longer than one hour in a location, and wait an hour before returning to that location. Generally, there have not been conflicts between entertainers, but this requires entertainers to share locations in downtown, especially popular ones.
- Not perform at locations designated for community event or festival, unless permitted to play at the event or festival by the coordinator. This is not a new rule per se, but has been added to this section.
- Minimum distance of 40 feet between entertainers.
- Entertainers must comply with the solicitation ordinance and the noise ordinance, and all other federal, state and local laws.
- Removal of requirement for street entertainers to obtain a permit.

Pushcarts

- Pushcarts may not be enclosed such that the pushcart operator can stand inside it.
- Pushcart operator shall keep the immediate area within a 5-foot radius of his/her pushcart clean.
- If a permitted pushcart operator requests to move, then he/she shall submit a new application and fee.
- Hours of operation extended from 9 a.m. – 10 p.m. to 7 a.m. - 10 p.m.
- Pushcart operators cannot be absent from their location for more than 15 consecutive days during the months of April through September. These months represent the busiest season for downtown, and there is a high demand for pushcart locations in the core of downtown. Currently, there is a problem with people obtaining permits, using the location occasionally, sometimes not at all, and tying up the spot so that no other pushcart vendor can use it. In cases where a pushcart operator is not consistently operating their cart, staff will be able to revoke their permit for non-use and allow another individual to place a pushcart on the location.

There are no changes to the Outdoor Dining and Merchandise section.

City staff recommends approval of the proposed sidewalk ordinance revisions.

Ms. Vrtunski said that the dimensions of the pushcart were arrived at due to the sidewalk widths downtown. As the downtown continues to thrive, pedestrian traffic and the demand on public space has increased. Given these dynamics, the City should clearly define the pedestrian passageways and establish boundaries of private use in public space. As the administrator of the of the ordinance, she needs to make sure staff can effectively and efficiently process permit applications and that there is also predictability for cart operators so they know what the City expects. For those reasons, one cart size makes sense; permits are issued on a first-come, first-served basis; and it would be best if all carts (excluding the grand fathered cart) fit the approved sites. The current size is suited to all the locations, however, not all of our locations will accommodate larger carts.

Ms. Vrtunski said that the first sentence in Section 16-144 (2) which reads, "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart" was added to clarify the existing ordinance. City staff would have no problem if Council chose to delete that sentence, however, they would still recommend the 24 square feet size requirement remain.

Councilman Mumpower expressed concern that pushcart operators cannot stand inside their carts. He felt there is nothing wrong with giving consideration to allow people to have some weather protection in a cart. Mr. Davis (the pushcart operator who has the only non-conforming cart) is the only successful pushcart operator in the City so far. He is the example of someone who can maintain a good business by serving consistently and with our weather factors, consistency seems to require some level of protection. Since the City is recommending a maximum of 24 square feet and Mr. Davis' cart is 30 square feet, he felt we should amend our ordinance to allow all our vendors to be protected on a year-round basis. He felt that when we adopt rules, we need to make things better and not restrictive. We felt we should make our ordinance more use-friendly.

Ms. Vrtunski said that Mr. Davis used to be the only pushcart operator but within the last three years we have gone from two operators to approximately seven operators who operate in 11 spots. Even though this seems small, it is a dramatic increase.

Councilwoman Jones moved for the adoption of Ordinance No. 3024, with the addition of Section 16-144 (17) as read by Ms. Vrtunski above. This motion was seconded by Councilman Ellis. Mayor Worley pointed out that Council has not heard from the public yet and that a motion at this time is not appropriate.

Vice-Mayor Bellamy felt that Section 16-144 (2)'s first sentence should be deleted, which deals with pushcarts not being enclosed. In addition, she supported increasing the dimensions of the pushcart from 24 square feet to 30 square feet.

Councilman Ellis supported the ordinance as proposed by staff. He felt that the grand fathered cart was fine, but had concerns about establishing semi-permanent-type pushcarts downtown because they do block traffic and they compete with downtown restaurants that do pay property taxes. This ordinance amendment has gone through the process of the Downtown Commission, Downtown Association and all downtown merchants.

Councilman Mumpower felt that if we get a saturation of pushcarts and they begin to present a problem, then we can amend the ordinance again. However, he was suggesting that we try the experiment that seems to have worked with the one consistent successful example we have of allowing him some protection from the weather

Councilwoman Jones supported the ordinance as proposed by staff as well.

Mr. Fred English pointed out that the vendors do pay $125 for a permit.

Mr. Chad Nesbitt felt that the ordinance was unnecessary.

Mr. Bill Fishburne felt Council should allow all pushcarts to be 30 square feet and suggested the City pro-rate the permit fees.

Councilman Mumpower moved to amend (1) Section 16-144 (2) to delete the first sentence that reads "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart;" and (2) Section 16-144 (13) (ii) to increase the square footage from 24 square feet to 30 square feet. Ms. Vrtunski said that the guiding principle for being sheltered from the elements is the height of the cart. If we strike the first sentence in Section 16-144 (2), there needs to be an adjustment to the height requirement. There was no second to the motion.

Mayor Worley asked if all of the available locations would accommodate the larger 30 square feet size. Ms. Vrtunski replied no, but she hasn't physically measured each location. She also had a concern that if you have someone construct a cart 30 square feet, they might not get the same spot they had last year and the only available location left doesn't fit the cart. City Attorney Oast also responded that we do have ordinances that prohibit people from obstructing the sidewalk.

When Councilman Peterson suggested an ordinance amendment to identify those locations downtown that a larger cart would be permissible, Mayor Worley suggested language be included that allows staff to designate those areas where the larger carts could be accommodated.

Upon inquiry of Councilman Mumpower, Ms. Vrtunski said we currently have 23 sites that are designated as available. One example where a larger cart would not fit is Pack Square, near the four restaurants.

Councilwoman Jones felt it was unfair if someone invests $4,000 in a pushcart and then finds out they can't use it.

Councilman Dunn felt that if the larger cart locations are identified then the pushcart operator should be given advance notice of those locations. It would be up to him then if he chooses to build that larger one.

Councilman Mumpower felt it is not fair for the City to force people to work out in the weather.

At 7:27 p.m., Mayor Worley announced a short break.

Councilman Mumpower moved to adopt the ordinance with the following amendments: (1) Section 16-144 (2) to delete the first sentence that reads "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart;" (2) Section 16-144 (13) (i) to change 4'6" in height to 8" in height; (3) Section 16-144 (13) (ii) to allow for a minimal standing room within a cart; (4) Section 16-144 (13) (ii) to increase the square footage from 24 square feet to 30 square feet and that the width be kept at no wider than 4 feet; and (5) a new Section 16-144 (17) to read as follows: "Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595 (1) (b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exception shall be in effect until the time that the operator or his successors can no longer maintain the cart in a fashion acceptable to the Health Department or in a fashion that precludes its ready removal in the event of an emergency situation." This motion was seconded by Councilman Dunn.

Vice-Mayor Bellamy wanted to make sure that the pushcart owners are made aware of the locations of spaces that larger carts would accommodate and also that it's on a first-come, first-served basis. Ms. Vrtunski said that will be made known to the operators during the application process.

Councilman Mumpower didn't believe that pushcarts represent major danger to our existing restaurants and if it appears to be the case, we can amend the ordinance in the future.

Councilman Peterson felt the original proposal is more consistent with how he would like to see downtown developed.

Mayor Worley felt all of Council was in favor of allowing pushcarts because they are a fabric of our downtown. He felt the reality is that these size limitations have been in effect since

1999 after considerable discussion and we have had no complaints about the size limitations. Council's original concern has now been addressed by the grandfather provision. He supported adopting the ordinance as originally proposed, with the grandfather clause, and with the deletion of the pushcarts not being enclosed.

The motion made by Councilman Mumpower and seconded by Councilman Dunn failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting "yes" and Mayor Worley, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "no."

Councilman Peterson moved to adopt the original ordinance as presented by staff with the following amendment: A new Section 16-144 (17) to read as follows: "Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595 (1) (b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exception shall be in effect until the time that the operator or his successors can no longer maintain the cart in a fashion acceptable to the Health Department or in a fashion that precludes its ready removal in the event of an emergency situation." This motion was seconded by Councilman Ellis.

Mayor Worley asked if Councilman Peterson and Councilman Ellis would be willing to amend their motion to delete the first sentence in Section 16-144 (2) that reads, "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart." Councilman Peterson and Councilman Ellis both agreed to amend their motion to delete that sentence.

The amended motion made by Councilman Peterson and seconded by Councilman Ellis passed on a 4-3 vote with Mayor Worley, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "yes" and Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting "no."

City Attorney Oast said that since the ordinance failed to pass by a 2/3 vote, there would have to be a second reading of the ordinance at the next formal meeting on May 27, 2003.

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C. RESOLUTION NO. 03-89 - RESOLUTION APPOINTING AN ALTERNATE TO THE BOARD OF ADJUSTMENT

Vice-Mayor Bellamy said that on April 22, 2003, there was a tie vote between Jane Mathews and Bradley Taylor for an alternate seat on the Board of Adjustment.

Jane Mathews received 3 votes and Bradley Taylor received 4 votes. Therefore, Bradley Taylor was appointed as an alternate member to the Board of Adjustment to serve a three year term, term to begin immediately and expire on January 21, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 414

VI. OTHER BUSINESS:

Budget Worksession

It was the consensus of City Council to hold a budget worksession on Thursday, June 5, 2003, at 3:00 p.m., in the First Floor North Conference Room of the City Hall Building.

Board Vacancies

Vice-Mayor Bellamy announced that City Council was accepting applications for vacancies on the following Boards: The Civic Center Commission, the Regional Water Authority and the Civil Service Board. The application deadline is Friday, May 16, 2003, at 5:00 p.m.

Claims

The following claims were received by the City of Asheville during the period of April 11-24, 2003: Nancy Restuccia (Inspections), Victor Babaoff – WNC Tire (Fire), James Lauer (Parks & Recreation), BellSouth (Streets), BellSouth (Water) and Nancy Tabel (Sanitation).

The following claims were received during the period of April 25-May 1, 2003: Heidi McDaniel (Water), Jimmy Cole (Water), Esther C. Hollifield (Water) and John C. Redmond (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City filed a Complaint on May 2, 2003, which is generally described as follows: City v. Carol Howard, Commissioner of N.C. Div. of Motor Vehicles, Dept. of Crime Control & Public Safety. The nature of the proceeding is a refund of $4,010 paid by the City for a protested civil penalty. This matter will be handled in-house.

The City received a Complaint on May 9, 2003, which is generally described as follows: Buncombe County vs. James B. White Sr. and wife Helen C. White, et al. The nature of the proceeding is tax foreclosure proceedings for unpaid real estate taxes. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English commented on several items and felt that City Council should be looking for ways to save money.

Closed Session

At 8:02 p.m., Councilwoman Jones moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorized the payment of economic development incentives will occur in open session. The statutory authorization is contained in G. S. 143-318.11 (a) (4). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:29 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:29 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – May 27, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy (participating via speaker phone); Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Veteran of the US Navy Mary Winner led City Council in the pledge of allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF CITY OF ASHEVILLE EMPLOYEES IN 13th ANNUAL EXCELLENCE IN PUBLIC SERVICE AWARDS PROGRAM

Mayor Worley read a proclamation recognizing several City of Asheville employees who were winners in their respective categories in the 13th Annual Excellence in Public Service Awards Program. Employees recognized were Ed S. Stoll, Rita Baidas, Dan Stewart, Thomas M. Brooks, Ronald R. King, Lt. Sarah Benson, Sgt. Curtis Jones, Officer Dwight Arrowood and Detective Rondell Lance. Mayor Worley also noted that Lt. Sarah Benson, Sgt. Curtis Jones, Officer Dwight Arrowood and Detective Rondell Lance won the overall award for 2003.

B. RECOGNITION OF SENIOR CITIZENS WHO WILL BE REPRESENTING OUR AREA IN THE NATIONAL SENIOR GAMES

On behalf of City Council, Mayor Worley recognized Earl Acuff, Thomas Bennett, Ed Bullock, Day Carper, Melvin Ellison, Donald Giersch, Dick Gilbert, David Herbert, Marcia Keith, Kathy Littlejohn, Helen McKie, Jimmie McSwain, Clarke Mitchell, Claudia Nix, Dick Penick, Bob Rhudy, Bobbie Roberts, Larry Seymour, Mary Soyenova, Charles Sproles, Leigh Svenson, William Walker and Norm Wilhelmi who have already won their events in their respective age groups at the local Asheville-Buncombe games in the Spring of 2002, and went on to win in their age groups at the NC State Games in Raleigh (Fall 2002). Mayor Worley wished the individuals good luck as they represent our area in the National Senior Games on May 29, 2003, in Hampton Roads, Virginia.

C. INSURANCE SERVICE OFFICE RATING FOR BUILDING SAFETY DEPARTMENT

Mr. Ralph Dorio, Technical Coordinator with the ISO's office in New Jersey, and Mr. Vaughn Wicker, Regional Manager for the International Code Council, were pleased to announce that on May 1, 2003, Asheville, N.C., became the third city in the United States (joining Coral Gables, Florida, and Fremont, California) to receive the highest rating for building code enforcement possible from Insurance Services Office Inc. He said the evaluation results for Asheville's Building Code Effectiveness Grading Classification includes a "1" for new one and two family residential property and a "1" for new commercial and industrial property. Insurers across the country are starting to use the building code evaluations as a key factor in assessing risk and determining homeowners and commercial insurance premiums.

Mr. Dorio said that only 3 jurisdictions out of 14,754 municipalities that have been evaluated in 44 states over the past eight years have obtained the Class "1" rating. Asheville improved its 1998 rating of Class "2" by focusing on continuous improvements in building inspection and plan review, including a rigorous ongoing training program for building personnel.

On behalf of City Council, Mayor Worley said the City of Asheville is proud of Director of Building Safety Terry Summey and the entire Building Safety staff as they constantly pursue ways to improve our services and enforce the code.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 13, 2003

B. MOTION SETTING A PUBLIC HEARING ON JUNE 10, 2003, TO CONSIDER ADOPTION OF THE 2003-04 ANNUAL OPERATING BUDGET

C. RESOLUTION NO. 03-90 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY DISPOSAL PARCEL 74 ON MARTIN LUTHER KING JR. DRIVE TO WNC HOUSING INC.

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcel 74 of the East End/Valley Street community improvement area to WNC Housing Inc. in the amount of $12,000.

On May 13, 2003, the City Council directed the City Clerk to advertise for upset bids on property for Disposal Parcel 74 located on the east side of Martin Luther King Jr. Drive at the intersection of Miller Street. The advertisement ran in the Asheville Citizen-Times on May 16, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from WNC Housing Inc. in the amount of $12,000 was not upset and the sale to WNC Housing Inc. should be approved.

Approval of the resolution will authorize the sale of the property to WNC Housing Inc. for the amount of $12,000.

City staff recommends adoption of the resolution authorizing the Mayor to convey property on Martin Luther King Jr. Drive to WNC Housing Inc. in the amount of $12,000.

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D. RESOLUTION NO. 03-91 - RESOLUTION AMENDING THE CITY COUNCIL 2003 MEETING SCHEDULE TO INCLUDE A BUDGET WORKSESSION ON WEDNESDAY, JUNE 4, 2003, AT 2:30 P.M., IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C.

RESOLUTION BOOK NO. 27 – PAGE 416

E. RESOLUTION NO. 03-92 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 10, 2003, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS INC.

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Summary: The consideration of a resolution setting a public hearing on June 10, 2003, to consider an economic development incentive grant to HighWater Clays, Inc.

HighWater Clays, Inc. is a nationally recognized provider of clays, equipment, and services used to make pottery. The Asheville-based firm employs 27 people. The business is growing and the company is proposing an expansion of its operations in the River District. The owners have requested consideration for an incentive grant under the City of Asheville Economic Development policy. The company is proposing new, taxable, capital investment of $725,000 for additional production equipment and facility improvements and the creation of 5 new jobs. The City of Asheville is considering offering HighWater Clays, Inc., a grant totaling $7,500.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

City staff recommends Council approve the resolution setting a public hearing on June 10, 2003, to consider an economic development incentive grant to HighWater Clays, Inc.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

ANNEXATION PUBLIC HEARINGS

Mr. Carter Pettibone, Urban Planner, explained that purpose of these hearings is for the City to explain the plan for extending City services to the proposed annexation areas, and to give all persons resident or owning property within the areas, and all residents of the City, the opportunity to be heard.

On March 25, 2003, the City Council adopted Resolutions of Intent beginning the annexation process for the following five areas referred to as the 2004 annexations: Deaverview Road, Crowell Road, Smoky Park Highway, Sand Hill Road, and Hendersonville Road Areas. The Annexation Services Plan was approved on April 8, 2003, and a public information meeting was held on May 15, 2003. Approximately 10 persons affected by the proposed annexations attended this meeting. On June 10, 2003, City Council will consider adoption of the ordinances extending the corporate limits, with an effective date of the annexations being June 30, 2004.

Mr. Pettibone said that annexation is defined as an extension of the City's corporate limits. Annexation areas under the statutes must be developed to urban standards. Once annexed, the property owners and residents are entitled to City services and are subject to the City's taxes and ordinances. The authority for annexation comes under the N. C. General Statutes. North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population. The fact is that people living in close proximity to cities benefit from the cities, and state annexation law is designed to include these people in the costs and benefits of governing and servicing the City.

Mr. Pettibone explained the standards necessary to qualify areas for annexation – (1) at least 1/8 of the area's boundary must be adjacent to the current corporate limits; and (2) each area must meet at least one or more of four development tests - (a) population/density test; (b) subdivision test; (c) development test; or (d) nonresidential urban use test. The state also recognizes that certain areas within these annexation areas may be classified as non-urban areas and there are two qualifications that must be met.

He explained the City's annexation strategy has been to target areas (1) that are clearly developed, (2) where water and sewer infrastructure is in place, (3) that improve the City's boundaries, (4) eliminate pockets of urban development that are essentially surrounded by the City or where all access is through the City; and (5) disburse the annexation areas geographically instead of just targeting one direction.

He said that the five proposed annexation areas consist of 98 acres with a total population of 40 people. There are 77 individual businesses within the proposed areas, noting that the majority would be considered small businesses.

Mr. Pettibone then reviewed the various services that would be provided to the annexed areas. He then reviewed the following financial plan:

Revenue: Total ad valorem property tax revenue - $128,364; Total state utility tax revenue - $14,234; Total local option sales tax - $49,400; Total Powell Bill allocation - $2,082; and Total fees, permits, licenses and charges for services - $1,683. Total revenue - $195,763.

Annual recurring expenditures: Police (two additional officers) - $70,000; Fire (rural fire department contracts expected to be in place for at least 5 years and the hiring of one Deputy Fire Marshall) - $55,775; Solid waste - $133; and Street lighting - $2,160. Total recurring expenditures - $128,068.

Annual capital expenditures: Police - $75,000 (vehicles and associated capital equipment for the additional two police officers); Fire - $30,000 (vehicles and associated capital equipment for the additional Deputy Fire Marshall position); Water lines - $3,500; Rollout containers - $160; Street lighting - $2,820. Total one-time annual capital expenditure - $11,480.

Mr. Pettibone said that the City has had more detailed boundary description work performed by the City's surveyor that will change the perimeter and contiguity of the annexation areas. No additional properties are included or deleted and those revisions will be presented to Council at their June 10, 2003, meeting.

Mr. Pettibone also noted that

A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE DEAVERVIEW ROAD AREA

Mayor Worley opened the public hearing at 5:44 p.m.

Mr. Pettibone explained the Deaverview Road area – This is located at the intersection of Deaverview Road and Pisgah View Road. The land use is commercial and residential. This contains four lots totaling 1.48 acres. The estimated population is two. This area meets the development test.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate

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certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:45 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 10, 2003.

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE CROWELL ROAD AREA

Mayor Worley opened the public hearing at 5:47 p.m.

Mr. Pettibone explained the Crowell Road area – This is located at the intersection of Crowell Road and Farm Street. It is also close to the intersection of I-40 and Smoky Park Highway. The land use is commercial. The access to this area is entirely through the City. The acreage is 2.28 and no estimated population. This area meets the non-residential use test.

When Councilman Dunn asked what is currently on the properties, Mr. Pettibone said that there is an auto repair business and the one to the west is a lodging facility.

Mr. Roland Herbstreit, owner of Smoky Mountain Auto Service, said that it will cost him and the other property owner (Mr. Patel) over $12,620 a year in property taxes if they are annexed into the City. He said his share will be approximately $3-4,000 and he will only save $300 a year on insurance. He will not benefit from trash pick-up and will not be able to vote in City elections since he doesn't live on that property. He said that he employs five people with families that count on him and he may have to let one or two employees go to pay this added expense. He has been in business for over 18 years and already has a problem with paying his County taxes. Again, $12,620 a year is too much money to ask two business owners to pay.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:52 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 10, 2003.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SMOKY PARK HIGHWAY AREA

Mayor Worley opened the public hearing at 5:52 p.m.

Mr. Pettibone explained the Smoky Park Highway area – This area is made up of one single property. This will bring the total split-jurisdictional commercial property into the City. It is a pocket of development and the access is primarily through Smoky Park Highway, which is in the City. This area meets the non-residential use test. Currently there is an auto sales business on the property. The acreage is 0.86 with no estimated population.

Mr. Michael Fryar, property owner, explained that the prior owner of this property had been paying City taxes since 1981 on a building that was not in the City. When he bought the property, he had to spend a whole day of straightening the mess out. He said he did not want any City services.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:00 p.m.

Upon inquiry of Councilman Dunn, City Manager Westbrook pointed out that it was the previous owner of this property and that owner should contact Buncombe County who is responsible for sending out tax bills.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 10, 2003.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SAND HILL ROAD AREA

Mayor Worley opened the public hearing at 6:01 p.m.

Mr. Pettibone explained the Sand Hill Road area – This area is made up of four properties totaling 4.24 acres total. This area meets the development test. The primary access is through the City and the estimated population is zero.

Upon inquiry of Councilman Dunn, Mr. Pettibone said that on the property is located the Enka-Candler Post Office/Library, a commercial building and a third building which is under development. City Attorney Oast said that the City can annex county-owned property.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

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Mayor Worley closed the public hearing at 6:04 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 10, 2003.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HENDERSONVILLE ROAD AREA

Mayor Worley opened the public hearing at 6:04 p.m.

Mr. Pettibone explained the Hendersonville Road area – This is bounded by Glen Bridge Road to the north, Old Shoals Road to the west and Buck Shoals Road to the south. The property totals 89.45 acres with 39 individual properties. This is mainly commercial and industrial, with a few residential properties. The primary access from Hendersonville Road is through the City. The estimated population is 38. It meets the development test. There is also some non-urban areas.

Councilman Mumpower asked if Day International, who employs 300 people, was contacted to see what type of impact we would be creating on them if annexed. Mr. Pettibone responded that they have not had any communication from them at all. Councilman Mumpower then suggested the City "reach out" to them for their input.

Councilman Dunn pointed out that even though the population in this area is 38, we may be talking about closing a business that employs 300 people. He felt we should start looking at incentives to keep larger employers.

Mr. Fred English, City resident, felt that when other areas get annexed, he gets less service. He felt the City should be more concerned about how to get industry to our area than trying to annex people and businesses.

Mr. Marion Lewald, with Smoky Mountain Auto Services in the Crowell Road area, said that she understands the impact of a business that employs 300 people, but her business has five employees and it seems like the City isn't as concerned about driving out small businesses.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:12 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on June 10, 2003.

F. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR A 252 UNIT MULTI-FAMILY PROJECT LOCATED AT THE CORNER OF ENKA LAKE ROAD AND SAND HILL ROAD KNOWN AS NORTHVIEW AT BILTMORE LAKE

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ORDINANCE NO. 3025 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A 252 UNIT MULTI-FAMILY PROJECT LOCATED AT THE CORNER OF ENKA LAKE ROAD AND SAND HILL ROAD KNOWN AS NORTHVIEW AT BILTMORE LAKE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:13 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a revision to the Conditional Use Permit for a 252 unit multi-family project located at the corner of Enka Lake Road and Sand Hill Road known as Northview at Biltmore Lake.

On April 1, 2003, the applicant, Northview Properties, submitted development plans for a Level III site plan review. The property is located in the extraterritorial jurisdiction (ETJ) area of the City and the property is zoned RM-16 Residential Multi-Family High Density District. The proposed project consists of 252 apartment units in nine buildings on 31-acres (PIN No. 9617.17-01-9671) located on Enka Lake Road. The Technical Review Committee (TRC) reviewed the plans at its April 21, 2003, meeting and recommended approval with conditions. Most of the TRC comments were addressed in revised plans submitted for Planning and Zoning Commission review. The Planning and Zoning Commission at their May 7, 2003, meeting voted to recommend approval of the plans with the remaining conditions identified by TRC, which are currently not addressed on the plans at this time.

Residential projects greater than 50 units in size are Level III projects, which are conditional uses in the RM-16 District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

The parcel is located on Enka Lake Road near the intersection with Sand Hill Road (City Exhibit 3 – Location Map). The zoning in the area reflects a wide variety of potential uses in the vicinity. To the north the property is zoned Highway Business District. To the south and east the property is zoned RM-16 Residential Multi-Family High Density District. To the west the property is zoned Industrial District. The development is accessed from Enka Lake Road by a central street with two residential streets coming from this central spine. Streets in the development will be private but will be built to City of Asheville standards.

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The development is accessed from Enka Lake Road by a new central street. This new street creates a T-intersection from which two main branches of the apartment community are served.

The apartments are located in nine structures located in the center of the property. The apartments will consist of 70 one bedroom units, 126 two bedroom units and 56 three bedroom units. A clubhouse and pool will also be located on the site (City Exhibit 4 – Landscape Plan).

The Unified Development Ordinance (UDO) requires 500 square feet of open space for every residential unit proposed. Based on the proposed development of 252 residential units 2.9 acres are required for open space. As proposed, the plan will preserve over 14 acres of open space with most this area in undisturbed woodland. Two playground areas for smaller children are provided on-site. Walking trails will create a passive recreation network throughout the property. A trail spur will also connect to Biltmore Lake below the dam.

Street trees and parking lot trees are provided on the plans. A landscape bufferyard is provided on the south side of the property. Credits for existing trees in many area of the site eliminate the need for additional landscaping.

Sidewalks are provided along the new entrance street and on one side of all parking aisles. A sidewalk will need to be provided along Enka Lake Road. In addition walking trails are provided throughout the property.

The engineers for the project have completed a traffic impact analysis (TIA) for the project. Lane additions along Enka Lake Road are the primary result of the TIA study. The developer has been working with the N. C. Dept. of Transportation (NC DOT) and the City Engineering Department to coordinate the proposed improvements. Widening of the bridge along Sand Hill Road over Hominy Creek is scheduled for work in 2004 and 2005. Widening of Sand Hill Road to Lake Drive also has a close timetable.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The development is within standards of development practice set forth by the City of Asheville. Public safety providers reviewed the project as part of the TRC review.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The 31-acre site is mostly wooded and slopes towards Hominy Creek. The developer is proposing to maintain nearly 15 acres as preserved green space land. Much of this area will act as undisturbed buffer along Hominy Creek. This buffer area will provide walking paths and other passive park style amenities.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed development is not expected to injure neighboring property values. The Northview project will be associated with the Biltmore Lake development already under construction.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The surrounding properties include a school property and other wooded property and a stone quarry. This residential project will preserve some existing vegetation along Enka Lake Road and will provide landscape buffers to retain the wooded nature from both inside and outside of the project. As a part of the Biltmore Lake project, the Northview apartments will be a character defining project of the area.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The development will provide additional housing options for current and new residents of the City.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This area has been approved by the NC DOT for roadway improvements for Sand Hill Road. These improvements are on a timely schedule for this project. Other utilities will be adequately served in the area. Currently, Buncombe County will provide protective services in this community. If the area is annexed by the City of Asheville, then the City will extend services here. The plans for Northview have been coordinated with representatives of the NC DOT.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The roadway network in the Enka area has received increased traffic from Sardis Road, along Sand Hill Road to the area of Highway 19-23. The bridge over Hominy Creek on Sand Hill Road will begin construction in 2004 and continue to 2005. The remainder of Sand Hill Road from the bridge southeast to Lake Drive will be widened also in a timely manner. The Northview project development will add to this traffic situation. The developers have had discussions with the NC DOT to determine traffic improvement measures in the area.

The Planning and Zoning Commission voted 7-0 at their May 7, 2003, meeting to recommend approval of the plan with the remaining conditions identified by TRC, which are currently not addressed on the plans at this time. Planning and Development staff concurs with this recommendation.

Upon inquiry of Councilman Peterson about the City's policy regarding open space, Mr. Glines said that if an area is already unbuildable (e.g., a floodplain area) the developers do credit for counting that as open space.

Councilman Peterson asked if the City is imposing any requirements on the developer about contributing to the widening of Enka Lake Road since there are already some major developments in the near future. Mr. Glines said the developer is working with the NC DOT to widening Enka Lake Road with additional lanes to handle the turn traffic going into their development (City Exhibit 5 – Overall Site Plan).

Councilman Peterson feared future problems with single entrance cul-de-sacs on large apartment complexes or developments that have only one entrance funneling traffic onto the primary access road.

Councilman Peterson asked what would happen if the developer installed the sidewalks along Enka Lake Road and then in the future NC DOT widens the road. Mr. Glines said that he doesn't anticipate the widening of the road anytime soon, but if the road is widened by NC DOT, then NC DOT would have to replace the sidewalk. Councilman Peterson was concerned that since there is only a fixed pot of NC DOT money for Asheville and if that has to go to widen Enka Lake Road, then some other project that might be needed might not get funded.

Upon inquiry of Mayor Worley, Mr. Glines said that one outstanding condition needs to be met by the developer – a sidewalk will need to be provided along Enka Lake Road.

Mr. Todd Ferrell, representing Northview Properties, spoke in support of the development. His only concern is the huge expense to the project to provide the sidewalk along Enka Lake Road. He explained there is the road, the shoulder of the road and then a 15-foot drop into a creek. He said that the 600 feet of sidewalk and 7 foot high retaining wall would need to be built against the creek on Enka Lake Road. A normal sidewalk costs about $4.00 per square foot and this sidewalk/retaining wall will cost about $28.00 per square foot. There is a difference of $15,000 vs. $96,000. He explained the sidewalk network already incorporated into the design (City Exhibit 4). He recommended that a sidewalk not be built along Enka Lake Road for purposes of safety.

Upon inquiry of Councilman Mumpower, Mr. Ferrell said that with regard to the sidewalk issue, the City's position has been that perhaps the standards could be lowered from the 6-foot requirement to work with the grades better, the area could be staked and then they could see how they could work within that. He was hesitant on that though because there are places where the shoulder drops into the creek and there is no way to do a sidewalk there unless a lot of fill, a retaining wall and removing trees. He felt that this will be a sidewalk that starts nowhere and goes nowhere.

Upon inquiry of Councilman Dunn, Mr. Ferrell said there are no unresolved stormwater issues.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:44 p.m.

After a brief discussion about a sidewalk along Enka Lake Road, the City's Traffic Engineer Anthony Butzek said that they have worked with the developer's engineer on possible solutions. However, at this point he feels that a sidewalk along Enka Lake Road is what they would like to see be installed as part of this project.

Councilman Ellis suggested a condition be attached to the conditional use permit that the developer and City staff work out the final details on some type of sidewalk along Enka Lake Road.

Upon inquiry of Councilwoman Jones, Mr. Glines said that a one bedroom unit will be approximately $700 climbing to $1,100 for a three bedroom unit.

Councilwoman Jones felt that sidewalks are very important for the future and concur with sidewalks being a priority in the Planning Department. Councilman Peterson agreed that in the future there will be more development in that area and it will not be a sidewalk going nowhere.

Councilman Mumpower said that spending a lot of money on a segment of sidewalk, when we don't know what will be happening on that road in the future, has risk attached to it.

Upon inquiry of Councilman Dunn, Mr. Glines said that this sidewalk would not be affected by the Sand Hill Road widening project.

Councilwoman Jones moved for the adoption of Ordinance No. 3025 granting a Conditional Use Permit for a 252 unit multi-family project located at the corner of Enka Lake Road and Sand Hill Road known as Northview at Biltmore Lake, subject to the conditions identified by the Technical Review Committee which are not currently addressed on the plans. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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At 7:00 p.m., Mayor Worley announced a short break.

G. PUBLIC HEARING TO REZONE PROPERTY ON EAST OAKVIEW ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3026 - ORDINANCE TO REZONE PROPERTY ON EAST OAKVIEW ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 7:25 p.m.

Mr. Carter Pettibone, Urban Planner II, said that this is the consideration of an ordinance to rezone 7.96 acres located on East Oakview Road from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single Family High Density District. This public hearing was advertised on May 16 and 23, 2003.

The applicant, Habitat for Humanity who is represented by Keith Levi, is requesting rezoning of the 7.96 acres (PIN No. 9627.11-75-2688) in order to develop the property for uses permitted in the RS-8 District. The intent of the RS-8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development.

The property is located in the City limits on the south side of East Oakview Road, a dead-end street that connects to Brevard Road. It is also adjacent to the interchange of Interstates 26 and 40. The existing land uses in the area include single-family residences to the north across Oakview Road and to the east, which are zoned RS-4 and a commercial trucking terminal zoned Commercial Industrial to the south across Hominy Creek. Upon preliminary analysis, both water and sewer are available to the site.

A good deal of the southern portion of property lies in a floodplain and there is some steep topography in the western portion of the property that is not in the floodplain. Both of these factors contribute to reducing the actual development potential of the property. The applicant also believes that the higher density and smaller lot size permitted in the RS-8 District are needed in order to make development of the parcel feasible for its organization.

Rezoning the lot would allow the property owner the opportunity to develop the property for higher density single-family use than currently is permitted. The RS-8 zoning would also provide a better transition from the higher intensity Commercial Industrial zoning of the property's southern neighbors to the surrounding RS-4 zoning, which contains less dense single family residential. In addition, the property is located in a RS-4 District that is completely surrounded by either Commercial Industrial zoning or Interstate rights-of-way and the probable long-term outlook for this area would not be low density residential.

In consideration of the above, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

The Planning and Zoning Commission voted unanimously to recommend approval of the rezoning of the property located on East Oakview Road from RS-4 to RS-8. City staff recommends approval as well.

Mr. Maurice Williams, resident on East Oakview Road, said that if the property is rezoned the owners will be able to build 64 houses on that property. If 64 houses are built, the road and bridge will not be able to accommodate that amount of traffic. However, it was his understanding that Habitat for Humanity proposes to build 14 houses and he urged Council, if they can, to limit the number of houses to 14.

Ms. Chris Hagood, resident on East Oakview Road, also asked Council to restrict, if they can, the number of houses to 14 and to move the proposed homes back off the road.

City Attorney Oast reminded Council that if the property is rezoned, they will be able to build the density per acre allowed by the ordinance, but it doesn't mean they have to build that many. Although it is possible to limit the number of units that can be built on a piece of property, this rezoning is not the vehicle within which to do that limitation.

Upon inquiry of Councilman Peterson, Mr. Pettibone said that if a developer wanted to build more than 50 units on that property they would have to come to City Council for a conditional use permit.

At 7:34 p.m., Mayor Worley closed the public hearing.

Mr. Keith Levy, representing Asheville Area Habitat for Humanity, said that they have preliminary site sketches for 14 houses on East Oakview Road and it is their intention to build 14 houses.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3026. This motion was seconded by Councilman Ellis and carried unanimously.

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H. PUBLIC HEARING TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW LEVEL III REVIEW CATEGORY FOR LARGER COMMERCIAL AND MIXED USE DEVELOPMENTS WITHIN ½ MILE OF THE DOWNTOWN CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3027 – ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO ESTABLISH A NEW LEVEL III REVIEW CATEGORY FOR LARGER COMMERCIAL AND MIXED USE DEVELOPMENTS WITHIN ½ MILE OF THE DOWNTOWN CENTRAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 7:42 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to establish a new Level III review category for larger commercial and mixed use developments within ½ mile of the downtown Central Business District. This public hearing was advertised on May 16 and 23, 2003.

It has recently come to staff's attention that there are a number of properties proximate to downtown Asheville with zoning designations allowing large-scale development as a matter of right. These designations include the Highway Business District which allows up to 200,000 square feet of building floor area and the Regional Business District which allows an unlimited amount of building floor area. Level III (conditional uses) review thresholds for these districts are now 100,000 square feet.

In most cases, these zoning districts have been established in order to recognize existing uses that would be nonconforming in the "typical" zoning districts that adjoin downtown (e.g., Community Business I and Community Business II, allowing 12,000 and 45,000 square feet of building floor area, respectively). Because greater floor area than that allowed in Community Business II has the potential to negatively affect the development pattern surrounding downtown, staff has proposed a code amendment that would allow commercial and mixed-use projects close to downtown that contain 45,000 square feet of floor area or greater to be considered as Level III (conditional use) projects.

This proposal would not create any nonconformities and would still allow the full range of uses and scale of floor area of the underlying zoning district to be available to the property owner, while providing an opportunity for careful review of site impacts in order to maintain the community character of this key area. Properties on Tunnel Road and on the west side of the French Broad River would be exempted from the provisions of this ordinance.

In summary, this code amendment establishes a new Level III review category for larger commercial and mixed use developments within ½ mile of the downtown Central Business District. There are a number of zoning districts in the immediate vicinity of downtown that, while perfectly satisfactory for their current uses, have the potential to accommodate much more intensive land uses that may or may not be appropriate on the periphery of downtown. This code amendment would offer the opportunity for heightened review of larger commercial and mixed use projects in these districts. Areas physically separated from the downtown by geographic features would be exempted from this requirement.

On May 7, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

After discussion initiated by Councilman Peterson, Mr. Shuford said that if the Council chooses to amend the ordinance to include developments within the Central Business District or within ½ mile of the Central Business District, he felt that it would be a too substantial a change and would recommend it be remanded back to the Planning and Zoning Commission.

When Mr. Shuford said that this Code amendment was not circulated for additional input (other than by the Planning & Zoning Commission public hearing), Councilman Mumpower felt he would have to vote against it. He felt that anytime we put additional controls on our community, we should solicit additional input.

Upon inquiry of Councilman Dunn, Mr. Shuford said that even though this is a higher level of review for certain types of projects, the Council discussion and public input has added value to the projects.

At 7:55 p.m., Mayor Worley closed the public hearing.

Councilman Peterson felt this ordinance amendment is a step in the right direction and hoped that the City would continue to look at applying this amendment to the Central Business District as well.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3027. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Councilman Dunn and Councilman Mumpower voting "no."

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IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3028 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH A NEW URBAN RESIDENTIAL DISTRICT

Mayor Worley said that the public hearing on this matter was held on April 22, 2003. Due to some language inconsistencies and the lateness of the hour on April 22, the matter was continued until this date.

Urban Planner Shannon Tuch gave a brief background of the ordinance amendment to establish a new high density, infill zoning classification called Urban Residential District.

Frequently in community meetings and planning forums and most recently, the forums for the City Plan 2025 comprehensive plan process, citizens have identified the need for:

- access to appropriately scaled mixed use neighborhood services located close to home
- improved pedestrian facilities, projects that relate to the street and attractive streetscapes
- more affordable housing throughout the community and a greater variety of housing choices
- broader transportation options

One of the most pressing problems facing the City of Asheville is the need for affordable housing. The Urban Residential District (URD) has been developed to increase opportunities for the development of affordable housing and a mix of other housing types by allowing for an increase in density, scale, and use in areas of the city where infrastructure can accommodate higher density, infill development. It is intended that the URD be located on significant transit corridors and/or in areas planned for high growth.

Providing residential units is the primary goal of the URD, however, it is recognized that there is significant need for basic commercial retail, office use, and other activities that support residential uses in proximity to high density residential areas. The URD recognizes this and incorporates other non-residential uses on a limited basis. The proposed URD is an opportunity to incorporate the City Council adopted Smart Growth and sustainable development goals that have been identified by the community during the last decade.

The URD will encourage pedestrian activity by creating safe and inviting streetscapes with comfortable walking amenities. Traffic flow will be improved by limiting curb-cuts and requiring cross access between parcels. The URD will also make public transit a viable option by increasing density (i.e., the number of potential riders) in neighborhoods that are or can be served by the bus system.

Some of the long term benefits from developing any corridor in this pattern will be to build a livable community, strengthen the area's tax base, reduce driving trips on roadways, support mass transit, improve air quality and reduce sprawl.

The URD is not being developed with a particular corridor or area of the City in which it is to be applied. However, staff has been in preliminary contact with Mountain Housing Opportunities and the West End Clingman Avenue Neighborhood regarding the possible application of this new zoning designation in certain areas of this neighborhood.

At the Planning and Zoning Commission meeting on April 2, 2003, the Commission approved the creation of the Urban Residential District by a vote of 7-0. Staff also supports the adoption of this district.

She said that based on Council's discussion during the April 22 public hearing, staff proposes the following revisions:

1. Under Permitted Uses the following shall be inserted to read:

   (b) Permitted Uses

   (1) All non-residential uses are restricted to first story or ground level floor and shall not occupy more than 50% of the ground floor gross square footage. Note: The balance of ground floor gross square footage can be used for common areas supporting the principal residential use.

   (2) Where a commercial use occupies the ground level, this use may be buffered by a non-residential office use on the remaining 50% of the ground level and on the second story that is directly above the commercial use. Under no circumstances can the total non-residential use exceed 30% of the building's total square footage.

2. Under Conditional Uses: "Pubs" has been removed.

3. Under Parking / Loading Standards the following text, taken from the Neighborhood Corridor District (NCD) Amendment, has been added to read:

   . . . Rules requiring that shared and remote parking areas must be found in the same zoning classification are waived in the Urban Residential District. Residentially zoned areas may not be used to provide shared or remote parking for this district except that non-residential uses in residential districts may be used. Parcels will require a recorded agreement for the shared or remote parking arrangement.

Also during the April 22 public hearing, City Council requested additional feedback from neighborhood and developer groups. Based on this feedback, staff would like to propose the following revision.

4. Under Height Standards the following has been revised to read:

(6) Height Standards: For multifamily development: Minimum 2 stories and maximum 4 stories with a maximum height of 54 feet. For single family development, the maximum height shall be 40 feet.

Ms. Tuch said that an additional amendment is requested as a result of soliciting additional comments: She suggested Council amend the minimum lot size for multi-family from 10,000 square feet (minimum) to 3,500 square feet (minimum).

Upon inquiry of Councilman Mumpower about any substantial advantages of this amendment, Ms. Tuch said that in order to build affordable housing that is of quality, developers require an increase in density and as our residential properties are currently outlined in the Unified Development Ordinance, they don't allow for this increase in density. We are looking to provide a residential district that affords some protection for residential living but allows for a larger density.

After a brief discussion, Councilman Peterson suggested amending the purpose of the URD to read "The Urban Residential District (URD) is established to … and will be located on significant transit corridors and/or in high growth areas." Mr. Shuford explained how he could foresee problems by making that language so restrictive and felt we needed the flexibility.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3028, with the amendment to the minimum lot size for multi-family being 3,500 square feet (minimum). This motion was seconded by Vice-Mayor Bellamy and carried on a 5-2 vote, with Councilman Peterson and Councilman Mumpower voting "no."

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B. SECOND READING OF ORDINANCE NO. 3024 – AN ORDINANCE AMENDING THE SIDEWALK ORDINANCE TO IMPROVE THE ADMINISTRATION AND IMPLEMENTATION OF THE ORDINANCE

Mayor Worley said that the first reading of Ordinance No. 3024 occurred on May 13, 2003.

When Councilman Mumpower suggested restricting the number of carts that would be weather-protected, Councilwoman Jones felt there would be a problem of equity.

Councilwoman Jones moved for the adoption of Ordinance No. 3024 on it's second and final reading. This motion was seconded by Councilman Ellis and carried on a 5-2 vote, with Mayor Worley, Councilman Ellis, Councilwoman Jones, Councilman Peterson and Councilman Dunn (who had left the Chamber without being excused) voting "yes", and Vice-Mayor Bellamy and Councilman Mumpower voting "no."

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V. NEW BUSINESS:

A. UPDATE ON THE METROPOLITAN PLANNING ORGANIZATION EXPANSION

City Engineer Cathy Ball said that this is an update to Council on the status of the agreement to expand the Metropolitan Planning Organization for transportation.

The Metropolitan Planning Organization makes decisions regarding highway funding, transit funding, and long-range transportation plans. The City of Asheville is the largest municipality in the MPO. The urbanized area of Asheville is impacted by much of the regional travel, in the form of increased traffic congestion, road widening projects, and highway projects. In addition, the City of Asheville is the largest provider of public transit in the region.

For these reasons, staff is concerned with making sure that the City of Asheville is adequately represented on the MPO's policy board, and ensuring that project decisions are made with input from the jurisdictions that are directly impacted by the projects. Currently, the City of Asheville has two representatives on the policy board, known as the Transportation Advisory Committee (TAC).

The MPO is in the process of expanding to the Hendersonville area and the Waynesville area. The MPO currently has eight member governments: Asheville, Buncombe County, Biltmore Forest, Black Mountain, Fletcher, Montreat, Weaverville, and Woodfin. Nine new member governments will be added to the MPO. They are: Haywood County, Clyde, Canton, Waynesville, Henderson County, Hendersonville, Laurel Park, and Flat Rock, and Maggie Valley.

As a part of the expansion, the MPO must draft a new agreement known as the Memorandum of Understanding (MOU). All of the local governments must sign the agreement in order to participate in the MPO process. A draft agreement is under consideration by the TAC. The agreement will establish the committee membership and voting policies. The TAC will vote on this draft agreement at their meeting on June 19, 2003.

Staff is bringing this item before Council to make the Council aware that the draft agreement does not provide any additional representatives to the City of Asheville or the other large jurisdictions in the MPO. This is based on a decision made by the TAC at their May 15, 2003, meeting. At that meeting, the TAC decided that each jurisdiction should get only one vote. Councilwoman Jones and Councilman Peterson expressed opposition to this structure. The Technical Coordinating Committee (TCC) recommended a structure that would give two representatives each to Asheville, Buncombe County, and Henderson County.

It should be noted that the draft agreement does include a number of provisions to give local governments the ability to make decisions about projects that impact their jurisdiction. These provisions are in Section 1.I of the draft agreement. These provisions would provide local veto power on certain project decisions. They would not, however, provide any additional representation on other issues that come before the TAC.

Almost all of the MPOs in North Carolina give additional representation to the largest jurisdictions in the MPO. In addition, the four largest MPOs in the state have weighted voting based on population. There are seventeen MPOs in North Carolina. The MPO in the Asheville area is now the seventh largest in the state.

At their meeting on June 19, 2003, the TAC will have an opportunity to once again discuss the draft agreement before taking a final vote. This is an appropriate time for the

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Asheville City Council to provide feedback to the TAC. After the TAC adopts the agreement it will be presented to each of the seventeen local governments in the MPO for their consideration.

City Engineer Ball said that the City of Asheville has to sign the MOU. If the City doesn't sign the MOU then it doesn't allow the Transportation Management Area to move forward. It is essential for us to work together to come up with an agreement that we can work with. Staff would like the ability to go back and work with the other local governments to be able to come up with something that more fairly represents the citizens of the City of Asheville as is shown by the other local governments who have TMA's.

Councilman Peterson, City's representative on the TAC, explained that the voting procedure should be on some relationship to proportionality of a town. Asheville needs to have a more significant voice and given the diversity of the larger areas (Buncombe County, Asheville, Henderson County, Haywood County) they need to have two representatives so that they are bringing in different views. He asked for Council to take a vote and express an opinion so at the next TAC meeting the rest of the Committee needs to know that Asheville has taken a firm stand.

Councilwoman Jones, City's representative on the TAC, said they are trying to do the best thing for the region and the best thing for Asheville. We are not asking for veto power, but asking for our citizens to have a bit more weight because of the huge amount of weight that so many of the projects have on our community. It does impact Asheville more. She felt this is about representation of Asheville citizens.

Councilman Mumpower asked why, in this region, do we have such a great resistance to giving Asheville more representation based on our population. City Engineer Ball said that her only guess is that maybe in the past there has been a perception that Asheville has held up projects.

There was a brief discussion initiated by Councilman Mumpower about the approach Council's two representatives on the TAC take when voting on matters.

Vice-Mayor Bellamy moved to support staff's proposal and direct them to continue to seek adoption of the staff proposal or something similar. This motion was seconded by Councilman Mumpower and carried unanimously.

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of May 2-15, 2003: Travelers (Streets), Lee Smart (Parks & Recreation), Paul Branks (Streets), Stephen Furey (Water), Marilyn McDonald (Streets) and William Wilmer (Water).

The City received the following claims during the period of May 16-22, 2003: Hiram A. Lewis (Water), Hadiyah Saleem (Streets), Jerome C. Beloff (Water), Krispy Kreme (Water) and Glazer Architect (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English spoke on several issues regarding the Memorial Day Celebration, the lack of affordable housing in the Biltmore Lake projects, and support of the Asheville Police Department.

Ms. Janet Bowman, Vice-President of the League of Women Voters, read a resolution unanimously adopted by the Board of the Asheville-Buncombe League of Women Voters which expressed serious concern regarding recent actions by elected and appointed officials which appear to compromise civil liberties guaranteed by the U.S. Constitution's Bill of Rights. The resolution asked for Council's immediate and thorough examination of these actions and their consequences, and encouraged affirmation of respect for and support of the legitimate rights of all our citizens.

Mr. Mike Fryar said it was his understanding that racing is prohibited at the French Broad River Park and questioned why they can race bikes there.

Richmond Hill Park

Ms. Terry Darakjy, Richmond Hill resident, spoke against the National Guard Armory at Richmond Hill. She felt the building of the new National Guard Armory will result in destruction of existing vegetation, trees, wildlife; will increase people in the area; will be a disturbing military presence; will make it difficult in getting emergency vehicles through area; there will be an upsurge of criminal element; will be an increase of vehicular traffic, noise, lights and activity; there will be negative air quality issues affecting children and elderly; property taxes will be increased; there will be stress on water and sewer due to topography; and flooding and erosion.

Mr. Craig Young, resident on Hornot Circle, spoke against the proposed entrance to the new Richmond Hill Park on Richmond Hill Drive. He felt Council was wrong in allowing the entrance to the park through a neighborhood. He expressed safety concerns of the elderly who walk in the street and children who play and ride their bikes on the road.

Ms. Rebecca Becker, resident on Hornot Circle, said that most of the community is support of the Richmond Hill Park, however, not with the entrance. She also cited safety concerns for children and the elderly and the possibility of speeding through the community.

Since the conditional use permit has already been issued, a brief discussion was held regarding why there were no public comments at the City Council public hearing when the conditional use permit was issued. Planning and Development Director Scott Shuford said that there was ample opportunity given for input and described the formal property owner notification as well and the informal notification. Mr. Shuford said that he would provide City Council with information on the notification process and site access issues for this Park/Armory project. He said that at this point, the neighborhood has the option to file a lawsuit and follow the standard appeal process.

City Engineer Cathy Ball said that they did look at other options for the park entrance and this is the only one they were able to design an entrance into.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Thursday – May 29, 2003 – 12:15 p.m.
First Floor North Conference Room
City Hall, Asheville, N.C.

Special Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

City Council held a special worksession to discuss the Joint Planning Area (JPA) and to give direction to City staff on the following five issues:

Should the entire extraterritorial jurisdiction (ETJ) be converted to Joint Planning Area?

Planning & Development Director Scott Shuford recommended continuing County appointments to the City Planning and Zoning Commission since it is an advisory board and may well have input into issues involving the JPA. Councilman Peterson expressed his reasoning why he felt there should be no County appointees to either the City Board of Adjustment or the City Planning and Zoning Commission.

After discussion, City Council requested more information with regard to the ramifications of the impact on the City Board of Adjustment membership and other issues. If the ETJ goes away entirely, there will be no need for County appointees to the City Board of Adjustment (and perhaps no legal justification for it). Even if only a portion of it goes away, there will likely be a reduced County presence on the City Board of Adjustment. City Council would be interested in hearing Buncombe County's perspectives on this matter to help them come to a decision.

Should City stormwater standards apply in the JPA?

After discussion this issue, City Council felt there should generally be City-type stormwater regulations in the JPA, except with a higher threshold (e.g., perhaps an acre as opposed to 10,000 square feet) before the regulations apply. City Council felt it was a good idea for Buncombe County to contract with City staff to enforce and inspect stormwater facility construction.

Should City curbing and sidewalk standards apply in the JPA?

After discussion, City Council felt there should generally be City-type curbing and sidewalk standards in the JPA. There are some circumstances in which Council would accept a standard consisting of a sidewalk easement combined with grading of the easement simultaneously with the construction of the street. Council was also open to the possibility of fees-in-lieu of sidewalks in certain circumstances. As with stormwater, Council thought it was a good idea for Buncombe County to contract with City staff to enforce and inspect street and sidewalk construction.

Cell tower height.

City Council agreed that the most obtrusive aspect of cell towers is typically the flashing lights placed on top per Federal Aviation Administration requirements and suggested limiting tower height to whatever height eliminates the need for the lights (this appears to be 200 feet in most cases).

Should there be a City of Asheville type traffic impact analysis (TIA) requirement in the JPA?

After discussion, City Council agreed that there should be a TIA process more like the City's than the NCDOT's in the JPA. One idea - the County could contract with City staff to review TIAs.

Mayor Worley adjourned the meeting at 2:05 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – June 3, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; and Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brian L. Peterson

CONTINUANCE OF UPDATE ON MINIMUM HOUSING CODE

Vice-Mayor Bellamy asked that Council delay discussion on the update on Minimum Housing Code until Councilman Peterson is present. She felt the issue affects buildings and lives of individuals in the future and it is important for him to hear the discussion and get as much information as possible.

Councilman Mumpower was supportive of other members of Council, but under the circumstances, he was not happy with seeing us step aside from important business and inconveniencing people and staff who attended this meeting to hear this update. Councilman Dunn agreed.

After a brief discussion about whether to postpone this update for two weeks or a month, Vice-Mayor Bellamy moved to postpone the update on the Minimum Housing Code until June 17, 2003. This motion was seconded by Councilwoman Jones and carried unanimously.

CONSENT:

Intent to Close Unnamed Alley off Catawba Street

Summary: The consideration of setting a public hearing on June 10, 2003, to close a portion of an unopened alley off Catawba Street.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process the adjoining property owners have requested to close a portion of the alley off Catawba Street.

Currently there is a structure that exists in the middle of the alley. The request is being made in an effort to correct this situation and get the structure onto private property.

Public Works Department staff has determined that the portion of the alley off Catawba Street running north to south between PIN Nos. 9649-09-05-4276 and 9649-09-05-3233. The portion for which closure is requested extends from Catawba Street to the rear of the lots stated above. Lots bordering the portion of the unopened alley are PIN Nos. 9649-09-05-4276 and 9649-09-05-3233.

Contract to Audit City Accounts

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2002-2003.

N.C. General Statutes 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2001-2002. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the Fiscal Year 2002-2003 audit. The base fee has been proposed at $54,000 (the fee has remained the same or decreased each of the past three consecutive years). Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution which authorizes the Mayor to execute a contract with Crisp Hughes Evans LLP for auditing services for Fiscal Year 2002-2003.

Finance Director Bill Schafer responded to a question from Councilman Dunn on the firm of Crisp Hughes Evans LLP.

Grant for a COPS in Schools

Summary: The consideration of a resolution to apply for and enter into an agreement with the United States Department of Justice for personnel funds to hire a Supervisor for the current School Resource Officers in the Asheville Police Department.

The COPS in Schools grant program has been an excellent way to provide a quality community service to our city schools through the assigning of School Resource Officers. The Asheville Police Department currently provides 3 officers to our schools. This program has been well received in the school system and has given them the support they need in the areas of safety of the school children and the premises in general; investigation of fights, thefts, and vandalism; and in identifying and mentoring problem students.

The COPS in Schools grant program offers a three-year grant for a maximum of $125,000 for the three-year period. The Asheville Police Department is requesting $184,587.43 in grants from the Department of Justice COPS in Schools Program with a local match of $59,587.43 over the three years, which will be paid for by Asheville City Schools. The grant funds will be used to add an additional sergeant position as a supervisor for the current COPS in Schools officers.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire one supervisor for the current COPS in Schools officers to enhance cooperation with Asheville City Schools.

Grant for a Police Overtime Funding

Summary: The consideration of a resolution to apply for and enter into an agreement with the United States Dept. of Justice for overtime funds to enable the Asheville Police Department to assign a police unit to the public housing communities.

Almost a year ago, the Asheville Police Department lost funding for a police unit dedicated to our public housing communities when the Housing Authority had their funding from the Dept. of Housing and Urban Development reduced. The overtime grant funding from the Dept. of Justice will allow the Asheville Police Department to restore that unit. There has been a noticeable increase in calls for service and crimes committed in the public housing communities

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since the elimination of their dedicated police unit. This unit will help to address the concerns voiced by the public housing communities to the Housing Authority and Police Department.

The Dept. of Justice Overtime Program offers a one-year grant to support community policing and homeland security efforts. There is a 25% match required for these funds. The Asheville Police Department is requesting the maximum amount of federal share allowed based on our population, which is $100,000 with a match requirement of $25,000. The matching funds will come from the Housing Authority. No financial resources will be required from the City of Asheville. The total grant request will be $125,000.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to assign a police unit to the public housing communities using overtime funding from the Dept. of Justice.

Minority Business Commission

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two (2) of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Ms. Connie Mitchell has been named by the American Institute of Architects (AIA) to represent them on the Minority Business Commission. Ms. Mitchell has been nominated to fill the position left vacant by Ms. Jacquelyn A. Schauer who resigned effective May 8, 2003. Ms. Mitchell's term will run through August 2004 to complete the current term of Ms. Schauer.

City staff recommends City Council adopt the resolution confirming the appointment of Ms. Connie Mitchell as the AIA representative on the Minority Business Commission.

Grant for National Register District Nomination Report

Summary: The consideration of a resolution to enter into an agreement with the North Carolina State Historic Preservation Office for and in consideration of a federal grant from the US Department of Interior, National Park Service in the amount of $2,000 for the purpose of the preparation of the Clingman/Riverside Industrial and Commercial Historic District National Register Nomination Report.

The project is to prepare a National Register nomination form for the Clingman/Riverside Industrial and Commercial Historic District. The proposed district encompasses approximately 20-25 properties on 2 ½ acres located to the west of downtown Asheville in the area north of Lyman Street and east of Riverside Drive. The proposed district, along with two other identified sub-districts was approved for inclusion in the North Carolina Study List in 1999. This nomination will include only the historic and commercial area within the larger West/End Clingman Avenue Neighborhood as identified in the grant application unless modifications are determined necessary through field observation efforts. A consultant who meets the qualifications outlined in 36 CFR 61 will be hired to prepare the nomination according to the guidelines outlined in National Register Bulletin 16A. The complete and final draft will be submitted to the State Historic Preservation Office no later than August 30, 2004.

The total cost for the project is $3,380. The grant is for $2,000 and the remaining local match of $1,380 will be provided by the property owners within the district as indicted on the application. The City will not be responsible for the local match. The grant period is from 6/1/2003-9/30/2004.

City staff recommends that the City of Asheville enter into an agreement with the State Historic Preservation Office to receive grant funds to hire a consultant to complete the nomination report for the Clingman/Riverside Industrial Historic District.

Ms. Stacy Merten, Director of the Historic Resources Commission, responded to questions from Vice-Mayor Bellamy.

Vice-Mayor Bellamy asked staff to make sure that they communicate with the area residents about the process.

Grant for Police Department Traffic Unit

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit.

On March 25, 2003, City Council adopted Resolution No. 03-42 authorizing the City to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit. Following a meeting with the Grant Program Coordinator for the North Carolina Governor's Highway Safety Program, the amount of the grant has increased to $498,747.54, while the City's local match has decreased to $67,765.89.

To remind Council, the Governor's Highway Safety Program offers a four-year grant with graduated match requirements in the personnel, equipment and additional costs categories. The Asheville Police Department is requesting $498,747.54 in grants from the Governor's Highway Safety Program to hire and train four officers and one supervisor, and to purchase five vehicles and computer equipment for the unit in the first year. The first year of the grant there is a 25% match on equipment and training, but there is no match for personnel. The match is $67,765.89 for the first year, which will require an appropriation of $67,765.89 from the Contingency account. Upon notification of grant award, a budget amendment will be brought to Council for the full amount of the grant award, including the City's local match. The original grant amount was for $474,438 and the original local match was $71,365.82. The formal grant application requires that the Mayor sign a pre-formatted resolution created by the North Carolina Governor's Highway Safety Program.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire and train a traffic unit with four officers and one supervisor to reduce the incidence of aggressive driving in the City of Asheville and allow the Mayor to sign the GHSP-02 Local Governmental Resolution from the Governor's Highway Safety Program.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on June 10, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

More Standard Minimum Lot Sizes in all Residential Zoning Districts and to Clarify Lot Width Requirements for Cul-De-Sac Development and for Flag Lots

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for more standard minimum lot sizes in all residential zoning districts and to clarify lot width requirements for cul-de-sac development and for flag lots.

This code amendment provides for more standard minimum lot sizes in all residential zoning districts and clarifies lot width requirements for cul-de-sac development and for flag lots. This amendment was requested by the City-County Housing Task Force and is summarized below.

Minimum Lot Size

Zone	Current	Proposed
RS-2	21,780	20,000
RS-4	10,890	10,000
RS-8	5,445	5,000
RM-6	7,260	7,000
RM-8	5,445	5,000
RM-16	5,445	5,000 for multifamily*
	or	2,500 for single family attached (townhomes)
	2,722.5/unit	3,500 for single family detached

Lot Widths for Cul-de-Sac Developments

New Language: Lots on a cul-de-sac shall be a minimum of 25 feet wide at the right-of-way line and 75% of minimum at the front setback line and shall average the minimum lot width over the entirety of the lot

Flag Lots

Added Language (incorporates an interpretation):

- No more than one lot in a subdivision of less than 8 units shall be a flag lot
- No more than 2 lots or 10% of the total lots, whichever is greater, shall be flag lots in subdivisions of 8 or more lots

Also included are two "housekeeping" amendments. First, the reference to residential lots having public street access has been corrected to allow for private streets built to public street standards as another option. Second, a correction to an incorrect reference is made.

* Since the adoption of the Urban Residential District, staff reconsidered the multi-family minimum lot size for the RM-16 district. We recommended a 10,000 square foot minimum to the Planning and Zoning Commission, but are now suggesting a 5,000 square foot minimum lot size to accommodate smaller-scale multifamily development; this would be slightly smaller than the current provision of 5,445 square feet.

On May 7, 2003, the Planning & Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well, with the change in the RM-16 multifamily lot area to 5,000 square feet.

Revise the Approval Authority and Process for Modifications to the Subdivision Regulations

Mr. Carter Pettibone, Urban Planner II, said that this is the consideration of an amendment to the Code of Ordinances of the City of Asheville to change the approval authority for subdivision modification requests.

Currently, both the Technical Review Committee (TRC) and Planning and Zoning Commission review requests for modifications to the subdivision ordinance prior to review and approval by the City Council. The typical timeframe for review and approval of these requests is about 2 months. These are technical modifications that address such issues as lots that don't front on a public right-of-way and similar matters.

This ordinance amendment will help streamline the review process for subdivision modifications by allowing their review and approval by the Technical Review Committee. All applicable city departments would still review these requests as part of the TRC review process. The ordinance amendment would also provide for a more equitable treatment of subdivision issues since the TRC is the review and approval authority for major subdivisions.

The review process would be reduced from 2 months to about 14 days. Staff believes this ordinance amendment provides a more streamlined and equitable alternative for subdivision modifications.

At its May 7, 2003, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Upon inquiry of Vice-Mayor Bellamy, Mr. Pettibone explained the appeal process.

Councilman Mumpower was concerned about deleting Planning & Zoning Commission review and City Council review with having no additional input from the public.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these public hearings on the June 10, 2003, formal City Council agenda.

EARLY ACTION COMPACT INITIATIVES

City Engineer Cathy Ball said that this is an update to City Council on the status of potential measures the City may take in meeting the requirements of the Early Action Compact to improve air quality and the first step in the process of developing the Early Action Compact Plan

In December 2002, City Council adopted a resolution to enter into an Early Action Compact (EAC) along with Buncombe County and other local governments. The first step in the process is to develop a list of measures that can be taken by each of the local governments to reduce air pollution. In an effort to develop this list, the Environmental Protection Agency (EPA) recommended that a group of stakeholders be created to make recommendations to local governments. City Council reviewed and approved the list of stakeholders in March 2003.

The Mountain Area Compact is a diverse region of five Western North Carolina counties comprising more than 2400 square miles. According to 2002 estimates, County populations range from 212,907 in Buncombe County to 20,192 in Madison County. Henderson County (93,033), Haywood County (55,299) and Transylvania County (29,997) fall within those extremes. Population density, total workforce and infrastructure development exhibit similar county to county variation. Services and retail trade are strong factors in each local economy. This reflects the area's popularity for retirement living and for travel and tourism.

Due to the differences in size and economic base, it was agreed that each county would identify local control measures individually. This process allows greater stakeholder participation and allows each jurisdiction to evaluate local resources and determine if county-specific control measures can reasonably be implemented.

All counties are targeting implementation dates of April 2005 in order to coincide with the beginning of that year's ozone season. As planning continues, that date may change for some measures.

This group of stakeholders representing the City of Asheville and Buncombe County met every Thursday in April 2003.

Mr. Jan Davis, Chairman of the Stakeholders Group, outlined the list of measures, as well as the process used to develop the measures, developed by the Stakeholders. The deadline for submission of this list is June 16, 2003.

Actions the public can take on an ongoing basis to reduce ozone include: keep your car tuned up, keep tires properly inflated, carpool or vanpool, ride your bike, take a walk, take the bus, use an electric powered mower or a push mower, conserve energy and reduce pollution at home, practice appropriate vehicle operating tips and purchase products that meet the Environmental Protection Agency Energy Star Program.

On ozone action days the public and businesses should: spread the word about Ozone Action Days; delay errands until late in the day; don't mow your lawn until late in the day; bring your lunch or walk to lunch; bus, bike or walk; practice appropriate vehicle operating tips; do not use drive-through services; telecommute; and participate in Ozone Action Day Program.

On ozone action days, the local, state and federal governments should seek participation of state and federal agencies in the following measures: limit morning meetings; practice appropriate vehicle operating tips; limit vehicle/equipment use; reschedule nonessential operations under direct control of the city; reschedule nonessential paving activities; explore the use of alternative fuels; track statewide initiatives to bring clearer burning fuels to area retailers; increase enforcement of smoking vehicles; tree planting program; hybrid-electric car pilot program; retrofit technology; purchase and service contracts should specify energy-efficient equipment and maintenance practices; annual in-house training; Ozone Action Day Coordinators; and telecommute.

Ongoing actions to reduce ozone include: clean burning fuels; WNC Regional Air Quality Agency; public education campaigns; outreach; themes; cultural outreach; community outreach; business involvement; conserve energy and reduce pollution at work; land use; conversion to alternative fuels; low sulfur fuels; ride the bus; Energy Star Program; and Advisory Group to address air quality and other environmental issues.

City staff has been involved in this process and supports the recommendations of the Stakeholders. No action by City Council is necessary at this time.

Mr. Davis responded to various questions and comments from Council regarding the initiatives.

On behalf of City Council, Mayor Worley thanked Mr. Davis and the Stakeholders for working on this very important issue for our entire region.

ALTERNATIVE FUELED VEHICLES GRANT

Public Works Director Mark Combs explained the Alternative Fueled Vehicles Program. He explained that on November 14, 2000, City Council adopted a resolution supporting an alternative fuel vehicle program and authorized staff to submit grant applications to support it. In April 2001, the City received a $400,000 grant from NC Division of Air Quality (DAQ) to construct a compressed natural gas (CNG) fueling station in the City. The two primary reasons for the award were:

a. To complete a State-wide fueling "corridor" master plan along I-40 which would accommodate CNG-powered vehicles from coast-to-coast;
b. To provide a fast-fill source for locally owned/operated CNG vehicles.

Unfortunately, due to State budget challenges in 2001, the grant was not funded as planned.

Last month DAQ staff contacted the City and expressed interest in re-funding the construction of a CNG fueling station.

If City Council wishes to move forward and accept the grant if received, a resolution authorizing the City to accept the grant and entering into an agreement with the N.C. Division of Air Quality, and a budget amendment will be brought before Council.

City staff recommends City Council (1) accept the Mobile Source Emissions Reduction Grant; (2) construct CNG fuel station; (3) fund/develop a Citywide AFV program; (4) maintain partnership(s) for clean air; and (5) research and implement new AFV technology, as available.

Mr. Combs responded to various questions from Council regarding alternative fuel.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ORDINANCE NO. 3029 - BUDGET AMENDMENT TO CONSIDER REQUEST FROM ASHEVILLE REGIONAL AIRPORT AUTHORITY

Director of Economic Development Mac Williams said that this is the consideration of a request from the Asheville Regional Airport for $10,000 from the City of Asheville to support a matching federal grant they have received.

The Asheville Regional Airport Authority (ARAA) recently received a $500,000 grant from the U.S. Dept. of Transportation (USDOT) (1 of only 40 such grants made nationwide and the only one in NC). The purpose of the grant program is to help small airports like Asheville enhance air service by addressing service deficiencies such as limited commercial jet service and high fares. After receiving the grant, the USDOT advised the ARAA that monies it had committed, from its own internal sources, as the local match would not be an appropriate source for all the match and that at least $100,000 cash from outside local sources would be required. Further, the ARAA anticipates such commitments will be needed by July 1, or perhaps, sooner.

The funds are intended to support the recently announced Continental Airlines direct service to Houston (beginning June 12th). Additionally, funding will be used to support other existing carriers with advertising and marketing initiatives to increase competition, upgrade service, and lower fares.

The ARAA is currently undertaking an aggressive fundraising campaign among local private and public sectors and has commitments for $75,000. The ARAA is requesting $10,000 from the City of Asheville in support of this effort.

Staff recommends City Council adopt a budget amendment to provide $10,000 to the Asheville Regional Airport in support of their efforts to leverage a $500,000 federal grant and authorize the City Manager to transfer $10,000 from the general fund contingency account to fund the request.

Councilman Ellis spoke in support of the request and noted that Buncombe County has committed $10,000.

Ms. Susan Phyllis, Marketing and Public Relations Director of the Asheville Regional Airport, said that the Airport has commitments to receive $25,000 from the Grove Park, $25,000 from the Biltmore people, $10,000 from the Tourism Development Authority and $10,000 from Buncombe County.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Ellis moved for the adoption of Ordinance No. 3029. This motion was seconded by Councilwoman Jones and carried unanimously.

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AMENDMENT REGARDING METHOD OF DESIGNATING PARKING METER ZONES AND PARKING IN DOUBLE METER SPACES

Transit Services Director Bruce Black said that this is the consideration of an ordinance changing the method of designating meter zones and the method of parking in double meter spaces.

Due to economic expansion and construction in the Central Business District and the ever-changing traffic patterns, there are frequent and continual changes in the layout of parking. Appendix E requires a change by City Council to add meters in these new areas when changes take place. By repealing Appendix E and amending Section 19-162, we will be able to install meters immediately as the traffic engineer designates through expansion, contraction, or alteration, new parking spaces in the Central Business District.

An amendment is also necessary to Section 19-164 regarding the parking at double sided parking meters. As a person parks their vehicle there is no way they can be in compliance with the current ordinance if they park in the forward parking space of a double meter. This amendment will reflect the new meters.

City staff requests City Council approve the ordinance.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PUBLIC SERVICE ANSWERING POINT

Police Chief Will Annarino and Fire Chief Greg Grayson said that staff is requesting formal confirmation that City Council desires to participate with Buncombe County in a joint 911 emergency communications center in approximately three years. In the interim period, staff requests direction on whether to proceed with establishing a City of Asheville primary 911 public safety answering point for all 911 calls originating in the City of Asheville or to contract with Buncombe County to provide fire/rescue dispatch services and continue processing police 911 emergency calls as we are currently doing.

During the 2003-04 City Council Budget Retreat in January, 2003, City staff presented Council with concerns about the delays that were occurring with over 32,849 911 emergency fire/rescue and police calls that are being transferred to the City of Asheville from Buncombe County. At that time, staff recommended to City Council that the City of Asheville create it's own primary 911 Public Safety Answering Point (or PSAP) in order to provide more rapid response to all emergencies occurring in the City of Asheville.

Council requested more information on the subject and most Council members toured the Buncombe County 911 emergency communications center and the City of Asheville emergency communications center. Some Council members toured the Sheriff's communications center. In the past five months, Council has had much discussion about the 911 dispatch situation. In addition, Buncombe County Commission Chairman Nathan Ramsey has recently stepped forward with a written proposal on behalf of Buncombe County Government to construct a joint emergency communications center that should be built and operational in approximately three years.

The operational benefits of a joint emergency communications center are significant. Most importantly, all 911 callers will experience the most minimal delay possible in receiving emergency services. However, Council needs to take action affirming support to participate in a joint emergency communications center when it is built by Buncombe County Government. Council's commitment to this joint venture will allow Buncombe County to properly design a joint center. In addition, city and county staff can begin working together in planning and facilitating the joint operation.

During this three-year interim period, Council needs to provide direction to staff on which one of three options the City of Asheville will take for the next three years, until the joint communications facility is constructed and becomes operational. The three interim options are:

1. Leave operations as they are with the delays on all 32,849+ 911 emergency calls transferred to the City of Asheville.
2. Create a City of Asheville primary 911 PSAP and receive and process all 911 calls originating within the Asheville corporate limits, or
3. Authorize the City Manager to execute a performance contract with Buncombe County Government for dispatch of fire/rescue calls (approximately 11,389 calls annually) and continue dispatching police emergency calls as we are doing currently (approximately 21,460 calls annually).

Police Chief Annarino explained the staff issue of improving the dispatch of emergency services responding to incidents by minimizing delays.

Deputy Police Chief Ross Robinson summarized how the currently 911 calls are routed to the Asheville Police Department from the Buncombe County Emergency Operation Center (EOC). He explained the delay being the current Buncombe County to City of Asheville transfer generates an approximate 15-85 second delay in our police officers and firefighters responding to emergency situations.

Police Chief Annarino said the long term solution is the consolidated communication center.

Fire Chief Greg Grayson feels we should move toward a consolidated communications center. The advantages for a consolidated center include: less delay, more personnel working together, better efficiency, and joint dispatch of multiple agencies.

Police Chief Annarino said that a consolidated center construction will require 2.5 to 3 years. He explained if there is no change, there are no "pros." "Cons" include a 15-85 second delay remains for 32,849 police and fire calls; 911 surcharge unavailable to upgrade city infrastructure; and not addressing staff's dispatch delay concern.

Police Chief Annarino then explained that if the City has a PSAP, the "pros" are: no delay of 32,849 emergency calls for city emergency responders; $312,000 in annual 911 surcharge revenues available to upgrade infrastructure; best Insurance Service Office (ISO) rating for Asheville Fire & Rescue (+2-1/2 points); and independent accountability for the city. "Cons" include: creates delays for 11,365 ambulance dispatches, prompting more fire/rescue responses; startup costs of $869,879; all equipment costs borne by city - $564,000; and additional ongoing costs.

Deputy Police Chief Robinson then explained the projected City call load.

Fire Chief Grayson then explained the Buncombe County offer during this interim period. The "pros" include: contract with Buncombe County for consolidated center; no delays for 11,389 fire calls for service; and improved ISO rating for fire (+2 points).

Police Chief Annarino explained that the "con" is that the staff issue is not addressed for 21,460 police calls per year. These calls will still experience some delay.

Fire Chief Grayson explained that the County's offer includes the following costs to be borne by the County: $148,780 annual staffing costs paid during interim (2.5 years = $371,950); approximately $75,000 start-up cost; and cost of new equipment $564,000 in consolidated center. The County's funding offer totals $1,010,950.

Police Chief Annarino and Fire Chief Grayson recommended City Council give their formal endorsement and commitment to participate in a joint 911 emergency communications center with Buncombe County Government. In the interim period, city staff recommends that if Council wants to address all 911 calls within the corporate limits, that the city proceed with implementing a City of Asheville PSAP. If City Council does want to take this step during the interim period, Council can authorize the City Manager to execute a performance contract with Buncombe County to dispatch all fire/rescue calls.

Police Chief Annarino and Fire Chief Grayson, along with Buncombe County's Emergency Operations Manager Jerry VeHaun, answered several questions from Council, regarding start-up costs, equipment, training, personnel, availability of homeland security monies, and 911 fees.

Mr. VeHaun said that the joint consolidated communication center would be completed by December of 2005.

After discussion, it was the consensus of City Council to (1) formally endorse and commit to participate in a joint 911 emergency communications center with Buncombe County Government; and (2) authorize the City Manager to execute a performance contract with Buncombe County to dispatch all fire/rescue calls and continue dispatching police emergency calls as we are doing currently.

CANDIDATE INFORMATION SESSION

City Manager Jim Westbrook said that several months ago City Council asked him to develop a program of information for members of the public who run for City Council. The feeling was that in the past, if there had been general information sessions about City government and specific programs, misinformation would have been less likely to develop during the election process. In preparing the proposed agenda, all City departments were consulted, as well as the City Attorney, the City Clerk and the Institute of Government.

As you know, City staff could literally take hours going into detail on various programs that would be of interest. However, he felt it most important to allow potential candidates to ask questions so they could decide what is important. In talking with staff at the Institute of Government about this particular initiative, they indicated that they were changing their program for new council members to include processes for working as a group, the need for personal time commitment, and taking a long-term view of both issues and relationships, among other things. Therefore, he included that in the agenda, too.

He would ask that Mayor Worley or a similar elected official act as the leader of the meeting, setting up the ground rules, as well as keeping time and moderating as necessary. After a brief welcome and introduction, he would present some information concerning the City's relationship to the state, as well as the council-manager form of government. He would be followed by the City Attorney who would present information on state law, local law, conflicts of interest, Open Meetings law, etc. The Finance Director and the Budget Director would follow with brief explanations of the budget and financial condition. This general information would be followed by a question and answer session with all candidates, moderated by Mayor Worley.

The last session would be led by a former Mayor and Council Members. The purpose is to follow up on the Institute of Government's suggestion about the need to hear and discuss the democratic process, personal commitments, working as a group, the need for public trust, etc. This would allow persons who are running for Council to hear from a previous Mayor and Council Members who are no longer in elected office their views on these important facets of being an elected Council Member.

The City Manager recommends that City Council approve moving forward with the Candidate Information Session.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

BOARD/COMMISSION VACANCIES

It was the consensus of City Council to readvertise for the vacancies on the Civic Center Commission and the Regional Water Authority.

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It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Mr. Gene Bell to the Civil Service Board to serve an additional two-year term.

OTHER BUSINESS

City Attorney Oast responded to Councilman Dunn when he asked what if the property owner who has to give the right-of-way for the entrance at Richmond Hill Drive would not give the right-of-way. Mr. Oast said that Richmond Hill Drive is a state road and the State has the option of condemnation for building roads. He did note that negotiations are still occurring with the property owner.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:42 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 10, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Retired Chief Master Sergeant Larry Fowler of the United States Air Force led City Council in the pledge of allegiance.

INVOCATION

Councilman Peterson gave the invocation.

RESOLUTION NO. 03-93 - RESOLUTION OF CENSURE OF COUNCILMAN BRIAN PETERSON

Councilwoman Jones moved to excuse Councilman Peterson from participating in this matter. This motion was seconded by Councilman Ellis and carried unanimously.

Mayor Worley then read the following resolution: "The City Council of the City of Asheville has the authority to address issues relating to the conduct of its members, when that conduct brings disrepute to the City or the Council, or otherwise interferes with the Council's ability to conduct the City's business. Just after midnight on May 27, 2003, Council Member Brian Peterson was observed by an Asheville Police Officer to admit a woman into his personal vehicle in an area under police surveillance for prostitution activity, and later denied the police observations about the circumstances of this incident. Council Member Peterson has engaged in conduct tending to bring the City and the Council into disrepute, and to otherwise interfere with the Council's ability to conduct the City's business and the ability of each member of Council to represent the City and Council. Mr. Peterson's conduct falls short of the standards that the citizens of Asheville have the right to expect of their elected officials, and tends to undermine and damage the Council's credibility with the public in general, and with law enforcement in particular. Now, therefore, be it resolved by the City Council of the City of Asheville that the actions of Council Member Brian Peterson on May 27, 2003, are hereby condemned, and the Council does hereby censure Mr. Peterson for his conduct. Be it further resolved that the Council calls on Mr. Peterson to seriously consider his credibility with Council and his own ability going forward to be effective in his service on Council in appropriately representing the citizens of Asheville and Council.

Councilman Dunn moved for the adoption of Resolution No. 03-93. This motion was seconded by Vice-Mayor Bellamy.

Councilman Dunn said this was a sad day for Council. There is no one in the City hurting more than Councilman Peterson and his family. A censure coming from him or anyone else bothers him because it does conflict with his belief that to publicly judge anyone goes against his religious beliefs. No one on Council is willing to discuss all of their imperfections. This being said, this Council does represent all of Asheville. Council is supposed to uphold the ethical and moral standards of an elected position. We are role models whether we like it or not. City Council should not be held to a lower standard of behavior than the City employees who they make rules for. This country is experiencing moral decline. Family values are being attacked by various special interests. When will honesty replace political correctness? Why do you think that less than 30% of the voters in our City vote – distrust of the system and its representatives. While Council does not have the power to have Councilman Peterson removed from office, which is what the law states, Council can censure him. Personally, this is really not the best solution. Therefore, he sadly requests that Councilman Peterson resign this position for the good of the City. This is the honorable, ethical and right thing to do. It's also time to place ethics ahead of political aspirations. He did not feel comfortable in commenting on this resolution and he didn't like to add to Brian's pain, but our citizens do expect us to deport ourselves in an ethical and honorable higher ground. Excuses and blaming others is easy. Honesty and common-sense seems to be losing favor in this country. Honesty and integrity do have a place in our society. Our criminal justice system has for centuries relied on a judgmental system. This system has been shown to be the best system in the world. If we ignore honesty, integrity and morals, our nation and our society will be thrown into chaos. He was sorry this all had to happen and while he does not like this resolution to censure he would support it, but he would prefer that Councilman Peterson resign.

The motion made by Councilman Dunn and seconded by Vice-Mayor Bellamy carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 418

I. PROCLAMATIONS:

A. KIPP PROGRAM

Vice-Mayor Bellamy recognized Asheville KIPP Director Shawn Jackson who spoke about the success of the first year of the KIPP (Knowledge is Power Program) Asheville Youth Academy. He explained that their mission is to prepare students with the skills, knowledge, and character necessary to succeed in high school, colleges, and the competitive world beyond. Vice-Mayor Bellamy also recognized Miss Miller who has excelled in the KIPP Program.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 27, 2003; THE SPECIAL WORKSESSION HELD ON MAY 29, 2003; AND THE WORKSESSION HELD ON JUNE 3, 2003

B. RESOLUTION NO. 03-94 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CRISP HUGHES EVANS LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2002-03

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Crisp Hughes Evans LLP, Certified Public Accountants, for auditing services for Fiscal Year 2002-2003.

N.C. General Statutes 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998 the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Crisp Hughes Evans LLP to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2001-2002. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the

Fiscal Year 2002-2003 audit. The base fee has been proposed at $54,000 (the fee has remained the same or decreased each of the past three consecutive years). Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution which authorizes the Mayor to execute a contract with Crisp Hughes Evans LLP for auditing services for Fiscal Year 2002-2003.

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C. RESOLUTION NO. 03-95 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY AND ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A GRANT TO HIRE AND TRAIN A SCHOOL RESOURCE OFFICER SUPERVISOR

Summary: The consideration of a resolution to apply for and enter into an agreement with the United States Department of Justice for personnel funds to hire a Supervisor for the current School Resource Officers in the Asheville Police Department.

The COPS in Schools grant program has been an excellent way to provide a quality community service to our city schools through the assigning of School Resource Officers. The Asheville Police Department currently provides 3 officers to our schools. This program has been well received in the school system and has given them the support they need in the areas of safety of the school children and the premises in general; investigation of fights, thefts, and vandalism; and in identifying and mentoring problem students.

The COPS in Schools grant program offers a three-year grant for a maximum of $125,000 for the three-year period. The Asheville Police Department is requesting $184,587.43 in grants from the Department of Justice COPS in Schools Program with a local match of $59,587.43 over the three years, which will be paid for by Asheville City Schools. The grant funds will be used to add an additional sergeant position as a supervisor for the current COPS in Schools officers.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire one supervisor for the current COPS in Schools officers to enhance cooperation with Asheville City Schools.

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D. RESOLUTION NO. 03-96 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY AND ENTER INTO AN AGREEMENT WITH THE DEPT. OF JUSTICE OVERTIME FUNDS PROGRAM FOR A GRANT TO ASSIGN A POLICE UNIT TO THE PUBLIC HOUSING COMMUNITIES OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution to apply for and enter into an agreement with the United States Dept. of Justice for overtime funds to enable the Asheville Police Department to assign a police unit to the public housing communities.

Almost a year ago, the Asheville Police Department lost funding for a police unit dedicated to our public housing communities when the Housing Authority had their funding from the Dept. of Housing and Urban Development reduced. The overtime grant funding from the Dept. of Justice will allow the Asheville Police Department to restore that unit. There has been a noticeable increase in calls for service and crimes committed in the public housing communities since the elimination of their dedicated police unit. This unit will help to address the concerns voiced by the public housing communities to the Housing Authority and Police Department.

The Dept. of Justice Overtime Program offers a one-year grant to support community policing and homeland security efforts. There is a 25% match required for these funds. The Asheville Police Department is requesting the maximum amount of federal share allowed based on our population, which is $100,000 with a match requirement of $25,000. The matching funds will come from the Housing Authority. No financial resources will be required from the City of Asheville. The total grant request will be $125,000.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to assign a police unit to the public housing communities using overtime funding from the Dept. of Justice.

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E. RESOLUTION NO. 03-97 - RESOLUTION CONFIRMING A MEMBER TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two (2) of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Ms. Connie Mitchell has been named by the American Institute of Architects (AIA) to represent them on the Minority Business Commission. Ms. Mitchell has been nominated to fill the position left vacant by Ms. Jacquelyn A. Schauer who resigned effective May 8, 2003. Ms. Mitchell's term will run through August 2004 to complete the current term of Ms. Schauer.

City staff recommends City Council adopt the resolution confirming the appointment of Ms. Connie Mitchell as the AIA representative on the Minority Business Commission.

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F. RESOLUTION NO. 03-98 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE STATE HISTORIC PRESERVATION OFFICE TO RECEIVE GRANT FUNDS TO HIRE A CONSULTANT TO COMPLETE THE NOMINATION REPORT FOR THE CLINGMAN/RIVERSIDE INDUSTRIAL HISTORIC DISTRICT

Summary: The consideration of a resolution to enter into an agreement with the North Carolina State Historic Preservation Office for and in consideration of a federal grant from the US Department of Interior, National Park Service in the amount of $2,000 for the purpose of the preparation of the Clingman/Riverside Industrial and Commercial Historic District National Register Nomination Report.

The project is to prepare a National Register nomination form for the Clingman/Riverside Industrial and Commercial Historic District. The proposed district encompasses approximately

20-25 properties on 2 ½ acres located to the west of downtown Asheville in the area north of Lyman Street and east of Riverside Drive. The proposed district, along with two other identified sub-districts was approved for inclusion in the North Carolina Study List in 1999. This nomination will include only the historic and commercial area within the larger West/End Clingman Avenue Neighborhood as identified in the grant application unless modifications are determined necessary through field observation efforts. A consultant who meets the qualifications outlined in 36 CFR 61 will be hired to prepare the nomination according to the guidelines outlined in National Register Bulletin 16A. The complete and final draft will be submitted to the State Historic Preservation Office no later than August 30, 2004.

The total cost for the project is $3,380. The grant is for $2,000 and the remaining local match of $1,380 will be provided by the property owners within the district as indicted on the application. The City will not be responsible for the local match. The grant period is from 6/1/2003-9/30/2004.

City staff recommends that the City of Asheville enter into an agreement with the State Historic Preservation Office to receive grant funds to hire a consultant to complete the nomination report for the Clingman/Riverside Industrial Historic District.

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G. RESOLUTION NO. 03-99 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR AN ASHEVILLE POLICE DEPARTMENT TRAFFIC UNIT

Summary: The consideration of a resolution to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit.

On March 25, 2003, City Council adopted Resolution No. 03-42 authorizing the City to apply for and enter into an agreement with the North Carolina Governor's Highway Safety Program for personnel and equipment funds for an Asheville Police Department traffic unit. Following a meeting with the Grant Program Coordinator for the North Carolina Governor's Highway Safety Program, the amount of the grant has increased to $498,747.54, while the City's local match has decreased to $67,765.89.

To remind Council, the Governor's Highway Safety Program offers a four-year grant with graduated match requirements in the personnel, equipment and additional costs categories. The Asheville Police Department is requesting $498,747.54 in grants from the Governor's Highway Safety Program to hire and train four officers and one supervisor, and to purchase five vehicles and computer equipment for the unit in the first year. The first year of the grant there is a 25% match on equipment and training, but there is no match for personnel. The match is $67,765.89 for the first year, which will require an appropriation of $67,765.89 from the Contingency account. Upon notification of grant award, a budget amendment will be brought to Council for the full amount of the grant award, including the City's local match. The original grant amount was for $474,438 and the original local match was $71,365.82. The formal grant application requires that the Mayor sign a pre-formatted resolution created by the North Carolina Governor's Highway Safety Program.

City staff recommends the City of Asheville apply for and enter into an agreement for grant funds to hire and train a traffic unit with four officers and one supervisor to reduce the incidence of aggressive driving in the City of Asheville and allow the Mayor to sign the GHSP-02 Local Governmental Resolution from the Governor's Highway Safety Program.

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H. MOTION ACCEPTING A GRANT FROM THE N.C. DIVISION OF AIR QUALITY TO CONSTRUCT A COMPRESSED NATURAL GAS FUELING STATION AND IMPLEMENT A LONG-TERM ALTERNATIVE FUELED VEHICLES PROGRAM

Summary: On November 14, 2000, City Council adopted a resolution supporting an alternative fuel vehicle program and authorized staff to submit grant applications to support it. In April 2001, the City received a $400,000 grant from NC Division of Air Quality (DAQ) to construct a compressed natural gas (CNG) fueling station in the City. The two primary reasons for the award were:

a. To complete a State-wide fueling "corridor" master plan along I-40 which would accommodate CNG-powered vehicles from coast-to-coast;
b. To provide a fast-fill source for locally owned/operated CNG vehicles.

Unfortunately, due to State budget challenges in 2001, the grant was not funded as planned.

Last month DAQ staff contacted the City and expressed interest in re-funding the construction of a CNG fueling station.

If City Council wishes to move forward and accept the grant if received, a resolution authorizing the City to accept the grant and entering into an agreement with the N.C. Division of Air Quality, and a budget amendment will be brought before Council.

City staff recommends City Council (1) accept the Mobile Source Emissions Reduction Grant; (2) construct CNG fuel station; (3) fund/develop a Citywide AFV program; (4) maintain partnership(s) for clean air; and (5) research and implement new AFV technology, as available.

I. ORDNANCE NO. 3030 - ORDINANCE DELETING APPENDIX F OF THE CODE OF ORDINANCES AND CHANGING THE METHOD OF DESIGNATING METER ZONES AND THE METHOD OF PARKING IN DOUBLE METER SPACES

Summary: The consideration of an ordinance changing the method of designating meter zones and the method of parking in double meter spaces.

Due to economic expansion and construction in the Central Business District and the ever-changing traffic patterns, there are frequent and continual changes in the layout of parking. Appendix E requires a change by City Council to add meters in these new areas when changes take place. By repealing Appendix E and amending Section 19-162, we will be able to install meters immediately as the traffic engineer designates through expansion, contraction, or alteration, new parking spaces in the Central Business District.

An amendment is also necessary to Section 19-164 regarding the parking at double sided parking meters. As a person parks their vehicle there is no way they can be in compliance with the current ordinance if they park in the forward parking space of a double meter. This amendment will reflect the new meters.

City staff requests City Council approve the ordinance.

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J. RESOLUTION NO. 03-100 - RESOLUTION REAPPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Summary: The term of Gene Bell, as a member (and Chair) of the Civil Service Board, expired on May 21, 2003.

On June 3, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Bell, as a member (and Chair) of the Civil Service Board, to serve an additional two-year term. His term will expire May 21, 2005, or until his successor has been appointed.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSING A PORTION OF AN UNOPENED ALLEY OFF CATAWBA STREET

RESOLUTION NO. 03-101 - RESOLUTION CLOSING A PORTION OF AN UNOPENED ALLEY OFF CATAWBA STREET

Due to a conflict of interest by Mayor Worley, Mayor Worley asked Vice-Mayor Bellamy to preside over the meeting during this item.

Councilwoman Jones moved to excuse Mayor Worley from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Peterson and carried unanimously.

Vice-Mayor Bellamy opened the public hearing at 5:21 p.m.

Public Works Director Mark Combs said that this is the consideration of a resolution to close a portion of an unopened alley off Catawba Street. This public hearing was advertised on May 16, May 23, May 30 and June 6, 2003.

According to N. C. Gen. Stat. sec. 160-299, a City has the authority to permanently close a street or alley without regard to whether it has actually been opened.

To proceed with this process the adjoining property owners have requested to close a portion of the alley off Catawba Street.

Currently there is a structure that exists in the middle of the alley. The request is being made in an effort to correct this situation and get the structure onto private property.

Public Works Department staff has determined that the portion of the alley off Catawba Street running north to south between PIN Nos. 9649-09-05-4276 and 9649-09-05-3233. The portion for which closure is requested extends from Catawba Street to the rear of the lots stated above. Lots bordering the portion of the unopened alley are PIN Nos. 9649-09-05-4276 and 9649-09-05-3233.

City staff recommends that City Council adopt the resolution to close a portion of an unopened alley off Catawba Street.

Mr. Gerald Green spoke in support of closing this portion of an unopened alley off Catawba Street.

Vice-Mayor Bellamy closed the public hearing at 5:25 p.m.

Vice-Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 03-101. This motion was seconded by Councilman Ellis and carried unanimously.

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Vice-Mayor Bellamy relinquished the gavel back over to the Mayor to preside.

B. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR HIGHWATER CLAYS INC.

RESOLUTION NO. 03-102 - RESOLUTION OFFERING HIGHWATER CLAYS INC. AN ECONOMIC DEVELOPMENT INCENTIVE GRANT AND AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT

Mayor Worley opened the public hearing at 5:26 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution to consider offering an economic development incentive grant to Highwater Clays, Inc. This public hearing was advertised on May 30 and June 6, 2003.

Highwater Clays, Inc. is a nationally recognized provider of clays, equipment, and services used to make pottery. The Asheville-based firm employs 27 people. The business is growing and the company is proposing an expansion of its operations in the River District. The owners have requested consideration for an incentive grant under the City of Asheville Economic Development policy. The company is proposing new, taxable, capital investment of $725,000 for additional production equipment and facility improvements and the creation of 5 new jobs. The City of Asheville is considering offering Highwater Clays, Inc., a grant totaling $7,500.

City staff recommends Council approve the resolution authorizing an economic development incentive grant to Highwater Clays, Inc.

Upon inquiry of Mr. Fred English, City Manager Westbrook explained the City's economic development incentive policy.

Councilman Dunn spoke ins support of awarding this incentive grant. He felt this was a good way to foster small businesses.

Mayor Worley closed the public hearing at 5:31 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-102. This motion was seconded by Councilwoman Jones and carried unanimously.

Vice-Mayor Bellamy thanked Highwater Clays for their investment in the West End/Clingman Avenue area.

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C. PUBLIC HEARING TO CONSIDER AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE STANDARD MINIMUM LOT SIZES IN ALL RESIDENTIAL DISTRICTS AND TO CLARIFY LOT WIDTH REQUIREMENTS FOR CUL-DE-SAC DEVELOPMENT AND FOR FLAG LOTS

ORDINANCE NO. 3031 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR MORE STANDARD MINIMUM LOT SIZES IN ALL RESIDENTIAL DISTRICTS AND TO CLARIFY LOT WIDTH REQUIREMENTS FOR CUL-DE-SAC DEVELOPMENT AND FOR FLAG LOTS

Mayor Worley opened the public hearing at 5: 34 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for more standard minimum lot sizes in all residential zoning districts and to clarify lot width requirements for cul-de-sac development and for flag lots. This public hearing was advertised on May 30 and June 6, 2003.

This code amendment provides for more standard minimum lot sizes in all residential zoning districts and clarifies lot width requirements for cul-de-sac development and for flag lots. This amendment was requested by the City-County Housing Task Force and is summarized below.

Minimum Lot Size

Zone	Current	Proposed
RS-2	21,780	20,000
RS-4	10,890	10,000
RS-8	5,445	5,000
RM-6	7,260	7,000
RM-8	5,445	5,000
RM-16	5,445 or 2,722.5/unit	5,000 for multifamily* 2,500 for single family attached (townhomes) 3,500 for single family detached

Lot Widths for Cul-de-Sac Developments

New Language: Lots on a cul-de-sac shall be a minimum of 25 feet wide at the right-of-way line and 75% of minimum at the front setback line and shall average the minimum lot width over the entirety of the lot

Flag Lots

Added Language (incorporates an interpretation):

- No more than one lot in a subdivision of less than 8 units shall be a flag lot
- No more than 2 lots or 10% of the total lots, whichever is greater, shall be flag lots in subdivisions of 8 or more lots

Also included are two "housekeeping" amendments. First, the reference to residential lots having public street access has been corrected to allow for private streets built to public street standards as another option. Second, a correction to an incorrect reference is made.

* Since the adoption of the Urban Residential District, staff reconsidered the multi-family minimum lot size for the RM-16 district. We recommended a 10,000 square foot minimum to the Planning and Zoning Commission, but are now suggesting a 5,000 square foot minimum lot size to accommodate smaller-scale multifamily development; this would be slightly smaller than the current provision of 5,445 square feet.

On May 7, 2003, the Planning & Zoning Commission recommended approval of the proposed code amendment by a vote of 7-0. City staff recommends approval of the proposed code amendment as well, with the change in the RM-16 multifamily lot area to 5,000 square feet.

Ms. Janet Moore, Chairman of the Asheville-Buncombe Housing Task Force, spoke in support of this code amendment.

Mayor Worley closed the public hearing at 5:37 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3031. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE APPROVAL AUTHORITY AND PROCESS FOR MODIFICATIONS OF THE SUBDIVISION REGULATIONS

ORDINANCE NO. 3032 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY TO ASHEVILLE TO REVISE THE APPROVAL AUTHORITY AND PROCESS FOR MODIFICATIONS TO THE SUBDIVISION REGULATIONS

Mayor Worley opened the public hearing at 5:39 p.m.

Urban Planner II Carter Pettibone said that this is the consideration of an amendment to the Unified Development Ordinance to change the approval authority for subdivision modification requests. This public hearing was advertised on May 30 and June 6, 2003.

Currently, both the Technical Review Committee (TRC) and Planning and Zoning Commission review requests for modifications to the subdivision ordinance prior to review and approval by the City Council. The typical timeframe for review and approval of these requests is about 2 months. These are technical modifications that address such issues as lots that don't front on a public right-of-way and similar matters.

This ordinance amendment will help streamline the review process for subdivision modifications by allowing their review and approval by the Technical Review Committee. All applicable city departments would still review these requests as part of the TRC review process. The ordinance amendment would also provide for a more equitable treatment of subdivision issues since the TRC is the review and approval authority for major subdivisions.

The review process would be reduced from 2 months to about 14 days. Staff believes this ordinance amendment provides a more streamlined and equitable alternative for subdivision modifications.

At its May 7, 2003, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed ordinance amendment. The Planning and Development staff also recommends approval of the amendment.

Mr. Pettibone explained two additional "housekeeping" amendments to Section 7-3-1 (a) (5) and Section 7-3-5 (a) (3) which text amendments were adopted in 2000.

Upon inquiry of Councilman Mumpower, Mr. Pettibone explained that the appeals of the TRC go to the Planning & Zoning Commission.

When Councilman Mumpower asked about outside groups reviewing this amendment, Planning & Development Director Scott Shuford said that the Council of Independent Business Owners were satisfied with the amendment.

Mayor Worley closed the public hearing at 5:46 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3032, with the two additional amendments to Section 7-3-1 (a) (5) and Section 7-3-5 (a) (3). This motion was seconded by Councilwoman Jones and carried unanimously.

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E. PUBLIC HEARING ON THE FISCAL YEAR 2003-04 ANNUAL OPERATING BUDGET

Mayor Worley opened the public hearing at 5:47 p.m.

Budget Director Ben Durant said that the City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal 2003/2004 Annual Operating Budget was presented to City Council on May 12, 2003, and another worksession was held on June 4, 2003. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 30 and June 6, 2003. Adoption of the Budget Ordinance is scheduled for June 24, 2003, at the City Council meeting.

The Fiscal Year 2003/2004 Annual Operating Budget is balanced with an Ad Valorem Tax rate of $0.53 per $100 assessed value.

A copy of the Budget is available for public inspection in the City Clerk's Office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which cannot be changed once adopted.

City staff requests City Council conduct the public hearing on the City of Asheville Fiscal Year 2003/2004 Annual Operating Budget and include public input in consideration on the budget.

Mr. Glenn Holbert, Secretary-Treasurer of the Asheville Firefighters Association, addressed the issue of equity as it relates to the monies the City contributes toward retirement benefits for its employees. Even though this inequity has existed for more than 20 years, he would only address the past 18 months of meetings and discussions the Firefighters Association has had with Council. In January of 2002 a meeting was requested with the City Manager to discuss this issue. The Association also conducted fact-based meetings with all members of City Council. During those meetings, the most prevailing concern of the present Council was "why now when the Governor is withholding substantial reimbursements from local governments and we will be lucky to survive the cuts that will be necessary." The firefighters softened their approach and continued with their education process. Their initial proposal contained five specific ways to begin to address the inequities. They also included in their proposal a pay enhancement which they placed on the back burner. During the Fiscal Year 2002-03 budget worksession, they appealed to Council to begin the process to determine the cost of a separation allowance. They felt this enhancement had the most promise. It addressed their needs and would, given a better financial climate, not place an unrealistic burden on the City's budget in any one given year. This is where the distrust of the firefighters and Council began. In June of 2002, Council promised that an actuarial study would be conducted prior to the budget deliberations for Fiscal Year 2003-04. That actuarial study would allow all parties to put to rest the debate relative to the cost of this allowance. To date no actuarial has been conducted and the cost of this proposal has yet to be determined. On February 21, 2003, the Fire Department conducted a staff planning session and during that session Assistant City Manager Jeff Richardson gave a report on the annual City Council retreat. He outlined the Council's priority list and we were pleased to see that the retirement benefit had made the top five. This was when they saw Council's attempt to narrow the discussion perimeters. Social security was Council's focus and all other options were fading. During the meetings in May of 2003, the firefighters reiterated their reluctance to embrace social security as the first and/or step in solving this issue. The $540,000 that will be needed to fund social security at today's salaries seemed the most unrealistic part of this equation. That amount will only increase over time. Secondly, social security does not benefit all firefighters equally. The windfall elimination provisions will penalize firefighters up to 60% of their benefits if they have not been in the social security system for 20 years. Finally, there is no actuarial for the separation allowance costs and we feel those figures would make this issue a no-brainer. It is fiscally irresponsible on the part of this Council not to consider both options and weigh the potential cost and benefits. The funds must be available to administer either program and in your budget worksession, the cost-cutting that would probably have to take place to fund social security would place jobs or the merit-based plan in jeopardy and we will not be the fall guys for that kind of approach. The firefighters have approached this issue in good faith. The City pays 18.32% of salary for benefits for police officers, 16.45% for benefits for all other employees and 10.3% for firefighters. This has been occurring since 1980. What this Council does will send a very strong message to the firefighters that protect the citizens of Asheville. Do their sacrifices count for something other than a pat on the back? Words will no longer suffice. Action is the only thing that will send a clear message. We will not be the scapegoat for tough decisions.

Ms. Paula Robbins, member of the Greenway Commission and Secretary of the Asheville Parks and Greenways Foundation, spoke about the dedicated and talented staff of the Parks and

Recreation Department. Their accomplishments have been rewarded by their professional peers with this year's award as the best Parks and Recreation Department in the Country for this size city. In addition to all of their past accomplishments, there are many exciting projects in the planning stages and nearing completion, e.g., Asheville Film Festival, Azalea Road Park, Richmond Hill Park and the Reed Creek Greenway. All have been collaborative projects with many other organizations so that funding has come primarily from sources other than taxpayer money. The citizens of Asheville need and want the services brought to them by the Asheville Parks and Recreation Department. She urged Council to maintain financial support for this department.

Mr. Fred English wondered if money could be used from Homeland Security to pay Police Department salaries. He spoke in support of the police officers and firefighters.

Detective Rondell Lance, President of the Fraternal Order of Police in Asheville, has seen Council struggle in the past with difficult decisions and how they strive to do what is right. He has seen Council listen and weigh each issue carefully. There are two issues he would like to address. One is the Advanced Certificate Program. As a law enforcement officer, we receive certifications in many different fields, such as radar, breathalyzer, etc. The highest certification that a law enforcement officer can receive is the Advanced Certificate issued by the State of North Carolina Criminal Education and Justice Standard Commission. This program awards officers for their time and service, as well as their education and training. He has been a police officer for 15 years and it has taken him 10 years to achieve his Advanced Certificate. You can be an officer for 20 years and not achieve the Advanced Certificate. It is something that an officer has to strive for and work to achieve. This program can be the difference between an officer deciding to go to Charlotte or the Highway Patrol or Winston-Salem to work because of higher wages. This would also be an incentive for the new officers to work toward and a benefit for those considering employment with the City. He encouraged Council to implement the program to reward the officers for the time, education and training. The second issue is the merit pay. Last year the City Manager sent an email to all employees and said that due to the financial difficulties with the state budget and lack of reimbursements, the City would not be able to give its employees a merit raise as it had in the past. After talking with his organization, they decided it was a legitimate reason for not receiving a merit pay. Being the professional and dedicated public servants that we are, we bit the bullet and did not complain. It was difficult, but we believed that once the City was able, they would once again implement the merit program. We waited in anticipation for the new budget. Also last year, there was an increase in our health insurance so employees were faced with no merit raise and less take-home pay. Last year was a difficult year for City employees. Now this new budget. He attended the first worksession and observed the City Manager and Budget Director present Council with a balanced budget that included the reinstatement of merit pay for employees, as well as the Advanced Certificate Program for law enforcement officers. We were pleased. Then we heard some of Council had a problem with employees receiving their merit raise and some had a problem with the Advanced Certificate Program. Then we were again faced with the possibility of no raise for the second year in a row. What was worse was that we knew that the money was there to implement the programs. He heard a Council member state "when I worked I did not get a merit raise" and as soon as he heard this, he hoped that Council member was just thinking out loud because such a statement has no bearing on raises for City employees. To say he didn't get a raise when he worked so no one else should get one seems selfish and not a reason to deny dedicated employees their merit pay. He also heard a Council member make the statement "that many businesses in our area are not getting raises this year." This is probably true, but there are many businesses in our area that are getting raises this year. And probably one of those reasons for not receiving a raise is the economy, but another one could be poor management. To use this as an excuse to not give the City employees raises has no value and is not a valid reason. To say everyone in our area is not getting a raise, so he employees of Asheville should not get one is ridiculous and based on that theory, we would never get a raise. Council should reinstate the

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merit raise and Advanced Certificate Program for the following three reasons: (1) Council is investing in the economy of the City. We as City employees eat in the City, buy gas in the City, bring our families to the City, we support charities in the City, and we buy clothes and shop in the City. (2) The money is there. We know from the worksession that the money is there for the programs and for Council to look into the faces of City employees and their families and say "we are not giving you these programs" is a discredit to the employees, to their families, and to the citizens of Asheville. (3) The employees deserve these programs. The City of Asheville is second to none. Our employees receive awards continually on federal, county and state levels. The employees of Asheville are some of the best in the state. The service that they provide on a daily basis is to be commended. The City triples in population daily by people coming from McDowell, Henderson, Haywood, Madison, Polk and all surrounding counties to enjoy what Asheville has to offer. The City is growing because of the efforts of the employees of this City. It's a great City and it's made so by it's employees. Council members come and go and many of you here to today may, in five years, will not be sitting up there on Council. But we employees will still be here, working days, working nights, working in the snow and rain, sleet, during Bele Chere, during Christmas parades and all the other activities the City provides. To have Council tell us that we do not deserve a raise – we can give you one, but we aren't – hurts the City, the employees, citizens and tourism of this City. He encouraged Council to implement these programs. He begged Council to invest in the employees and watch the employees make the City better than it is. Watch us maintain a place that people from all over the country can come and enjoy all that the City has to offer. All we ask is for Council to give the employees what they deserve and earn as dedicated professional employees of this great City.

Mr. James Grant, member of the Recreation Board and commissioner of the National Parks and Recreation Association, challenged Council to keep our parks and recreation alive. We are a health care provider to the residents of Asheville. He explained how inactivity and poor nutrition have a disastrous impact on the health of North Carolinians. As a National Gold Medal Winner for Recreation and Park Management, Asheville provides services to all persons in our region. He explained the Pool Pal Program. All recreation centers help to prevent crime and the fear of crime in our neighborhoods.

Mr. Jim Drummond, Commissioner for the Asheville Youth Sports Program, explained how the Parks and Recreation Department has an economic impact, a wellness impact and an education impact on our citizens.

Ms. Ann Babcock, member of the Recreation Board, explained how parks, recreation programs and greenways define the quality of life in a community.

Mr. Dennis Justice, Fletcher resident, was concerned over the Civic Center. He explained how it is hard to recruit teams and events there due to the condition of the Civic Center. He believed the City should take the auditorium and performing arts center out of the equation and hire an engineer to tell the City what will extend the life of the arena by 20 years or more.

Mr. Mike Lanning, representing the Police Benevolent Association, spoke in support of the Advanced Certificate Program as an incentive to keep trained officers, as well as an inducement to hire new officers.

Mayor Worley closed the public hearing at 6:21 p.m.

After a short discussion, it was the consensus of City Council to begin their June 17, 2003, worksession at 2:00 p.m. in the First Floor Conference Room to discuss the budget prior to their regular worksession items.

It was also the consensus of City Council to postpone the update on the Minimum Housing Code from their June 17 worksession until July 15, 2003, since some key voices will not be available on June 17. City Manager Westbrook noted that City staff is ready to present their recommendations.

Mayor Worley announced that on June 24, 2003, City Council will consider adoption of the Fiscal Year 2003-04 Annual Operating Budget.

At 6:30 p.m., Mayor Worley announced a short break.

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 03-103 - RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE 2004 ANNEXATION AREAS TO REFLECT REVISED PERIMETER AND CONTIGUITY FOR THE ANNEXATION AREAS

Urban Planner II Carter Pettibone said that this is the consideration of a resolution amending the Annexation Services Plan for the 2004 Annexation Areas to reflect revised perimeter and contiguity calculations for the five annexation areas.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan, as long as the requirements for providing service to the annexation areas continue to be met.

At the public hearing on May 27, 2003, City staff recommended that the perimeter and contiguity calculations for the annexation areas be revised to reflect more detailed metes and bounds descriptions for the annexation areas. These revised metes and bounds descriptions were developed after the adoption of the Resolutions of Intent and the Annexation Services Plan and reflect more detailed and thorough descriptions of the areas. The proposed amendment to the Services Plan results from these revised boundary descriptions. The effects of this change are that it causes the contiguity of the Deaverview Road Area to be increased significantly and the contiguity of the other areas to be revised slightly, but does not cause any of the areas to qualify under any additional tests.

This technical amendment allows us to incorporate improved information for these calculations into the Services Plan. It also does not increase the size of areas under consideration or add any additional property to the annexation areas. There are no changes to proposed services, costs, or revenues associated with this amendment.

As long as the Annexation Services Plan does not show the annexation areas as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to revise perimeter and contiguity calculations for the five annexation areas.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 03-103. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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B. ORDINANCE NO. 3033 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE DEAVERVIEW ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 10, 2003.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Deaverview Road area.

On March 25, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Deaverview Road area, Crowell Road area, Smoky Park Highway area, Sand Hill Road area, and Hendersonville Road area. The Annexation Services Plan for all of these areas was approved on April 8, 2003, and the Plan was amended on June 10, 2003. A public information meeting was held on May 15, 2003. Public hearings on each of annexations were held by City Council on June 10, 2003. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Staff recommends adoption of annexation ordinance for the Deaverview Road area, with an effective date of June 30, 2004.

Upon inquiry of Councilman Mumpower, Mr. Pettibone reminded Council what was located on this site.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Peterson moved for the adoption of Ordinance No. 3033. This motion was seconded by Councilwoman Jones.

Councilman Dunn said that it's not because it's politically good to vote against an unpopular theme but rather his negative vote stems from a much bigger issue. Council ran for their City to be a better place. After one year or more, he sees little headway on big issues that affect the City revenues. He has seen a lot on Unified Development Ordinance amendments, proclamations and rezoning issues, but there are much bigger issues that we need to start taking care of if we are going to continue annexing. He doesn't think we are making enough of a strong voice. The room tax. The room tax in Asheville is 4 cents. This Council should go on record, in my opinion, of supporting a 7-cent room tax to go directly to Asheville to support infrastructure, police, and parks and recreation. That's $2-3 Million we would have in our coffers if we would go on record as supporting this. He knows our legislators are the only ones who can do this. They have been voting for room tax increases all over this state continuously as seen by their records, but they will not do it in their own back yard. This is an abomination. The Republicans and Democrats in Raleigh need to hear from this Council. It's time for us to get that room tax to use for these various projects. This is something we need to do. He felt we need to stop wasting money on two school systems. Our citizens are paying 20-cents to supplemental school tax. We are duplicating services and he has the records to prove it. Although we are making headway, he didn't see that we need an administrative top hierarchy to continue using tax dollars on. Part of that supplemental school tax could be used as a tax break to our citizens. He's talked to teachers and they don't really care if the administration is one way or the other, as long as they get their

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supplements and as long as they have autonomy for the Asheville High School and the other parts of the Asheville School System. That is a significant tax break for some of our citizens. If we were diligent in placing real pressure on our state representatives we could be receiving room tax revenue paid by tourists for roads, streets and the Civic Center. The Mayor will say that we have done that and we have asked them for a menu. That's fine, but it has taken years for that to really happen. It's time for voters in our City to decide if they are going to keep voting for our state legislators when they continue to not support this City. It takes infrastructure money for the hotels and it's time to hit that issue. That is one of the things we need to do. Why pick on schools? It's a political hot potato, but in reality we could save the taxpayers even more dollars. The Blue Ridge Parkway costs our City $10,000 or more a month to haul dirt across the County into Fairview. We are being held hostage by the Blue Ridge Parkway that is costing our taxpayers big dollars. We ought to be incensed about that. We should not allow that to continue. We need to merge some of these City and County government issues. We have done a wonderful job with the 911 and the Joint Planning Agency. By just annexing these areas, we are trying to gain a tax base without the trouble of getting involved politically with the ones he just mentioned. By annexing businesses, like Day International, we are working against the large companies that employ people. When you look at the population of Asheville, which is roughly 70,000 people, it's the same as it was 60 years ago. Annexation is not being the catalyst to keep our density and our population here in Asheville. Look at history, it's failing. What are we offering the people we annex? He personally doesn't think we're offering them a great deal. Some say that the folks should pay taxes to the City because they benefit from being in the City. He would argue that and say he thinks some of the people living in our City are not getting the fair shake they deserve either. He lives in Wilshire Park and it's been in the City 50 years and still no sidewalks there. We talk about 1,700 miles of water lines and only a handful is going to be repaired. Three hundred and fifty miles of streets - $1.2 Million, and we're still 35 years behind. Some of you will argue that we have no control over these issues. He would argue that what Council says and what we do means a lot. We need to become more vocal and push this agenda. Nothing like pressure – that's when things happen. When he leaves this Council after four years of service he wants to make Asheville a better place. But the status quo has got to stop. We have got to take a stand on the room tax and other things to help us pay our bills. They say that by attacking the room tax, we are killing the goose that lays the golden egg. He would say that every goose needs a nest and the nest is Asheville. We need to be giving this some more service besides a little behind the back nudging. He would encourage Council, if we keep annexing, to get vocal about these issues. He would support annexation if he thought we were doing everything we could do to bring more revenue.

Councilman Mumpower said that focusing specifically on annexation, he doesn't like it, he finds it unpleasant and personally it's a distasteful activity, but it's fairness issue. If people live in the immediate proximity of the City or do business in the immediate proximity of the City, then they should share in the cost of running the City. A lot of people that live near the City benefit from the City and a lot of the people that do business near the City benefit from being around all these people. Distasteful as it may be, if we're going to be fair to the people who pay for this City then he thinks that we have to ask some of those people to step up and do their fair share.

The motion made by Councilman Peterson and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Dunn voting "no.

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C. ORDINANCE NO. 3034 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE CROWELL ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 10, 2003.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Crowell Road area.

On March 25, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Deaverview Road area, Crowell Road area, Smoky Park Highway area, Sand Hill Road area, and Hendersonville Road area. The Annexation Services Plan for all of these areas was approved on April 8, 2003, and the Plan was amended on June 10, 2003. A public information meeting was held on May 15, 2003. Public hearings on each of annexations were held by City Council on June 10, 2003. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Staff recommends adoption of annexation ordinance for the Crowell Road area, with an effective date of June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Upon inquiry of Councilman Mumpower, Mr. Pettibone said that property tax for the motel would be approximately $11,336 and the property tax for the Smoky Mountain Auto Service would be approximately $1,283. Fire Chief Greg Grayson also responded that the property owner for the Auto Service said that his insurance company had told him that he would have approximately $300 in savings in insurance premiums and he will also experience a 7.5 cents per $100 value in fire tax savings (approximately $200).

Councilman Ellis said that there are several other motels in that immediate vicinity and not annexing this one puts the other motels at a disadvantage.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Peterson moved for the adoption of Ordinance No. 3034. This motion was seconded by Councilman Ellis.

Councilwoman Jones felt that the non-residential use test, when utilizing small parcels, isn't really strong and she would therefore vote against this annexation.

The motion made by Councilman Peterson and seconded by Councilman Ellis carried on a 5-2 vote, with Councilwoman Jones and Councilman Dunn voting "no."

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D. ORDINANCE NO. 3035 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SMOKY PARK HIGHWAY AREA

Mayor Worley said that the public hearing on this matter was held on June 10, 2003.

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Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Smoky Park Highway area.

On March 25, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Deaverview Road area, Crowell Road area, Smoky Park Highway area, Sand Hill Road area, and Hendersonville Road area. The Annexation Services Plan for all of these areas was approved on April 8, 2003, and the Plan was amended on June 10, 2003. A public information meeting was held on May 15, 2003. Public hearings on each of annexations were held by City Council on June 10, 2003. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Staff recommends adoption of annexation ordinance for the Smoky Park Highway area, with an effective date of June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Upon inquiry of Vice-Mayor Bellamy, Assistant City Manager Jeff Richardson explained the resolution of the property owner's concern regarding the tax issue of the property.

Mr. Mike Fryar, property owner, explained how the building and property were improperly assessed by Buncombe County.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford explained that there is potential for further development in this area and every time we annex property, we improve the future contiguity for the new property to come into the City.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

After discussion, Councilman Mumpower moved for the adoption of Ordinance No. 3035. This motion was seconded by Vice-Mayor Bellamy.

Councilman Ellis felt that we should wait to annex this property until the land around it develops further. Planning & Development Director Scott Shuford said that this is really the dead-end of where the City limits line can go absent the development on the old BASF property.

Councilwoman Jones felt that the non-residential use test, when utilizing small parcels, isn't really strong and she would therefore vote against this annexation.

Upon inquiry of Mayor Worley, Fire Chief Greg Grayson explained how the area would be served for fire protection.

Councilman Ellis decided to vote in favor of this annexation and hoped that in the future the value of the property will be increased considerably though this annexation.

The motion made by Councilman Mumpower and seconded by Vice-Mayor Bellamy carried on a 5-2 vote, with Councilwoman Jones and Councilman Dunn voting "no."

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E. ORDINANCE NO. 3036 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SAND HILL ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 10, 2003.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Sand Hill Road area.

On March 25, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Deaverview Road area, Crowell Road area, Smoky Park Highway area, Sand Hill Road area, and Hendersonville Road area. The Annexation Services Plan for all of these areas was approved on April 8, 2003, and the Plan was amended on June 10, 2003. A public information meeting was held on May 15, 2003. Public hearings on each of annexations were held by City Council on June 10, 2003. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Staff recommends adoption of annexation ordinance for the Sand Hill Road area, with an effective date of June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3036. This motion was seconded by Councilman Peterson and carried on a 6-1 vote, with Councilman Dunn voting "no."

ORDINANCE BOOK NO. 20 – PAGE 360

F. ORDINANCE NO. 3037 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HENDERSONVILLE ROAD AREA

Mayor Worley said that the public hearing on this matter was held on June 10, 2003.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Hendersonville Road area.

On March 25, City Council adopted Resolutions of Intent beginning the annexation process for the following five areas: Deaverview Road area, Crowell Road area, Smoky Park Highway area, Sand Hill Road area, and Hendersonville Road area. The Annexation Services Plan for all of these areas was approved on April 8, 2003, and the Plan was amended on June 10, 2003. A public information meeting was held on May 15, 2003. Public hearings on each of annexations were held by City Council on June 10, 2003. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description and a map are attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Staff recommends adoption of annexation ordinance for the Hendersonville Road area, with an effective date of June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

When Councilman Mumpower asked if the City has contacted Day International, Mr. Pettibone said that he had and they expressed concern over rising taxes.

Councilman Mumpower expressed concern that this is a less than ideal time to annex the export business of Day International and risk the loss of jobs. He explained how industrial jobs are at a high risk and how we should try to hold onto them. He asked if Council would be willing to consider deleting the Day International property from this annexation.

Councilman Peterson appreciated the concern about Day International, but noted that they will not have to be paying Skyland Volunteer Fire Department taxes and they might have other savings. If we looked at every major employer in Asheville and said we want to protect those jobs by not charging them property taxes, then all the residents would have to pay 20-40% more for the services. That's not fair. If they are looking to expand, they would have the advantage of applying for the City's economic development incentive grant and get a property tax rebate for a number of years. Cities that are growing have done well economically and there has been job growth and rising incomes. The more people that are brought into the system, the less that everyone else has to pay. If we say we don't want to burden this one, and we don't want to burden that one, what we end up doing is shifting that burden to everyone else. Our job is to look at the bigger picture. If Day International had some particular concern and they wanted some economic rebate, we have a lot of programs to try to encourage jobs to stay here and to bring jobs to the City so we can address that on that front.

Councilman Dunn said that Asheville is becoming the most expensive City in the state to live and we are going to have to find other sources of revenue.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3037. This motion was seconded by Councilman Peterson and carried on a 5-2 vote, with Councilman Dunn and Councilman Mumpower voting "no."

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Mr. Shuford showed a chart explaining that the trend around our state is urban growth through annexation.

City Manager Westbrook explained how not growing in population affects other monies the City receives.

V. NEW BUSINESS:

A. RESOLUTION NO. 03-104 - RESOLUTION INITIATING THE CANDIDATE INFORMATION SESSION

City Manager Jim Westbrook said that several months ago City Council asked the City Manager to develop a program of information for members of the public who run for City Council. The feeling was that in the past, if there had been general information sessions about City government and specific programs, misinformation would have been less likely to develop during the election process. In preparing the proposed agenda, all City departments were consulted, as well as the City Attorney, the City Clerk and the Institute of Government.

As you know, City staff could literally take hours going into detail on various programs that would be of interest. However, the City Manager felt it most important to allow potential candidates to ask questions so they could decide what is important. In talking with staff at the Institute of Government about this particular initiative, they indicated that they were changing their program for new council members to include processes for working as a group, the need for personal time commitment, and taking a long-term view of both issues and relationships, among other things. Therefore, that is included in the agenda, too.

The City Manager would ask that Mayor Worley or a similar elected official act as the leader of the meeting, setting up the ground rules, as well as keeping time and moderating as necessary. After a brief welcome and introduction, the City Manager would present some information concerning the City's relationship to the state, as well as the council-manager form of government. He would be followed by the City Attorney who would present information on state law, local law, conflicts of interest, Open Meetings law, etc. The Finance Director and the Budget Director would follow with brief explanations of the budget and financial condition. This general information would be followed by a question and answer session with all candidates, moderated by Mayor Worley.

The last session would be led by a former Mayor and Council Members. The purpose is to follow up on the Institute of Government's suggestion about the need to hear and discuss the democratic process, personal commitments, working as a group, the need for public trust, etc. This would allow persons who are running for Council to hear from a previous Mayor and Council Members who are no longer in elected office their views on these important facets of being an elected Council Member.

The purpose of this report is to explain the program and asks Council's approval to move forward with it.

The City Manager recommends that City Council approve the resolution authorizing the Candidate Information Session.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-104. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 435

VI. OTHER BUSINESS:

Award

Mayor Worley proudly announced that Asheville has received City Livability Award for Cities under 100,000 for the Grove Arcade Project from the U.S. Conference of Mayors.

Claims

The following claims were received by the City of Asheville during the period of May 16-22, 2003: John W. Williams (Streets), Delicia Deen (Civic Center) and Kenneth D. Roberts II (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Alan Ditmore spoke about his concern with the growth of density limits and the affect of cost of living.

Mr. Fred English commented about the pushcart provisions of the ordinance and the City's application of those provisions.

Mr. David Lynch, representing Asheville Justice Watch, spoke about the Police Chief's alleged violation of the City's Police Department's Policy No. 1231 (media relations), Procedure 2 (e) with regard to the incident involving Councilman Brian Peterson. A breach of such policy would put an internal review officer in the uncomfortable position of investigating his own chief. Since the Chief has the sole responsibility for issuing findings of fact in such an investigation, he would be charged with determining his own guilt or innocence. We feel that the citizens and leaders of Asheville need to find a way to ensure that our Police Department's professional body is kept as separate as possible from actual or apparent political influence. We submit that this breach of policy illustrates that an independent oversight board is an appropriate and necessary step to provide the safeguards that our community needs and deserves. City Attorney Oast said that he doesn't have any first-hand knowledge, but it is his understanding that the information was already being circulated at the time the Police Chief made a visit to the Citizen-Times.

Mr. Peter Dawes, from the Mountain Guardian, explained an unsatisfactory incident where he asked for information concerning the Councilman Peterson incident from the City Attorney's Office.

Mr. Michael Morgan felt it was wrong of Council to censure Councilman Peterson since he has not been tried in a court of law.

Mr. Dennis Justice, Fletcher resident, felt that Council should close the door on bringing hockey in the Civic Center until the facility is addressed. He passed out additional information concerning the Civic Center and it's budget.

Mr. Mike Fryar supported the City tearing down the Civic Center and building it somewhere else since there is no parking in the downtown area.

Mr. Walter Plaue expressed his appreciation of Council's support of the Memorial Day celebration at the City-County Plaza. He hoped it would become an annual event.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:43 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 17, 2003 - 2:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Worley announced that the Update on the Minimum Housing Code would be delayed until the Tuesday, July 15, 2003, worksession.

BUDGET WORKSESSION

City Council discussed the 2003-04 Annual Operating Budget.

At 4:10 p.m., Mayor Worley announced a short recess.

CONSENT AGENDA:

Community Meeting on July 29, 2003, in South Asheville

Public Hearing Set for July 8, 2003, for Phenix Research's Economic Development Incentive Grant

Summary: The consideration of a resolution setting a public hearing on July 8, 2003, for an economic development incentive grant to Phenix Research Products, a company relocating to Asheville from California.

Phenix Research Products, formerly of Hayward, California, is relocating to Asheville. The company is setting up its corporate headquarters and distribution functions in offices located in the Business Incubator on the Enka campus of AB Tech – a primary factor in their decision to locate here. The firm is a supplier to the biotech and university market offering a range of equipment and instrumentation. The firm intends to employ approximately 45 people over the next two years.

The Asheville location was selected after consideration of other competitive locations. As part of the recruitment process, the City of Asheville made a tentative commitment to support the project with an incentive grant in the amount of $20,000, which is part of a total local incentive package of $50,000 made in partnership with Buncombe County, AdvantageWest, and the Asheville Chamber of Commerce.

Before the tentative commitment by the City can be officially granted, a public hearing is required.

Staff recommends Council approve the resolution setting a public hearing on July 8, 2003, for an economic development incentive grant to Phenix Research Products.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

2003 SAUMUR INTERNATIONAL CONGRESS

Ms. Barbara Hodgson, Saumur Committee Chair, said that Asheville's Sister City Saumur, France, is hosting the first International Congress October 4-8, 2003 and has invited Asheville and their twin cities in Europe to participate. She outlined the purpose of the Conference and the planned activities.

Mr. Carroll Hughes, President of Asheville Sister Cities, recommended the City and the Chamber of Commerce assist them in developing a display for the Saumur exhibit. They felt it was an opportunity to further develop the information in existence with Asheville Sister Cities being responsible for transporting, setting up and maintaining the display in the future.

Mr. Ken Richards, North Carolina Coordinator for Sister Cities International, and Mr. Daniel Robert, member of the Asheville Sister Cities, urged Council to attend the Conference in Saumur, France, and thanked City Council for their support.

NEIGHBORHOOD/DEVELOPER MEETINGS

Planning & Development Director Scott Shuford said that based on City Council's considerable interest in improving developer and neighborhood communication early in the development review and approval process, City staff undertook a focus group process to identify issues and potential solutions in enhancing the existing "neighborhood meeting" approach. Three separate focus groups were convened. One group represented developer interests; one group represented neighborhood interests; and the third group consisted of the Planning and Zoning Commission. After each group had met and a list of critical issues was determined, selected members from each group then met together on two occasions to identify areas of agreement and to prepare recommendations for action. An independent facilitator was used to direct meeting discussion and provide minutes.

He reported that the focus group process has resulted in a recommended procedure for improved Neighborhood/Developer Meetings. The procedure includes an incentive for developers to choose the Neighborhood/Developer Meeting process over the standard review process. It includes an opportunity for expanded notification of property owners in the vicinity of the proposed development. Finally, it includes an organized approach for the conduct of Neighborhood/Developer Meetings that should result in the meetings to be conducted in an effective fashion. The goal of this procedure change is an early, friendly, helpful official partnership between the neighbors, developers and the City.

In summary, the proposal would apply to all rezoning, conditional use rezoning, and conditional use permit requests that involve Planning and Zoning Commission review. The proposed procedure offers developers the option of selecting an enhanced Neighborhood/Developer Meeting process in exchange for skipping the Planning and Zoning Commission step in our current requirements. This results in no additional time being taken in the development review process but creates significantly improved communication between developers and neighborhoods. City Council would continue to hold a public hearing and take final action on all development proposals, just as is done under the current requirements. Even when developers opt to follow the existing procedures, staff will continue to recommend developer contact with affected neighborhoods.

This recommendation would not have been possible without the dedication of time, creative ideas, and enthusiasm on the part of a large number of volunteers. I would like to thank the following persons for their assistance in creating this recommendation:

FOCUS GROUP PARTICIPANTS

Neighborhood Participants	Developer Participants	Planning & Zoning Commission
Barber Melton	George Morosani	Billie Bule
Headlee Howard	Tom Gallaher/David Hill	Tom Cathey
Greg Gregory	John Spake	Selina Sullivan
Mike Lewis	Chris Eller	Jan Davis
John Quigley	Harry Weiss	Hedy Fischer
Norma Baynes	Jerry Grant	Nate Cannady
Stephen Hudzik	Ron Butler	Rod Hudgins
	Ron Moser	

* indicates that the participant served on the final joint focus group.

Additionally, Paul Godfrey provided invaluable assistance by serving as the facilitator for these focus group meetings.

The following headings provide a summary of the work of these focus groups, including the clarification of key issues, identification of expected results (i.e., what the process should look like), and the specific meeting procedures themselves. These headings illustrate the organized way the groups conducted their business and the level of detail that went into their discussions.

Clarifying Issues and Interests

The following items were listed as major issues relating to Neighborhood/Developer Meetings:

- Misinformation
- Full plan details made available to all parties early in the process
- Lack of trust
- Early and accurate complete information sharing
- Clearly definition of neighborhood stakeholders
- Marketing of development process – common understanding of issues and procedures
- Lack of an on-going dialogue as the development process continues (even after development approval has been given and construction is underway)
- Neighbors don't understand technical aspects of the development process
- Need for a better Neighborhood/Developer Meeting process – ground rules; expectations; facilitation
- Need for citizens to be better educated about the development process
- Lack of understanding about the big picture – how does the project help the City meet its broader goals?
- Need for staff participation in Neighborhood/Developer Meetings
- No existing way to alert and document all impacted stakeholders
- Lack of willingness to compromise on each "side"

The following were identified as the key interests of the stakeholder groups:

- Neighbor concerns: Safety; property values; traffic; change in neighborhood character

- Developer concerns: Profit; property rights; desire to impact community in a positive way; need for clearly defined neighborhood meeting process that is reasonable in terms of time and money; staff involvement in neighborhood meetings for informational purposes and to indicate that the process is officially "condoned" by the City.
- Staff concerns: Time involved in meetings; need to be perceived as neutral in the process.

Criteria for Guiding Process Decisions

Participants were asked to develop a set of criteria for use in evaluating any potential process ideas. The following criteria were developed:

- The process must have teeth.
- The process should be viewed as legitimate in eyes of all participants.
- The process should not be burdensome on any one party or on all parties.
- The process should clarify upfront what is and what is not negotiable.
- The process should be reasonable in terms of time and costs.

Improved Neighborhood/Developer Meeting Procedures

Participants identified the following procedures for improved Neighborhood/Developer Meetings:

- Developer registers project application a minimum of 45 days before the City Council meeting at which the public hearing is scheduled to occur.
  - Plans are placed on record and made available to the public at a central location (City Planning and Development Department).
  - Plans will provide as much information as available at time of posting.
  - Plans will be made available on City website if possible.
  - Staff contact person is clearly identified.
- Notification procedures:
  - Property owners within 400 feet of the property proposed for development would receive notice of the Neighborhood/Developer Meeting from the City of Asheville. This is a minimum notification area and developers are advised to determine if additional property owners should be notified (e.g., if the project is located on a dead-end road 600 feet long, perhaps it would be good practice for the developer to notify all property owners fronting the road); developers would be responsible for any additional mailing costs associated with a larger notice area.
  - Any affected neighborhood association registered with the City and located within 400 feet of the property proposed for development would also receive notice of the Neighborhood/Developer Meeting. It is expected that the designated person(s) receiving this notice will identify key participants outside the general notice area and arrange for them to attend the Neighborhood/Developer Meeting. However, this should not be construed as an open invitation for all neighborhood association members outside the notice area to attend. The intent is to have representation from affected neighborhood associations while ensuring that most neighborhood participants are from the notice area.
  - Timing: The City shall mail Neighborhood/Developer Meeting notices 45 days before the City Council meeting at which the public hearing is scheduled to occur. The initial Neighborhood/Developer Meeting shall occur no less than 10 days prior to the City Council meeting at which the public hearing is scheduled to occur.

    - The City of Asheville will provide notice of the public hearing to adjacent and nearby property owners as provided for under state law or City Code requirements, whichever is more restrictive.
    - Meeting location: Neutral site of sufficient size for meeting.
- Meeting Facilitation - The meeting must be managed by someone who knows the rules (mediator/facilitator) and is able to effectively run a meeting. The developer will pay for the cost of the mediator/facilitator. City staff will attend the meeting as technical advisor(s) only and will not facilitate the meeting.
- Meeting Ground Rules - The following set of ground rules were adopted to promote effective communication during Neighborhood/Developer Meetings. These ground rules would be reviewed by the meeting facilitator at the outset of each meeting and "enforced" during the meeting by the facilitator.
    - Listen to one another (really listen before responding)
    - Ask for feedback from one another
    - Accept the need for compromise by each of us
    - No stereotyping (let's keep a level of objectivity in our discussions)
    - Be open minded
    - Let's clearly define our statements to insure that all parties clearly understand their meaning
- Conduct of Meeting – Meetings will have a structured agenda to include: Ground rules for the meeting; Areas of allowable discussion clarified; Clarification of any zoning rule(s) that applies to the situation; Plan presentation (including how plan addresses the big picture); Identification of areas of agreement and disagreement; Negotiation of issues of concern; and Identification of next steps, if any.
    - City staff must attend the meeting to provide technical advice and information and to indicate official "condoning" of the process.
    - Meeting is intended to result in a signed document of supported and non-supported issues that will be generated by the facilitator (who will also identify the necessary signees).

He asked for Council direction as to whether staff should prepare the necessary code amendments, information packets, and process changes to implement this new procedure.

Coalition of Asheville Neighborhood Chair Barber Melton explained the process and how it will help in the mistrust in the community.

Councilman Mumpower felt that a trial period might be in our best interest. Mr. Shuford said that he could write into the Code amendment a sunset date.

When Councilman Mumpower said this sounds like a mandatory process for the developer with a voluntary process for the neighborhoods, Mr. Shuford explained that the goal is to encourage better communication and facilitation of the development process between developers and neighborhoods.

At the request of Councilman Mumpower, Mr. Shuford said that he would provide City Council with what he would think their responsibilities would be and possible options in this process. In addition, he would have the focus group review the proposed Code amendment.

There was a brief discussion, initiated by Councilman Peterson, on if this process would affect the protest petition provisions.

Councilman Peterson felt that we need to educate people at these meetings and suggested information regarding protest petitions and the standards City Council must consider when issuing a conditional use permit be included in the information packet.

It was the consensus of Council to direct City staff to prepare the necessary code amendments, information packets, and process changes to implement this new procedure.

BOARDS & COMMISSIONS

Mayor Worley and Vice-Mayor Bellamy each spoke about the tireless efforts for improving air quality that Mr. Arlis Queen, who had to resign from the Regional Air Quality Agency Board due to health reasons, brought to the Board. In addition, City Council instructed the City Clerk to arrange interviews for Mr. Queen's vacancy on the WNC Regional Air Quality Agency Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Peter Crosa, Jerri Goldberg and Lisa Michie to the Civic Center Commission. In addition, City Council asked the City Clerk to arrange interviews for two vacancies on the Commission.

It was the recommendation of the Boards & Commissions Committee, and consensus of City Council, to not reduce the membership of the Civic Center Commission.

It was the consensus of City Council to postpone making appointments to the Economic Development Strategic Plan Implementation Task Force until the Task Force makes its recommendations in July, 2003.

It was the recommendation of the Boards & Commissions Committee, and consensus of City Council, to reduce the membership of the Educational Access Channel Commission from four years to three years.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Marion Mathews, Nat Myers, Tim Amos (City Schools), Alan Hantz (UNC-A) and Shirley McLaughlin (A-B Tech) and to appoint Monty Fuchs (County Schools) to the Educational Access Channel Commission. In addition, it was the consensus of City Council to designate Kent Thompson (UNC-A seat) to serve in the absence of Greg Dillingham (UNC-A seat) until Mr. Dillingham's return from military duty.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Frank Fishburne, Carol Ann Pothier, James Grant and Susan Sparboe to the Recreation Board.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Darryl Hart to the Regional Water Authority of Asheville, Buncombe and Henderson.

It was the recommendation of the Boards & Commissions Committee to not appoint an oversight board regarding animal control services. However, Councilwoman Jones asked that City Council receive an interim report in three months and a full report in six months.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:20 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 24, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Billy Cochran, USMC Ret., led City Council in the pledge of allegiance.

INVOCATION

Mayor Worley gave the invocation.

ADDITION TO THE AGENDA

Vice-Mayor Bellamy asked that a topic regarding the budget be placed at the end of the agenda.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 10, 2003, AND THE WORKSESSION HELD ON JUNE 17, 2003

B. RESOLUTION NO. 03-105 - RESOLUTION AMENDING THE 2003 CITY COUNCIL MEETING SCHEDULE TO INCLUDE A COMMUNITY MEETING ON TUESDAY, JULY 29, 2003, AT 7:00 P.M. AT THE SHILOH COMMUNITY CENTER LOCATED AT 121 SHILOH ROAD, ASHEVILLE, NC

RESOLUTION BOOK NO. 27 – PAGE 436

C. RESOLUTION NO. 03-106 - RESOLUTION SETTING A PUBLIC HEARING ON JULY 8, 2003, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO PHENIX RESEARCH PRODUCTS

Summary: The consideration of a resolution setting a public hearing on July 8, 2003, for an economic development incentive grant to Phenix Research Products, a company relocating to Asheville from California.

Phenix Research Products, formerly of Hayward, California, is relocating to Asheville. The company is setting up its corporate headquarters and distribution functions in offices located in the Business Incubator on the Enka campus of AB Tech – a primary factor in their decision to locate here. The firm is a supplier to the biotech and university market offering a range of equipment and instrumentation. The firm intends to employ approximately 45 people over the next two years.

The Asheville location was selected after consideration of other competitive locations. As part of the recruitment process, the City of Asheville made a tentative commitment to support the project with an incentive grant in the amount of $20,000, which is part of a total local incentive package of $50,000 made in partnership with Buncombe County, AdvantageWest, and the Asheville Chamber of Commerce.

Before the tentative commitment by the City can be officially granted, a public hearing is required.

Staff recommends Council approve the resolution setting a public hearing on July 8, 2003, for an economic development incentive grant to Phenix Research Products.

RESOLUTION BOOK NO. 27 – PAGE 437

D. ORDNANCE NO. 3038 - ORDINANCE REDUCING THE TERMS ON THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The consideration of an ordinance reducing the terms from four years to three years on the Educational Access Channel Commission and appointing members to the Commission.

Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On June 17, 2003, it was the consensus of City Council to reduce the terms on the Educational Access Channel Commission from four years to three years in order to bring them in line with the terms of most other boards. The ordinance contains an amendment to that effect.

Council had previously indicated a desire to reduce the membership of the Commission from 11 to 10, and has not filled a vacancy created by the resignation of one of the at-large members. The ordinance also makes that amendment.

Also, on June 17, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to (1) reappoint Marion Mathews (City appointment), Nat Meyers (City appointment), Tim Amos (representative of City Schools), Alan Hantz (representative of UNC-Asheville) and Shirley McLaughlin (representative of A-B Tech); and (2) appoint Monty Fuchs (representative of County Schools). All terms will be for three years respectively, terms to expire June 1, 2006, or until their successors have been appointed.

In addition, it was the consensus of City Council to designate Kent Thompson (representative of UNC-Asheville) to serve in Greg Dillingham's absence while Mr. Dillingham is on military duty. Mr. Thompson will step aside for Mr. Dillingham upon Mr. Dillingham's return to Asheville.

Staff recommends City Council adopt the ordinance reducing the terms from four years to three years on the Educational Access Channel Commission and to adopt the resolution appointing members.

ORDINANCE BOOK NO. 20 - PAGE 368

E. RESOLUTION NO. 03-107 - RESOLUTION APPOINTING MEMBERS TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

See Consent Agenda Item "D" above.

RESOLUTION BOOK NO. 27 – PAGE 438

F. RESOLUTION NO. 03-108 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

Summary: The consideration of appointing members to the Recreation Board.

The terms of Frank Fishburne, Carol Ann Pothier, James Grant and Susan Sparboe expire on June 30, 2003.

On June 17, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Frank Fishburne, Carol Ann Pothier, James Grant and Susan Sparboe to each serve an additional three year term, terms to expire June 30, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 439

G. RESOLUTION NO. 03-109 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON COUNTIES

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Regional Water Authority of Asheville, Buncombe and Henderson.

J. Lewis Daniels has resigned from the Regional Water Authority, thus leaving an unexpired term until September 30, 2003.

On June 17, 2003, it was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Darryl Hart to the Regional Water Authority to serve a three year term, term to begin immediately and expire on September 30, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 440

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 165 HILLSIDE STREET TO ALLOW THE CONVERSION OF A SINGLE-FAMILY DWELLING TO A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3039 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 165 HILLSIDE STREET TO ALLOW THE CONVERSION OF A SINGLE-FAMILY DWELLING TO A DUPLEX IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:10 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner II Carter Pettibone submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a conditional use permit to allow the conversion of single-family dwelling to a residential duplex in an RS-8 Residential Single-Family High Density (RS-8) District on a 0.17-acre property located at 165 Hillside Street.

On April 25, 2003, the applicants, John and Alice Rutland, submitted an application for a conditional use permit for a duplex in an RS-8 District (PIN No. 9649.14-34-5775). The proposed project consists of converting the basement of the existing single-family home into a separate dwelling unit. The Technical Review Committee (TRC) reviewed the plans at its May 19, 2003, and recommended approval with conditions. The applicant has worked with City staff to address these conditions.

Residential duplexes are permitted as conditional uses in the RS-8 District. Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

The parcel is located within the City Limits at the intersection of Hillside Street and North Holland Street west of Merrimon Avenue (City Exhibit 3 – Location Map). There is a mix of zoning and land uses in the immediate area surrounding the site (City Exhibit 3 – Aerial Map). To the east and to the west across North Holland Street are single-family homes zoned RS-8. The property to the south is vacant and also zoned RS-8, while properties directly north across Hillside include apartment buildings zoned RM-16. A Community Business I District containing a mix of commercial uses is also in close proximity along Merrimon Avenue.

Duplexes in single-family districts must be located a minimum of 300 feet from all other multi-family uses on the same street in the single-family district. There are no multi-family uses located within 300 feet of the property in question along either Hillside Street or North Holland Street in the RS-8 District.

The Unified Development Ordinance (UDO) requires that the minimum lot area shall be 125 percent of that required for a single-family residential unit in the respective district. The parcel's 0.17 acre is larger than the RS-8 minimum lot size of 0.125 acre (1/8 of an acre).

The UDO requires parking be located in the rear and screened with vegetation from adjacent uses. Parking for the duplex, consisting of three spaces, will be in the rear of the lot and screened by a combination of existing and proposed trees and shrubs (City Exhibit 3 – Site Plan). Access to the parking area will be from North Holland Street.

Duplexes are required to have a single front entrance and other entrances as required. Only one entrance is proposed on the building front facing Hillside Street, which is the front of the lot. The entrance to the second unit will be located to the rear of the building toward the parking area (City Exhibit 3 – Elevations).

The UDO requires that duplexes must meet the requirements of the North Carolina Building Code. The project has received conditional approval from the Building Safety Department and will need to fully comply with these requirements at the time of building permit application.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the UDO. City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety,

   The project received conditional technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project must comply with all City standards in regards to maximum clearing and grading and erosion control. Very little clearing or grading is expected since the existing building will remain and minimal off-street parking would be required. The site plan calls for a number of existing trees to be preserved and used to satisfy planting and buffering requirements. These factors help minimize the impact on the natural features of the site.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   As the appearance and intensity of the property will not change significantly, little to no harm is anticipated to the value of the adjoining properties. The existing physical design of the building helps assure that it fits within the neighborhood surrounding it. Staff has also determined that the additional traffic generated will not adversely impact the existing road conditions or capacity.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The applicant has proposed that the existing single-family structure on the property be converted to a duplex. As a result, the building would continue to fit into the neighborhood as it currently does now. Parking would be located away from the main street (Hillside Street) on the southern portion of the site and be screened as required by the UDO.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The project will also help meet one of the City's Smart Growth policies, providing higher density residential infill development. The City's Comprehensive Plan indicates this area as planned for residential development and the proposed density of the project is similar to what is currently permitted in the area.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The project received technical approval from the TRC, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The project was reviewed by the Engineering Department during the TRC process and it was determined that the existing roadway conditions and capacity were sufficient to handle any sort of increase generated by the proposed use, which is anticipated to be minimal.

This project was reviewed by the TRC at it's May 19, 2003, meeting. The TRC identified some unresolved technical issues and recommended approval with the condition that these issues be addressed prior to final approval. The applicant has addressed most of these conditions and is working with the City Staff to address those outstanding.

Since all the conditions have not been addressed at this time, Staff recommends approving the issuance of a conditional use permit for the duplex with the following conditions:

- The applicant works with Planning and Development staff to determine the appropriate locations for vegetation to be used as landscaping and parking lot screening.
- A driveway permit must be obtained in order to create a driveway with access to North Holland Street.
- The applicant obtains all applicable permits for water, sewer, driveway, stormwater, and erosion control provisions.

Upon inquiry of Councilman Dunn about the cost for all the permits required, Mr. Pettibone said that he didn't have that information at this time, but would find out and let him know.

Mr. Pettibone responded to a question from Councilman Peterson regarding on-street parking.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:21 p.m.

Councilman Ellis moved to grant a conditional use permit for property located at 165 Hillside Street to allow the conversion of a single-family dwelling to a duplex in an RS-8 Residential Single-Family High Density District, subject to the following conditions: (1) The applicant works with Planning and Development staff to determine the appropriate locations for vegetation to be used as landscaping and parking lot screening; (2) A driveway permit must be obtained in order to create a driveway with access to North Holland Street; and (3) The applicant obtains all applicable permits for water, sewer, driveway, stormwater, and erosion control provisions. This motion was seconded by Councilwoman Jones and carried unanimously.

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Upon inquiry of Mr. Pettibone, it was the consensus of City Council to have staff move forward with a text amendment to the Unified Development Ordinance making duplexes, triplexes and quadraplexes a use by right as opposed to a conditional use. Councilman Peterson felt that only duplexes would be appropriate as a use by right.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3040 - ORDINANCE ADOPTING THE FISCAL YEAR 2003-04 ANNUAL OPERATING BUDGET

Budget Director Ben Durant said that he is presenting the Fiscal Year 2003/2004 Annual Operating Budget for City Council's consideration before adoption.

On May 12, 2003, staff presented to City Council the Proposed Fiscal Year 2003/2004 Annual Operating Budget. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 30 and June 6, 2003. City Council conducted a public hearing on the Budget on June 10, 2003. City Council also held two additional budget worksessions on June 4 and June 17, 2003.

The Fiscal Year 2003/2004 Annual Operating Budget is balanced with a tax rate of $0.53 per $100 of assessed valuation, which reflects no increase over the current property tax rate. All essential programs and services are maintained.

The Budget as initially presented to City Council on May 12, 2003, included a net budget of $98,921,523 and a General Fund appropriation of $69,300,859. The Budget presented for adoption today includes a net budget of $96,162,863 and a General Fund appropriation of $69,095,859. Key changes to the initial Proposed Budget are summarized and discussed below:

- The initial budget for the Water Resources Fund included $2,553,660 in revenue from a new capital improvements charge. This new charge would have provided funding for major capital improvements such as water line and treatment plant improvements. Buncombe County Commissioners, however, did not approve the initial Water Resources Fund Budget that included the new capital improvements charge. As a result, staff has removed $2,553,660 in revenue and expenditures from the Water Resources Fund Budget that is being presented for City Council adoption today.

- Shortly after the City Manager presented the Proposed Budget on May 12th, staff received FY 2002/2003 3rd quarter local option sales tax revenue from the State of North Carolina. Two-Cent sales tax revenue in the 3rd quarter fell 6% compared to the 3rd quarter of the previous fiscal year. Due to this unexpectedly large decline, staff now estimates that FY 2002/2003 revenue from the two-cent sales tax will fall short of budget by $205,000. This shortfall in the current year led staff to recommend a $205,000 reduction in the FY 2003/2004 General Fund

Proposed Budget. At the June 4th budget worksession, the City Manager recommended the following General Fund Budget reductions to offset the sales tax shortfall:

1)	Reduce the Manager's contingency account	$100,000
2)	Delay the pavement study until FY 2004/2005	$20,000
3)	Delay the additional 1% 401(k) until November 1, 2003	$85,000

The General Fund Budget presented to City Council for adoption today includes these proposed reductions.

Several Budget issues, including the provision of social security benefits for City Firefighters, remain unresolved at this point and require further direction from City Council. In order to fund social security or any other service priorities, City Council must make further reductions to the Budget and reallocate the funding accordingly, or identify additional revenue sources.

Staff requests that Council review the FY 2003/2004 Annual Operating Budget, make any desired adjustments, and adopt the FY 2003/2004 Budget Ordinance.

Councilman Ellis moved to adopt the budget presented by the City Manager with the following amendments: One, $565,000 for Social Security for the firefighters to be included in the budget. He recommended funding that Social Security as follows: ½ of the cost ($282,500) to come from not purchasing four vehicles currently in our budget – one automated loader truck ($184,300), one full-size SUV from the Fire Department ($33,000), and two Police vehicles ($65,200); and the other half to be appropriated from the Fund Balance ($282,500). Two, delete the $100,000 funding for the Visitor's Center and appropriate $20,000 to the Arts Council for their work with the Urban Trail. This motion was seconded by Councilman Mumpower.

Councilman Ellis said there has been a great deal of interest in other priorities for the community and he would like to see those priorities too, but this Council has responsibilities for many other things. We have talked about needing more police but Council has been made aware that 8-10 additional officers have been applied for through grants and we have a positive attitude about getting those grants. He has also learned that we may be up to 10-15 new officers over the next 12-18 months. If we are going to get that many new police officers over the next 12-18 months then he would have trouble in supporting taking money away from priorities for that purpose.

Police Chief Will Annarino handed out to Council a sheet of additional police positions for Fiscal Years 2003-04 and 2004-05. These are positions they have been working on for bringing in needed personnel but doing it in a way that they felt they could afford by utilizing grants. Grants are a very cost effective way to address issues not at the expense of our local taxpayers. Grants are not quick though and we have to work through the constraints of the budget cycles of the federal and state governments. Our record for receiving grants is good. He explained there is a potential of receiving 20 additional positions, and if the City receives the grants, there will be a savings of $1,106,223. He explained that between the grants and the budgeted positions, there are 16 police officers in the 2003-04 budget and in the 2004-05 budget an additional 4 officers.

Councilman Ellis said that even though additional police officers did not make the top five priorities of City Council at the retreat, all of Council is supportive of utilizing grants as a way to providing services to our citizens.

Upon inquiry of Councilman Ellis, Police Chief Annarino said that even though he cannot predict whether the grants will be awarded or not, the City does have a great track record with the state and the COPS programs. In the grants that require matches, when you have a partnership on a grant match, they look very favorably on that.

Councilman Ellis also said every member of Council supports affordable housing because it is a need in our community, along with a great deal of other needs. We have committed $500,000, which was increased in the last budget year during a very tough time by $100,000. In addition, in our Community Development Block Grant that the City receives, there is another $675,000 for affordable housing. This Council is funding affordable housing with $1,175,000 this coming year. He felt this is a good commitment to affordable housing because there are many other needs that we have in our city. He felt his motion to approve the budget, with his amendments, is a compromise, which does fund Social Security for the firefighters.

Councilman Dunn found it troubling to just now find out the new 20 police officer positions after Council has been talking about the need for new officers for over a month, at least. Police Chief Annarino explained that all the grant positions have been brought before Council for prior approval and Council was aware of the 2 new officers for annexation. The only two Council may not have known about is the 2 new officers for the next Fiscal Year 2004-05. Mayor Worley felt that even though Council approved the applications for the grants, that was outside the budget context and he felt this might have been a lack of clear communication within the budget context that tied all the grants back together.

Councilwoman Jones liked the attention, although late attention, to putting in the budget and identifying where the Social Security for the firefighters will come from. In late January Council held their retreat in the preamble of the proposed budget and formulated their strategic priorities. (1) Infrastructure – staff did a great job of hearing that and funding that; (2) Affordable housing – in my estimation, in a year where we have additional dollars, maintaining does not equal prioritizing; (3) Firefighters Social Security – that was not in the original budget but she is glad to see that in the budget now; and (4) Environment and Transportation – in an almost $100,000,000 budget there was $20,000 allocated. This is a more complicated one, but she would like to see more intention around that. The four priorities that are related to the budget, are not, to her reading, reflected in the budget. She would not be able to support the motion made by Councilman Ellis.

Mayor Worley said that in the budget document, the Council priority reads "to continue to promote affordable housing through the identification of specific strategies to reduce the cost of homes." That doesn't say to increase the funding for affordable housing and he didn't have that understand at the retreat in January. The actual language voted on at the retreat reads "Affordable infill housing stock – cost of building houses – reduce as much as possible." He felt we have a commitment to that strategy and that commitment continues. A prior Council voted several years ago to add a penny to the property tax and dedicate that to affordable housing, which started off at $400,000. Last year, in a very tight budget year, we increased that funding by $100,000. When you look at further increasing contributions to affordable housing, it is again coming out of our taxpayer's pockets. There are a lot of ways that we can fulfill that commitment and we have been doing that this year with a lot of our Unified Development Ordinance (UDO) amendments. The UDO give incentives for affordable housing and other actions that promote affordable housing that makes it easier for affordable housing to take place. We can only do so much with money and we have to find other innovative ways. He did feel that we are fulfilling that commitment. He would support the motion made by Councilman Ellis because we are contributing $1,175,000 for affordable housing. He felt we needed to maintain a balance in our budget process and the services we provide our citizens. We also have needs in police, infrastructure and general services.

Councilman Mumpower felt that this is not a perfect budget but there is a lot more good than bad. He has been diligent in trying to find examples of waste, duplication or poor use of our limited resources. Having made an effort to be diligent about that, he feels more good than bad about the crafted budget. He strongly disagreed with going into our Fund Balance, which is basically our savings account. He felt to have to tap into that when we have a budget this large maybe does not demonstrate as strong level of stewardship as he wished we could attain. But, we all have a responsibility to try to work with one another to craft compromises. He would support the motion made by Councilman Ellis.

The motion made by Councilman Ellis and seconded by Councilman Mumpower failed on a 3-4 vote, with Mayor Worley, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilman Dunn, Councilwoman Jones and Councilman Peterson voting "no."

Vice-Mayor Bellamy moved to approve the budget presented by the City Manager with the following amendments: Cut in revenues by reducing the recycling fee by half - $366,000; Increases in expenditures include: Affordable Housing Trust Fund - $100,000, additional police officers - $150,000; Social Security for Firefighters - $250,000 (with the remaining coming from Fund Balance); and bus passes for City employees - $22,500, which is a total increase in expenditures of $522,500 – for a total revenue need of $888,500. Cuts in expenditures include: Civic Center Fund - $50,000; fire contracts for annexation - $119,000; overtime for annexation - $55,000; Planning Department - $50,000; police and fire overtime - $50,000; delay automated garbage truck - $135,000; cut Parks & Recreation capital budget - $100,000; Visitor's Center - $100,000; 401 (k) - $145,500; Government Channel equipment - $30,000; Council Chamber - $15,000; and Manager's Contingency - $39,500, which is a total cut in expenditures of $888,000. In addition, 25% of the 1-cent property tax dedicated to Parks & Recreation shall be dedicated to police/narcotics enforcement and any vacant positions in the City Development Division of the City Planning Department are frozen. She said that last week Council members were asked to go back and cut where they wanted cuts, after they have asked staff to help them find a way to make sure that all the priorities that all Council members wanted in their budget were met. It was not done, so as a Council member, she has talked with her peers and they have chosen to cut in these areas. She has been pretty clear with her priorities starting at the retreat last year. In our minutes from June 10, 2003, it reads "there has been a noticeable increase in costs for service and crimes committed in the public housing communities, since their elimination of their dedicated police unit." She was concerned that the grants we may, or may not, get won't be in time. She received a letter from the Principal of Johnston Elementary with the signature of teachers there stating that the children in Deaverview are being used as mules and they are fearful in their own homes, that did it for me. When we met with the Housing Authority Board last month at their annual meeting, one thing they cited continuously was the number of crimes committed, the number of crack cocaine vials they find, and the issue of finding guns. When we look at our community about decent, safe and attractive affordable housing, it needs to increase. Our firefighters have come to us and asked over and over again to help them with their retirement benefits. Somewhere along the lines the actuarial study got dropped – since it wasn't in the minutes officially, so they say it wasn't asked for. I remember supporting it to be done. Bus passes for our City employees. We need to increase our ridership and it helps with our Compact Agreement that we must meet. She also supports our police officers initiative that presented. This motion was seconded by Councilman Peterson.

Councilman Peterson asked for two amendments: (1) Regarding the cuts in expenditures, the Manager's Contingency should be $39,000 and the total cuts in expenditures should read $888,500; and (2) Since the cost of providing Social Security for firefighters is a higher number than we were previously provided, the increase from the allocation from the Fund Balance should be increased from $250,000 to $315,000. Vice-Mayor Bellamy accepted those amendments.

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Upon inquiry of Councilman Dunn, Councilwoman Jones explained the difference in the automated garbage truck purchase amount from Councilman Ellis' motion and Vice-Mayor Bellamy's motion.

Councilman Dunn felt this community deserves more police and will support that. Regarding grants, he felt that you can go broke saving money. Sometimes grants are good and sometimes they are not so good if they require taxpayer money to fund something that is not an essential service, noting that the Police Department is an essential service. He feels that City government is still too big and affordable living should be one of our battlecrys. Firefighters are overdue for retirement benefits.

Councilwoman Jones clarified that the new additional police officers addressed in Vice-Mayor Bellamy's motion would be dedicated to public housing. She hoped that the Police Department does receive the grants but it's time to prioritize the people that are most vulnerable. The School Board has also asked for Council's help and support in making those places where children are living safer. This is a step in the right direction.

Councilman Mumpower said that our history is to research, study programs and get input from the staff and public before we make decisions. The theory being that is the more informed we are the wiser our decisions will be. He has some real trouble with some of the effort to do last minute add-ons in the budget and he has no doubts that will create some difficulties in the future. He felt that when we start cutting things without careful research, we risk doing systemic damage to our system. He suggested a response from each department regarding what kind of impact the cuts will have on City departments and services.

Civic Center Fund - $50,000. Civic Center David Pisha said that this would be an equivalent of a position or the maintenance budget for the year. We are low in overall staffing compared to many Civic Centers. He said they are at the mercy of not only the entertainment cycle, but the economic cycle. The number of concerts have declined as well as the attendance at the previously booked concerts. We have no control over people spending their discretionary income on events.

Councilwoman Jones said that there will still be an increase in the subsidy from the General Fund to the Civic Center. She said that in terms of business, there's always a way to think about in terms of subsidy – it's not just about what you cut, but what you grow.

City Manager Westbrook said that several years ago Council added on an admissions fee to fund maintenance. Whatever that fee is, will still have to go to maintenance. Because of that, we may not be able to take the entire cut out of maintenance but some may have to come out of salaries.

Councilman Peterson explained that he is not looking to impose major cuts but directing the City Manager to do a better job and reduce the loss by 2.5 percent of the Civic Center's overall budget.

Councilman Ellis said that in his opinion the Civic Center makes money for the City, even though some tax dollars go into it. Far more comes back with people spending money in motels/hotels and restaurants. In fact, the subsidy for the Civic Center is less now than it was 10-20 years ago.

Councilman Dunn suggested the Chamber of Commerce help pay for the Civic Center since it's so important to the City of Asheville. He said the hotels/motels and restaurants are the ones making the money.

Fire Contracts for Annexation - $119,000. Fire Chief Greg Grayson said that in preparing the budget we had to provide the amount needed for the Skyland and Lake Julian/CP&L annexations. The total $300,000 increase reflects $238,000 for the annexations pending in litigation and $62,000 for the annexations not in litigation. Since the budget has been prepared however, the Skyland Volunteer Fire Department requested and has had approved by the Buncombe County Board of Commissioners a rate increase from 7.5 cents per $100 to 9.5 cents per $100 effective July 1, 2003. Whatever the Fire District tax rate is affects how much we have to pay in contractual costs. Therefore, since the Skyland rate has been increased by 2 cents, the amount we have to pay for contractual obligations goes up. Regarding the $238,000 for the annexations in litigation, that is for the portion of the year that the annexation will be effective.

Councilman Peterson felt that the two annexations in litigation wouldn't be settled until at least the end of the calendar year, thus needing only $119,000. In fact, if the companies continue to fight the annexation in court, we wouldn't have to spend any of the $238,000.

City Manager Westbrook said that we anticipated the annexation question being settled before the end of the calendar year. City Attorney Oast also responded that we have had one oral argument in one of the Lake Julian cases and we will have another one sometime this fall. He felt it is realistic to say that the annexation could be decided in the first quarter of the fiscal year. The annexation would be effective the last day of the month following the month in which the decision was rendered. Councilman Peterson pointed out they can still continue to appeal.

Overtime for Annexation - $55,000. Fire Chief Grayson said that this is to provide coverage to the two annexed areas in litigation until 9 new firefighters can be hired.

Councilman Peterson felt that this amount is in the budget to be safe until those new firefighters are hired, but if the annexations don't go into effect until January of 2004 then the firefighters will have already been hired and trained and this $55,000 can be eliminated.

Planning Department - $50,000 and Any vacant positions in the City Development Division of the City Planning Department are frozen. Assistant City Manager Jeff Richardson (in the absence of Planning & Development Director Scott Shuford who is out of town) said that the City Development Division was cut from 5 positions last year to 4 positions currently all filled. The workload level in the Planning Department is high and City Development is no exception. City Development facilitates downtown growth, facilitates issues between businesses and residents, and the workload will increase since we are currently expanding services into the Haywood Road area. A reduction in staff would mean a reduction in services. Regarding the $50,000 cut, Mr. Shuford would need to sit down and determine where he could cut that amount with the least level of service reduction possible to our citizens.

Councilwoman Jones said that currently the salaries are $840,000 and they are proposing $900,000, which is approximately a $60,000 increase. That doesn't seem like a cut in personnel to her. That seems like a tiny increase in salaries, noting that Council hasn't touched the merit increases. In addition, they are giving the Planning Director the latitude on how to make the cut. Overall, the current Planning budget is $1,283,391 and what Planning is proposing is $1,417,397, which is a 10% increase. We are saying that Planning gets more money, but just not as much money. She did clarify that if positions become vacant in City Development in the coming year, those positions are to be frozen and that the freezing of positions has nothing to do with the $50,000 cut.

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that normally a freeze in positions is reaction to a revenue shortage from something Council has no control over, such as last year when the State didn't come through with the money promised. It's not normally a budget item. In a budget you either have the position or you cut it out. Mayor Worley responded that he has never seen a budget passed that froze positions. They have either been left in or taken out.

Councilman Dunn said that from a business standpoint, he wouldn't hire someone until he had a little more income. Just because a city doesn't do it, doesn't mean it shouldn't be done. The argument that it's not been done before, doesn't hold a lot of water. Freezes sometimes protect taxpayers from too much government. Councilman Mumpower responded that he appreciated the efforts to save the City money, but you've turned right around and spent all the money saved. Councilman Peterson explained that we are giving back to the residents of Asheville $366,000 in reduced recycling fees.

Assistant City Manager Richardson said that since the Planning Director doesn't know what the impact of the $50,000 cut will be in terms of workload, the new Neighborhood/Developer Meeting concept will have to be considered and balanced. Councilman Peterson responded that the developers won't have to go to the Technical Review Committee or to the Planning & Zoning Commission so there is a lot of work that staff would have to have done, but they won't be doing with the new meeting concept.

Assistant City Manager Richardson pointed that out of the $134,000 increase, over $90,000 would be for salary increases and to pay for fringe benefit increases. If you look at operating costs and such, they will take a cut in day-to-day operating costs. Mr. Shuford will have to either lay someone off or he'll have to cut operating costs. Vice-Mayor Bellamy disagreed in that Planning already has two vacant positions.

City Manager Westbrook said this would be a reduction in service until we can hire those two employees.

Councilman Ellis said that even though the City Development Division is located in downtown it serves Biltmore, west Asheville, north Asheville and all of the City. They are located downtown because of the lack of space in City Hall. A lot of things are happening in our center city and proposed development is in the hundreds of millions of dollars. We have to have staff to respond to those needs. He encouraged Council to go to a Downtown Commission meeting to see what is happening in downtown and what the staff serving all sections of the City is doing.

Police ($25,000) and Fire ($25,000) Overtime - $50,000. City Manager Westbrook said that most of the overtime for the Police goes into the downtown augment, which is additional police officers in the downtown area because there are a lot of visitors and traffic downtown. Several years ago that was a concern of Council and raising the level of overtime was the answer to try to put more officers downtown. He said when police officers are called out for emergencies situations and they have worked more than their shift, they automatically go into overtime and that is the first call on overtime money. The downtown augment will probably be where the overtime will be reduced. The entire downtown augment program is approximately $200,000 and that is probably where the reduction would take place.

Police Chief Annarino said that their increase was in patrol in anticipation of the increase in fringe benefits and merits, understanding the load that the officers are carrying on overtime requests. They do a lot of City-sponsored events and downtown events to accommodate people and with that comes additional overtime requirements. The $25,000 cut will not dramatically impact their department but it will impact them some and they will have to adjust.

Upon inquiry of Vice-Mayor Bellamy, Police Chief Annarino said that the overtime grant was to be specifically earmarked for housing.

Councilman Peterson said that he has confidence in the City managers that they can do a little bit better in managing some of this overtime. We know there may be increases but we're just reducing the amount of the increases.

Fire Chief Grayson said that we have spent this past year extremely frugal in our overtime. It's been a number of years since the overtime amount has been adjusted. One thing about the fire overtime is that a large portion of that is required by the Fair Labor Standards Act (FLSA), and it's not what you consider typical overtime. It's built in over time through 56-hour weeks. Most employees will work 40 hours a week/160 hours a month. Firefighters work 212 hours in a month, so some of that is through FLSA. He said that approximately $120,000 is basic FLSA. He said they will work with the resources they are given but the overtime funding does not adequately reflect the need of the Fire Department.

Regarding Vice-Mayor Bellamy's motion, Councilman Mumpower said that if we are taking $315,000 from our Fund Balance and refunding the recycling fee by $366,000, the rest of it seems like a wash. We are still robbing our Fund Balance to make this work out. Councilman Peterson said this budget is a reflection of the majority of Council's priorities. These are items we wish to have funded and because it has been put on Council members to come up with the cuts, these are the cuts we feel would not hurt services and allow for greater funds for the Civic Center, the Planning Department, the overtime, but limits that increase slightly. It is a slight rearranging of priorities to reflect what Council believes the public has asked Council to do. Councilman Mumpower said that his point is that Council is taking roughly $888,500 out and then adding in roughly $888,500. Councilman Peterson said that was true but they are not spending the entire $888,500 – we are adding to line items $522,000 and we are returning to the residents $366,000. Councilman Mumpower said you have to add $315,000 from Fund Balance to the $522,500, so it's actually $837,500. His point is he applauds Council's efforts to save money, but then you are turning right around and spending that money.

Councilman Ellis said that Council did know about most of the police officers and now we have 20 coming in and now adding 3 more for 23. He felt that was a little overkill to add that much staff and he's not sure taxpayers would be willing to fund that kind of expenditure, when we are cutting some pretty important things. You're adding 3 police officers for the $150,000 and yet you are cutting out the overtime, which puts officers and firemen on the streets. He didn't know of a good corporation in America that doesn't use overtime to some extent. It makes a lot of sense because it's far more efficient to reward your employees with some overtime. It's also cheaper to spend a little bit on overtime than it is to add people to the payroll. Councilman Peterson disagreed in that as a management tool, if you are understaffed so that you have to have all of your employees continue to come in and work overtime and paying them more than the starting salary for a new hire, then it would be appropriate to add more people. The fact that we've had so much overtime indicates that the Police Department is understaffed. City Manager Westbrook said that in many cases using overtime is the preferable way to provide those extra services. In the downtown augment, you want seasoned police officers that can walk those areas and can provide law enforcement protection to the general public. The best way to provide those services, since the officers want to do it and they are familiar with the territory, is to do overtime. It's the least costly way to do it. It really depends on whether Council thinks it's more prudent to try to provide the service at the least possible cost or whether Council desires to hire more police officers to whatever service level they feel necessary.

Upon inquiry of Councilman Mumpower, Police Chief Annarino said that overtime gives him a lot more latitude in being able to put officers out in the street when and where we need them. Regarding downtown augment, we find it more beneficial to use overtime money to put off-duty officers downtown because we place them when and where we need them. What he presented to Council earlier was the potential for police positions we have over the next year. He said that if Council instructs him to add the $150,000 for new officers in public housing, we will

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have to notify the appropriate agency that we are no longer eligible for the COPS ARGUS program grant. He suggested that Council give him an opportunity to check with the agency to see if he can get some kind of idea where that grant stands. Usually their fiscal year starts in October so we should know fairly soon if we are going to get that grant. Then, Council can make the decision on whether to fund the additional 3 positions on top of that or if we are given word we won't get the grant, we would have these 3 positions in place and go ahead and put them in the ARGUS Unit right away.

Councilman Mumpower was concerned that the majority of the police positions are grant funded, which means we have differing levels of grant participation. The City is going to have to assume progressive responsibilities in our budget for eventually within the next three years to fully fund 16 police positions, plus the three new positions. After Police Chief Annarino said that it would be approximately $555,000, Councilman Mumpower suggested to Council that this is not the way that we should orchestrate our law enforcement budget. This last minute modification has the potential to create budgetary concerns in the future.

Councilman Ellis applauded Council's efforts to try to save taxpayers money, but he thinks we are making a mistake to try to micromanage the details of the Police, Fire and Planning Departments down to this detail.

Councilwoman Jones clarified that the Civic Center subsidy, the Planning Department reduction, and the Fire and Police overtime are still net increases from last year. All of them will grow from where we are now. We are cutting the proposed increases.

Councilman Mumpower said the implication of that those budget increases are predicated on fat, waste, bad decisions by our management personnel and staff. He knows a couple of the cuts pretty well and if Council digs a little deeper, it's just not that simple. Why do we have a budget director or department managers or a city manager if we don't have some faith and trust in these folks. He was concerned that Council is doing last minute second-guessing without thorough research and that will come back to cost us more money in the end.

Councilman Peterson responded that this is not last minute. We have been talking about this for months. Council members are elected to pass the budget. The budget for the Police Department has a certain number of employees and Council members are hearing that should be a greater number – that is what we are doing. We're doing our job passing a budget and determining it's in the budget how many employees there are. It's our job to say that's too many or that's not enough. The Planning Department asked for growth of 10% and we're cutting them back to 6%. We're not slashing their budget. We are asking them to do a better job and he has confidence they can do a good job managing their budget and managing a 2% reduction. That is our job. If we are just here to rubber-stamp what has been prepared by staff, why even have an election and have elected Council members.

Delay Automated Garbage Truck - $135,000. City Manager Westbrook said they will delay that service enhancement for another year.

Upon inquiry of Councilman Mumpower, City Manager Westbrook said that the highest worker's compensation rate is in Sanitation workers who work on the garbage trucks. Part of the motivation automation is getting those people who are at risk to do other things. Also the efficiency of having automation doing what three people used to do with one. After the automated truck is on line, City Manager Westbrook said that actually the turnover is such that probably those positions wouldn't be filled once the truck arrives and starts operation.

Cut Parks & Recreation Capital Budget - $100,000 and 25% of the 1-cent property tax dedicated to Parks & Recreation shall be dedicated to police/narcotics enforcement. Vice-Mayor

Bellamy said this is a $100,000 of new money not in the budget last year and they will leave it up to Parks & Recreation Director Irby Brinson to determine what to reduce.

Mr. Brinson asked for clarification of the "25% of the 1 cent property tax dedicated to Parks & Recreation shall be dedicated to police/narcotics enforcement." He asked if that was in addition to the $100,000 or is that where the $100,000 will be dedicated. Vice-Mayor Bellamy said that it is where the $100,000 will be dedicated, not an additional $100,000.

Mr. Brinson said their particular needs dealt with some maintenance and repair and some new park construction. It will be a balance between both of those to make sure we are able to meet our priorities. Instead of three tennis courts, we may do one. Instead of two playgrounds, we may do one. We may not do all of the Broadway Greenway construction. We would do a combination of both to try to minimize the impact. A little bit of background about the Parks and Recreation Department is that it's just not parks and recreation. All of the City's building maintenance falls within our capital request. We have capital requests of $300,000 for City Hall new chiller operations, we have fire safety issues in City Hall that we need to address, we have elevator issues, and we have roof needs not only in recreation centers but also fire stations. All of those issues add up to a lot more than $500,000. We do get about $200,000 for maintenance and repair but that does not go a long way. We try to do a systematic approach of looking at the needs of the community. We've had a matrix for our playground construction for about 6 years now and that is based upon what we felt were high priorities and we try to address at least two of those a year. We are not in compliance with the Americans with Disabilities Act in a lot of our playgrounds. We have a lot of safety issues we need to address. We also have equipment needs just like any other department. We try to do the best we can. He felt that additional maintenance needs would be approximately $500,000. Regarding the French Broad River Park, he said that for every 15-cents that the City puts in we are returning $1 investment. About 15% of the cost of the French Broad River Park has been from the City and the rest has been from grants or donations.

Councilman Mumpower said that Mr. Brinson has honored many discussions with him and has provided him with facts and truth and he felt we are making a real mistake to take money from this budget when we are leveraging 15-cents into $1.

Mr. Brinson said the one negative impact of this would be the delay for them doing things that have been promised for several years to the community. New greenway construction would be one thing we would need to look at. We would hate to disturb the leveraging of $185,000 to the French Broad River that is matching another $360,000 we received in grant funds. That is not saying we can't go out and try to raise more funds to reduce that match. Mr. Brinson said a lot of this is tied to grant funds or funds that have already been received that have certain deadlines to meet. We are tied to those constraints. There is a lot of talk on the State side about reducing the Parks and Recreation Trust Fund as one option to balance the State budget. If we don't continue to aggressively apply, that Fund may not be there. That is generally around $250,000 a year that we have been able to receive to meet other needs by using that match. If we lose that money, it means he has to ask Council for $500,000 instead of $250,000. He won't stop asking and the needs aren't going to away. He realized Council has a very difficult decision and he will do the best job he can to serve the citizens.

Councilman Dunn was concerned about the City's liability if we build fishing piers at the French Broad River Park and someone falls off and drowns.

Councilwoman Jones stressed we are cutting back an additional $100,000 to parks and recreation because it was not prioritized. Presently it's the priority we want to maintain and the non-priority we want to grow – we're saying let's change that around. The priority we want to grow and the other important things, let's maintain.

Councilman Peterson also noted that the budget is not written in stone in that Council can adopt budgets amendments. He said after the cut, it still leaves $400,000 in the capital fund for the Parks and Recreation Department.

City Manager Westbrook explained that a few years ago the Council raised the property taxes for affordable housing, parks and recreation, and streets and sidewalks. During the budget when the last revaluation took place, the Council wanted to increase the money going into affordable housing, which reflected 1-cent on the tax rate. They did not make that increase for parks and recreation, which also had previously been allocated 1-cent increase on the tax rate. The Parks and Recreation Advisory Commission felt that it was the intent of the former Council to also increase the money for Parks and Recreation, so this $100,000 in the budget would accomplish that.

Visitor's Center - $100,000. City Manager Westbrook said that the City has an agreement with the Chamber of Commerce that over a period of five years we will fund $100,000 a year towards a Visitor's Center. Other entities are doing the same. The City's contract provides a provision that the Chamber must perform certain activities before the $100,000 is paid each year. They have not provided the proof to the City that those activities have been performed this year. Therefore, the $100,000 budgeted this year can be carried forward until next fiscal year and the $100,000 for next fiscal year is saved.

401 (k) - $145,500. - City Manager Westbrook explained that when the third quarter sales tax figures came in from the State he recommended to offset the sales tax shortfall by three things, one of which was delaying the additional 1% 401 (k) until November 1, 2003, to make up some of that shortfall. The $145,500 represents the remaining portion of additional 1% of the 401 (k) for employees. This cut will take the additional 1% for employees out entirely for next fiscal year.

Mayor Worley explained that there is a certain group of employees that, under a mandated from state law, have a 5% 401 (k). All other employees have a 4% 401 (k). This was designed to bring the other City employees up to the same level as the select group, so we treat all employees equally.

Government Channel Equipment - $30,000. – City Manager Westbrook said that City Council wanted to have their meeting broadcast live. In order to make that happen, the dedicated person who works in that job has used some of his own personal equipment. A portion of this money was for him to take his own personal equipment out and to buy City equipment to put in its place. In addition, there was some money to enhance the service by providing educational programs on Channel 11.

Council Chamber - $15,000. – City Manager Westbrook said that this was an effort to have Council use laptop computers and go paperless at the Council meetings. Staff is unable to do this because of the historic desks. The $15,000 was to provide lumber for City staff to build a new dais and to purchase some additional pieces of electronic equipment to make that happen.

Manager's Contingency - $39,000. – City Manager Westbrook said Manager's contingency is for emergencies that come along. He had first recommended $300,000, but after the third quarter sales tax figures came in from the State, this was another item he recommended be reduced to $200,000. This will now reduce that fund to $161,000.

At 7:18 p.m., Mayor Worley announced a short break.

When Councilman Peterson asked if another budget ordinance should be brought before Council with the changes Council would like to see, City Manager Westbrook said what Council

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has provided to him is sufficient. He understands what Council wants and they have given him policy guidance for levels of service. He will implement what Council adopts. He said that if we do run across something that none of us is seeing right now, they will come back to Council prior to June 30. If it is something that we can fix after June 30 by a budget amendment, then we will do that.

Upon inquiry of Councilman Peterson, City Manager Westbrook said that he understands the guidance from Council regarding Social Security for firefighters. He said that we are still trying to work out with the State how this whole process works because apparently it happens so infrequently they are trying to work through it. The Council will have to adopt a resolution specifically allowing the firefighters to vote at a later date, as soon as we get that guidance from the State. That would not hinder Council from making appropriations now to do that.

Vice-Mayor Bellamy said that two weeks ago she asked for an additional budget worksession, in addition to the many Council has had before. She requested it because she felt the priorities of Council still were not being addressed in the budget. At the budget worksession she began the session with this in mind – let's talk as Council members on what we agree on and start from there and ask staff to go back with what we agree on and find it in the budget. At that time the City Manager informed her that if any changes need to be made that Council needed to make them. She felt that more money in affordable housing was a policy issue. Go back, find the money and give Council some options. More money for the Social Security for firefighters. That is a policy issue – go back and find the money. There were different things that Council all stated at different times, that there was consensus on, to go back and find the money. But it didn't happen. So Council had to decide what to cut. It is not easy to decide on these cuts. Not one of them was easy. It's not a cut; it's a reduction or a delay. It's unfortunate as a Council member that we could not direct staff to do what we've asked them to do as policy-makers. What we are recommending leaves in money for the merit raises, the worker's compensation, insurance and bonds, 9 new firefighters for Skyland annexation, fire annexation contracts, group health insurance increase of 15%, the parks and greenway capital projects (and that's in addition to the $400,000 that was talked about earlier), the debt service on fire station 5, the law enforcement officers professional certificate program, 3 officers in training position, fire and public works small capital, some of the debt services on automated trucks, public works vehicles (which others have suggested that we cut), police separation allowance, increase of Buncombe County taxes, the debt service on radio microwave, some of the Civic Center subsidy, fleet charges, the lobbyist, debt service on fire engine, the Board of Elections, unemployment, the real estate program, and even the pavement study. It's unfair for Council members not to have staff to support our goals and our ideas to go back and do what we've asked them to do. We, as Council members, had to do the job of staff.

Councilman Mumpower felt it was a mistake to do last minute add-ons or changes without research, public comment, and deliberation. He felt it was a serious mistake and some of these will bite us. Many times it's been said that if we plan it in the planning session, that should turn into dollars. He never remembered that being said at any point in our retreats. Strategic planning is not the same, necessarily, as budgetary planning. His participation at our next retreat will be much different than his last, if we are going to go forward with that assumption. We are talking a lot about staff not following our guidelines. He didn't think we were clear. He thought the Mayor demonstrated that in, for example, the affordable housing guidelines. They didn't say for staff to plug in more money into that issue. He didn't come away thinking that. He didn't realize, until the Mayor showed the picture of what Council voted on at the retreat, just how narrow and specific their request was. He felt it was pretty easy for Council to beat up on staff, but he's not sure that Council has done their homework. He has a hard time of playing catch-up at the last minute and dumping the accountability on our staff.

Upon inquiry of Councilman Mumpower about the reduction of the recycling fee, Councilman Peterson said that the current recycling fee is $5.10 per bill every other month for City residents. He proposes to cut the fee in half to $2.55 every other month. Every resident will see a reduction in their water bill totally $15.30 over the year. Councilman Mumpower said three of the people who are speaking on behalf of this budget voted for a 2-cent tax increase last year. He felt this is tokenism. If anyone is excited about getting $15 back this year when you see all the things that we spend money on – the almost hundred million dollar budget we have. He is disturbed by that theme. It does not encourage him, as the leadership model that he would hope that he, as a Council would embrace. Another point is that the suggested budget did pursue cuts and frankly he agreed with a good number of those cuts. But then Council turns around and spends everything they cut, with a few exceptions. He will have to speak against this budget because he felt we're doing last minute things that don't result in any significant savings. It's more of a shift to some personal preferences and he doesn't believe that is a responsible budget setting process.

Vice-Mayor Bellamy said she doesn't fault the entire staff. We can only direct three employees so she can only direct those three employees. Two of them don't have anything to do with the budget directly. She can only fault one employee.

Councilman Peterson said that the reduction in the recycling fee is something he pursued. He has pursued it for the 3.5 years he has been on Council. He agreed that it is not a lot, but for someone who owns a $150,000 house, which is a pretty typical house in Asheville, this would be comparable to a 1-cent property tax savings. He would like to get rid of the recycling fee altogether and see some real savings. He'd like to reduce taxes, but we can only do so much. We're doing the best we can. He voted to raise taxes 2-cents last year because the State withheld potentially millions of dollars. This coming budget year we're going to be getting almost all of that money and he felt like it was time to give something back. This was the easiest way to give something back that a person who lives in a modest home will see some savings. He felt that as high as our water bills are, to have $2.55 lower on your water bill every other month, people will see the savings and we are giving something back to the residents of Asheville. He will continue to support that.

Councilman Dunn said he did not vote for a tax increase last year. He believes the citizens of this City deserve as much of their tax money back in their pocket as they possibly can. Five dollars is not much, but it's a start. Secondly, this will make the City cut their spending by $366,000 next year. As far as he is concerned, this is cutting government spending. He has a problem with the way some of this has been presented tonight. We suddenly get more information on police officers, which really does upset him. We wanted $500,000 for the Fire Department and four of Council voted for it and it never came up as a priority in the budget. These officers and firemen deserve that. Affordable housing. We need it. He's not crazy about some of this, but he will support affordable housing along with it. He thinks we need to give people a break on what government costs them – cut their taxes and give them a place to live too. We're talking about less than 1% of a $100,000,000 budget. If some of the Council wants to hold that against him in the future, then so be it. He doesn't have a problem with this. He hated that we had to go to this extreme to become managers instead of policy-makers, but it had to be this way. He's been public about that and he didn't get elected to sit back and listen to staff. He's going to get involved with what he sees is something that need to be done. If Mr. Brinson wants to take that $100,000 and do whatever he wants to, that's fine. But he wants to cut $100,000. He will support this motion. There are some things here that he is not famous for supporting, but he thinks the spirit of what we're trying to do is well worth it. We all gained something and we all lost something, but we've managed to finally work together.

Councilwoman Jones said there were some things that Holly Jones is not famous for supporting either, however, she felt very good about the public having a concrete way to understand how we make decisions and how we web them with dollars. It is not what comes across their table last and what they like. It is what we collectively came up with. Affordable housing is her passion and she makes no apology for that. It is also, time and time again, the number one issue that is quoted at the top of the list at forums. Call it a personal agenda – fine, she embraces it. But she knows she is not alone in that personal agenda. She has many residents in the City of Asheville right behind her and she has Council members that care about it too. She can respectfully understand where maybe some people interpreted "maintain means priority" or "strategies doesn't mean budget," but not in her world. In the budget book's first pages, it lays out the priorities. The public has access to this book. Next year if we don't prioritize it – fine, but this year we did. She felt absolutely responsible as an elected official of the people to web those new dollars. We have additional new dollars this year and are all of them up for grabs – absolutely not because we have fixed costs. Just like businesses have new fixed costs. Businesses have unemployment costs and health insurance. Non-profits have those same fixed costs that aren't negotiable, but even when you get rid of all those fixed costs, there are some variable dollars in there. In her estimation, too many of the variable dollars were directed toward things that we did not raise up. And this is redirecting those to what we raised up. To reiterate, the vast majority of the expenditure cuts are not cuts from this budget year, they are reductions in a proposed increase. If it's difficult, then we're all dealing with difficult matters and that is just part of the land what we live in. She was watching a news show on Sunday and the reporter said 1/3 of our towns and cities are facing lay-offs. This budget lays no one off. This budget gives merit raises to employees, which she personally thinks may be a little rich this year, but it rewards hard work and people wearing a couple of different hats. That is in a year where many towns and cities are laying off. In terms of proposing expenditures that will ultimately cost more money, in a $2 Million budget for example in one of the funds, the Civic Center Fund, if we can't manage a $50,000 swing, which is 2.5%, we are in hot water. If we can't find a way to manage that small of swing then we have a lot of bigger problems. No one would have liked to have seen this done differently more than me. Any of you that were in this room know how hard I tried. So she hates that we had to come to it like this, but she feels very good about all the cuts and she doesn't think anything will be paralyzed. This remains faithful to why we were sent to office – not only in content, but in spirit.

Councilman Ellis does support affordable housing. We did allocate $500,000 in addition to the $675,000 from Community Development Block grants. He doubted that many cities are allocating that much. He also pointed out that the $500,000 is money that we are loaning out and people are paying back to us, so every year the fund increases. He felt this year there are other priorities we need to look at. He felt the other motion was very fair motion and a compromise. He said that if we cut the 401 (k) out, we're cutting the firefighters again and other employees and that is unfortunate. He does support additional police officers but we've had a report from the Police Chief that we're probably going to get up to 20 new officers the next year to year and one-half. We are now adding 3 more and saying we're going to put them in public housing and if we do that, we're likely to lose a grant. That doesn't compute, and at the same time, you're cutting their overtime. He felt there was a good compromise, but now feels like we're getting too detailed and could not support the motion.

Mayor Worley felt that if we adopt this budget then we are moving from the policy-making into the management. We are a policy-making body. He was one of those that voted in favor of affordable housing for a priority, and he can assure you that he didn't have the slighted inkling that that would be used to justify additional funding. If he did, his vote wouldn't have been there. He said that he is committed to affordable ways and there are many ways to address that. We increased the contribution to the Affordable Housing Trust Fund last year by $100,000. He felt there is a capacity that this community can endure in terms of how much dollars we take out of our tax revenues and contribute to affordable housing. And he is concerned that we are exceeding that capacity. You also talk about priorities and there is much to be said from those who are proposing this budget that it meets the priorities. It adds $150,000 for additional police officers. If you go back and look at our retreat, one of the items we voted on was adding more police officers and that did not receive enough votes to be a priority. A lot has been said that the budget didn't reflect our priorities. He would certainly argue that it did. We did not ask in our retreat that police officers be added to the budget. And, yet, at the same time, he commended our Police Department for recognizing the need and finding innovative ways to add police officers through grants and he thinks we have added, through that process, the police officers that we need to add. He was also concerned when he hears the Police Chief say that if $150,000 in this proposal for additional police officers is directed to public housing that may make us ineligible for the grant for 3 police officers for public housing. We are taking on one hand and giving on the other. We are reducing the recycling fee by half. There has been really no Council discussion of the effect and no staff input on that. He certainly is not aware that this Council has been receiving an outcry from the public saying we need to reduce the recycling fee. The recycling fee covers half the cost of recycling. It costs us to recycle. It's a good thing to do and he totally supports it. It's the right thing to do. It reduces waste going into our landfill and it is environmentally sound. The recycling fee was designed to cover half the cost to the City and the General Fund covers the other half. We are now asking the General Fund to cover ¾ of that cost. Is there a savings? Yes, you can say the water bill is reduced -- actually it's the recycling charge on the water bill that is being reduced. But, we pick it up ultimately in our property taxes. When you look at the specific cuts starting with the Civic Center Fund. Taking $50.000 out of that from where? We don't have the answer from those who are proposing it. It just takes $50,000 and leaves it up to staff to figure out where. That's where are already losing money. When you talk about the money for fire contracts for annexation, there is a risk there and it is dependant upon when the annexations might become effective. If that happens in the first quarter of this coming fiscal year, we'll have to find that money from somewhere. Overtime for annexation falls in the same category. Those who are proposing the $50,000 from the Planning Department don't know where it's going to come. There is talk that the Planning budget has increased so we're just reducing the amount of the increase. That's true of every City development. He thinks the budgets generally have increased across the board. Why? We have in the budget a merit increase for our employees and we also have in the budget fringe benefits that have increased in costs, insurance has gone up dramatically, worker's compensation insurance, health insurance, and liability insurance. We have had a dramatic increase of over $1.5 Million in our insurance costs. Our budget figures have increased and our costs have increases as well, and yes our employee costs have increased. In the Planning Department there are 17 full-time equivalent employees in there now and there will be 17 in the next budget year. Again, he asked where the $50,000 going to come from. We're cutting $50,000 out of police and fire overtime and that's going to affect the service that we provide. We slashed $100,000 from the Parks & Recreation capital budget. The specific items in that Parks & Recreation capital budget are clearly set forth in the capital portion of the budget. He could talk about each one of the other cuts, but he won't. He did want to talk about the freezing any vacant positions that might come up in the City Development Division of the Planning Department. It's already been said it's pretty unusual to freeze positions in a budget. Particularly positions that aren't vacant. Usually you do that in a drastic budget situation and then you cut staff positions that are vacant. That does not seem to be a reasonable request. We are making a number of cuts but we are making increases. When he looks at the total revenue that we need for making cuts of $888,500, but we're adding revenue needs of $1,203,500 and that includes the money we lose by cutting the recycling fee because we have to make that up. We have to pay for recycling. He thinks our citizens deserve a responsible budget process and he thinks the budget we will be voting on is irresponsible. We are going about it the wrong way. He thinks our staff has responded to our priorities that we set forth at the retreat. He thinks they responded very well. We, as a Council, have not talked well together during this process nor have we communicated policy decisions very well to staff. He thinks we have made a major mistake if we try and go through randomly making cuts to put in things that some of us want. He was very disappointed in this budget process.

Councilman Dunn said that the Mayor talked about a risk. Maybe the greater risk is to never do anything. Maybe we keep on spending money and keep on and on because it's painful and it hurts. Sooner or later you draw a line in the sand. It's painful, yes, but it's not impossible to take care of. He thinks the citizens did get a fair budget process and we tried everything we could to try to talk to people. He talked to everyone on Council, except maybe one. He tried to work with Council and this is what we had to do. This is where leadership starts to take over.

The motion made by Vice-Mayor Bellamy and seconded by Councilman Peterson carried on a 4-3 vote with Vice-Mayor Bellamy, Councilman Dunn, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Ellis and Councilman Mumpower voting "no."

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V. NEW BUSINESS:

A. RESOLUTION NO. 03-110 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY BOARD

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the WNC Regional Air Quality Agency Board.

Mr. Arlis Queen has resigned from the WNC Regional Air Quality Agency Board, thus leaving an unexpired term until July 1, 2008.

On June 17, 2003, it was the consensus of City Council to interview Dean Kahl, Cecil Beumer, J. Loyd Kirk and Lawrence Haas.

After Council talked about the excellent qualifications of all candidates, Dean Kahl received 4 votes, Cecil Beumer received no votes, J. Loyd Kirk received 3 votes and Lawrence Haas received no votes. Therefore, Dean Kahl was appointed as a member of the WNC Regional Air Quality Agency Board to fill the unexpired term of Mr. Arlis Queen, term to expire July 1, 2008, or until his successor has been appointed.

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B. RESOLUTION NO. 03-111 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing members to the Civic Center Commission.

There currently exists two vacancies on the Civic Center Commission - Kent Wolff, whose term expires June 30, 2003, and Dan Breneman, whose term expires on June 30, 2004. In addition, the terms of Jerri Goldberg, Lisa Michie and Peter Crosa expire on June 30, 2003.

On June 17, 2003, City Council instructed the City Clerk to arrange interviews for Larry Smith, Charlie Cole and John Broadbooks.

In addition, on June 17, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Jerri Goldberg, Lisa Michie and Peter Crosa to each serve a three year term respectively, terms to expire June 30, 2006, or until their successors have been appointed.

After Council talked about the excellent qualifications of all candidates and the upcoming additional vacancy opportunities, Larry Smith received 6 votes, Charlie Cole received 6 votes, and John Broadbooks received 2 votes. Therefore, (1) Charlie Cole was appointed to serve the unexpired term of Kent Wolff, term to begin immediately and expire on June 30, 2006; and (2) Larry Smith was appointed to serve the unexpired term of Dan Breneman, term to begin immediately and expire June 30, 2004.

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VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of May 23-June 12, 2003: Ronnie Cole (Water), Judy McMahan (Streets), Donald Brigman (Fire), Sondley Estates (Water), Thomas W. Harrill (Transit Services) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English, resident in east Asheville, made several comments regarding the budget from the City shouldn't be involved in the real estate business to supporting the police department pay increases.

Mr. Mike Fryar explained how City Council was given misinformation by the Planning staff when they were considering the annexation of his property.

Ms. Cheryl Wegner related to Council traffic concerns about the proposed entrance to the Richmond Hill Park on Richmond Hill Drive. The City Engineer has looked at an entrance off Riverview Church Road, but it will be very expensive. Since it is clear that dollar signs mean more to Council then the grave concerns of your citizens, they implored council to amend the Conditional Use Permit to include traffic mitigation. She explained that Council is violating their Traffic Calming Policy.

Regarding the Richmond Hill Park entrance and upon inquiry of Councilman Dunn, City Attorney Oast said that it is his understanding that the property that is under consideration for condemnation can be condemned for use as a public road. If it were the City that was doing the condemnation work, the title in that condemnation would vest immediately. He assumed the law for the State is the same but it may not be. He tended to think that it would actually stronger in favor of the State in that regard. What could be tied up for years would be what is actually paid for that property. But, if the property is being condemned for public road purposes, the title vets immediately. Again, what may take a long time is to determine how much they pay for the property. City Manager Westbrook said that it was his understanding that the only other reasonable entrance would cost in excess of $1 Million and that is a cost the State will not incur.

At the request of Councilman Mumpower, City Manager Westbrook said that he would have the City Engineer look into the issues of traffic mitigation with consideration for future uses of the adjacent site and report back to Council with their recommendations. It was his understanding that this would be for traffic calming in the future.

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Closed Session

At 8:32 p.m., Vice-Mayor Bellamy moved to go into closed session pursuant to N. C. Gen. Stat. sec. 143-318.11 (a) (6) to discuss a personnel matter. This motion was seconded by Councilman Dunn and carried on a 5-2 vote, with Mayor Worley and Councilman Mumpower voting "no."

At 10:03 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:03 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 8, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

U.S. Army Veteran Walter Plaue led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 24, 2003

B. RESOLUTION NO. 03-112 - RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING ENTERING INTO A LEASE WITH THE MEN'S GARDEN CLUB OF ASHEVILLE FOR ½ ACRE ON AZALEA ROAD

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding a proposed lease with the Men's Garden Club of Asheville (MGCA) for 1/2 acre of land on Azalea Road.

The 1/2 acre on Azalea Road is a portion of the property acquired by the City of Asheville from John Moyer. The City previously leased the space to the MGCA for one year from November 1, 2001, to October 1, 2002.

The MGCA has offered to enter into a nine (9) year lease for the space where it currently has constructed a greenhouse and appurtenant facilities at a rent of $750.00 per year payable in goods and services. The proposed lease will enable MGCA to continue operating the greenhouse facility in its current location. The lease may be terminated by either party upon 60 days written notice.

Approval of the resolution will authorize the City Clerk to publish a Notice of Intent to enter into the Lease.

The Parks and Recreation Department and Planning & Development Department staff recommend adoption of the resolution.

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C. RESOLUTION NO. 03-113 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF REAL PROPERTY AT THE INTERSECTION OF ERSKINE AND LIVINGSTON STREETS FROM THE HOUSING AUTHORITY

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property at the intersection of Erskine and Livingston Streets from the Housing Authority of the City of Asheville for the City of Asheville parks system.

Erskine Street Park consists of 0.429 acre of land improved with children's playground equipment located at the intersection of Erskine and Livingston Streets. Jointly developed by the City and the Housing Authority, the land is owned by the Housing Authority and the improvements were funded by the City using a Community Development grant. In 1998 the park was designated Herbert J. Watts Park in honor of a former City Councilman and retired City Police Officer

The Housing Authority has proposed to donate the park to the City because the City is better equipped to provide the long-term management and maintenance of the park.

Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for incorporating into the City's park system.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept the donation of real property from the Housing Authority.

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D. RESOLUTION NO. 03-114 - RESOLUTION CONFIRMING THE APPOINTMENT OF LATRETTA HIGGINS AS THE REPRESENTATIVE OF THE COUNCIL OF INDEPENDENT BUSINESS OWNERS ON THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two (2) of who are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Ms. Latrella Higgins has been named by the Council of Independent Business Owners to represent them on the Minority Business Commission. Ms. Higgins has been nominated to fill the position left vacant by Ms. Vonna Cloninger who resigned effective July 1, 2003. Ms. Higgins' term will run through August 2004 to complete the current term of Ms. Cloninger.

City staff recommends City Council adopt the resolution confirming the appointments of a member of the Minority Business Commission.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO PHENIX RESEARCH PRODUCTS

RESOLUTION NO. 03-115 - RESOLUTION TO OFFER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO PHENIX RESEARCH PRODUCTS

Mayor Worley opened the public hearing at 5:08 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution offering an economic development incentive grant to Phenix Research Products, a company relocating to Asheville from California. This public hearing was advertised on June 27 and July 4, 2003.

Phenix Research Products, formerly of Hayward, California, is relocating to Asheville. The company is setting up its corporate headquarters and distribution functions in offices located in the Business Incubator on the Enka campus of AB Tech – a primary factor in their decision to locate here. The firm is a supplier to the biotech and university market offering a range of equipment and instrumentation. The firm intends to employ approximately 40 people over the next two years.

The Asheville location was selected after consideration of other competitive locations. As part of the recruitment process, the City of Asheville made a tentative commitment to support the project with an incentive grant in the amount of $20,000, which is part of a total local incentive package of $50,000 made in partnership with Buncombe County, AdvantageWest, and the Asheville Chamber of Commerce.

Before the tentative commitment by the City can be officially granted, a public hearing is required.

Staff recommends Council approve the resolution authorizing an economic development incentive grant to Phenix Research Products.

Mr. Greg Schultz, President of Phenix Research Products, briefed Council on the background of his company and gave to Council material regarding his company. He spoke about how pleased he was to move to Asheville and how they hoped to fill the facility with other biotech companies.

Upon inquiry of Mr. Walter Plaue, Mayor Worley explained the terms of the incentive grant.

Councilman Ellis explained that the grant is not a cash payout.

City Manager Westbrook also added that the agreement states that the company will employ 14 people with salaries of not less than $25,000 per year.

Mayor Worley closed the public hearing at 5:15 p.m.

Councilman Dunn spoke about how pleased he was that this company was taking a chance on Asheville. He spoke about how the Council is working hard to recruit businesses to our area.

Vice-Mayor Bellamy agreed with Councilman Dunn noting that the City is working with other community partners to support the initiatives of bring economic development to our area.

City Attorney Oast said that the economic development incentive grants are not reductions in taxes. We use the amount of property taxes paid as one of the factors in determining the amount of the grant.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 03-115. This motion was seconded by Councilman Dunn and carried unanimously.

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IV. UNFINISHED BUSINESS:

A. ASHEVILLE CITY PLAN 2025

Mayor Worley said that the public hearing on the Asheville City Plan 2025 was held on April 22, 2003, at which time City Council listened carefully to all the public comments. It was the consensus of City Council to then study the plan carefully, taking into consideration the comments. At that meeting it was then determined that at a future date undetermined City Council would consider adoption of the plan.

Planning & Development Director Scott Shuford said that since City Council cancelled its first worksession in July and, with the rescheduling of the consideration of the Minimum Housing Code to later in July, the opportunities for discussing the draft Asheville City Plan 2025 in July were scarce. Since the July 8 formal Council meeting was relatively "light" due to rescheduling the Minimum Housing Code from this meeting, he was taking this opportunity to get some additional feedback on the Plan from Council prior to bringing a final draft forward for consideration.

As previously suggested by the Mayor, staff is interested in hearing each of Council's five most significant concerns about the Plan so that we can make any changes necessary to move it forward. We are seeing an increasing amount of development activity, ranging from the final permitting of the Sayles Wal-Mart to a large number of other fair-sized projects. Consequently, we need to get the Plan revision and final consideration to Council so that we can concentrate on these projects.

This will be a listening opportunity for staff – we want to hear Council's concerns so we can get the Plan in order for your final consideration in possibly August or September.

Councilman Ellis thanked the hundreds of citizens that spent thousands of hours helping to put this document together. This 400+ page document is a great guide for what might happen in the next 22 years. It is a guideline and not something set in concrete. It is a culmination of the thoughts of hundreds of people. He felt it was an excellent document and would support adoption of the Plan when appropriate.

Vice-Mayor Bellamy read that successful city plans create long-term community value. She said this Plan is for 22 years and wondered what the average life of a plan like this is. Mr. Shuford responded that the average life of a plan is around 10-25 years. We were following the concept of the 2010 Plan when we set the timeframe. In addition, we also felt this was a good timeframe to be looking at because the first land use plan for the City was adopted in 1925. The 100-year mark was to be reflected in the name of the Plan as well as the timeframe involved in it.

Vice-Mayor Bellamy noted that a comment from the Plan from Max Haner, former Chair of the Planning & Zoning Commission, states that after adoption of the 2010 Plan, 15 years later they were ready to get rid of that and move on. She wanted to make sure that we are not looking too far out with the 22 years. She wondered if it should it be the 2015 Plan. Mr. Shuford responded that we do anticipate there being multiple amendments to this Plan between now and 2025. The Plan is intended to be updated on a regular basis. One of the faults of the 2010 Plan was that it was updated after the first two years, but then not updated since 1989. A lot has been changed since then. In 1996 there were amendments to create the Unified Development Ordinance and the City-wide rezoning made great changes to the 2010 Plan and the Plan was never amended to reflect those changes. Staff will do a better job of bringing the amendments forward. That is one reason why we have an implementation matrix in the Plan so that we can give Council a frequent report on how well we're doing in implementing the Plan and meeting the deadlines and guidelines that Council has established.

Vice-Mayor Bellamy said that there are no benchmarks in the matrix to say that at this five year point this will be established, or at the ten year mark, this will be established. The goals and the strategies outlined could last the entire 22 years and then we won't technically know if they were actually met. She felt it would be good to have benchmarks and some time periods to measure the strategies to see if we're successful. This is one of the most valuable components missing. Mr. Shuford said that Vice-Mayor Bellamy raises a good point and maybe we do need to clarify somewhere in the purpose and intent section that there will be periodic reports made to Council about progress that has been made. Resulting from direction that comes from that, staff will modify the Plan accordingly.

Vice-Mayor Bellamy asked what part does the new Metropolitan Statistical Area (MSA) and our expanding region play in this overall document. Mr. Shuford responded that it wouldn't have an effect from the standpoint of either the transportation or land use aspects of it. What may happen, and it probably doesn't need to be reflected in our Plan, is that because our MSA has gotten to a certain level, we will start to attract a wider range of development activity from around the country. Basically they break the areas into different tiers and as a result of the data that is used to generate development market analyses, he thought we are going to see a lot of development attention turned to us from outside our area, but he thought we had that covered in terms of our land use plan. Vice-Mayor Bellamy disagreed because in the matrix it talks about what types of development we don't want – like big box. But, because our MSA has changed and we are the hub for Western North Carolina, she believed we may attract more big box developments because of our area and the desirability of our area. However, our Plan says we don't want that. Mr. Shuford explained that that was an issue he has heard from more than one Council member with regard to the statement in the Plan that big box development was regarded as either less desirable or undesirable. That was a summary of what came from the public input process. Council members have made him quite aware that that has a tendency to be incendiary and he is planning on taking that section out. He doesn't think that the Plan will lose anything by dropping that grouping because we address it in other areas. He recognizes that Asheville is going to be the center of commerce for Western North Carolina because of our size and our location at two Interstates. We are going to receive development pressure for big box type development and we need to accommodate it.

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Vice-Mayor Bellamy felt that green development is wonderful and how the benefits of it are outlined in the Plan is good. However, one thing missing is the need for the creation of an incentive program for developers to actually do green development. Mr. Shuford responded that green development is often more expensive than regular development and as a result there should be some incentive for that. We have been working with Peter Alberice to look at a grant that would be used to develop strategies for providing those incentives. We can also look at our rules and regulations and see where they are disincentives for green development that might exist and remove those.

Vice-Mayor Bellamy asked how the new developer/neighborhood meetings would mesh into this Plan. Mr. Shuford said this is one of the cases of where our regular work program is starting to catch up to the goals of the Plan. In many ways it's like the Joint Planning Area and the Early Action Compact occurring since we started this process and we need to address those. It may make meeting some of the implementation steps that are listed in the matrix with regard to community involvement a lot easier because we have already taken some of the steps in that direction. Regarding voluntary vs. mandatory, Mr. Shuford said that right now we are not proposing a mandatory process for developer/neighborhood meetings. We feel like we have a program that's going to take a few years to try to see how it works and to measure its benefits. First we have to get it implemented and there has to be code amendments. Until we have had a change to see if it is absolutely the right way to go, he wouldn't recommend to Council that we go with a mandatory process. Because there are added expenses associated with the process that we have laid out, it may make it difficult for certain types of development. For example, if we continue to have duplexes as a conditional use permit, right now they don't go to the Planning & Zoning Commission for approval – they come straight to City Council. He'd hate to get us in a situation that anything that came to City Council would have to have a mandatory public involvement process if it is that small of scale. Vice-Mayor Bellamy felt this is the type of thing that needs a benchmark.

Vice-Mayor Bellamy asked what is the timeframe for incorporating the LEED system in the development of the green building program. Mr. Shuford said that he is working with the local architects to develop that program. He said that the LEED system is an internationally recognized green building program.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford said that the Downtown Asheville Center City Plan, that just deals with downtown Asheville, is an addendum to the overall Plan. The goals in that Plan deal directly with downtown issues and not with City-wide issues.

Vice-Mayor Bellamy felt that within 22 years discussion needs to take place about a housing bond and that needs to be included somewhere in this document.

Vice-Mayor Bellamy said that we don't give a strong enough emphasis on our support for incremental tax credits. We need to say that we are going to pursue legislative approval for that. We need to talk about the importance of it and how the community can benefit from it.

Vice-Mayor Bellamy said that there was a debate at the retreat about how when we plan for something, should dollars should be considered. She felt they both should go together. She felt that the City should commit to support this, not just in theory, but what we will place value and dollars in in the future. Mr. Shuford said that speaking on behalf of the Planning Department, there are some aspects in the Plan that deal with capital improvement suggestions and certainly he hoped those would be reflected in the budget. But again, this is a guideline and Council implements it potentially at every meeting. Every time Council makes a decision, it has the potential to add to the list of things we need to change or amend to this Plan. When the Plan and Council's priorities not in alignment is when we need to make adjustments. In fact, in a month or two we will be bringing to Council the infill development ordinance that deals with duplexes, triplexes and quadraplexes. Depending upon Council's action on that, it will either stay in the Plan or it will be something we will take out.

Councilman Dunn said that it's difficult to pick five things out of a document over 200 pages that he has concerns about. We have a Planning Department, a City Development Office and a Unified Development Ordinance. That is a lot of people to plan the City's future. He realized this document is supposed to help it, but it seems to him that we already have plenty of regulations, departments and planners to do that very thing. We talk about the 2025 Plan, but where is the role of government. He knows that's not the purpose of this Plan, but we must be thinking of that too. He felt the Plan is unrealistic. It talks about annexation continuing. If we look back at the history of Asheville in the past 60-70 years, the City is a lot bigger as far as square footage, but the population is going downhill. The transportation goals are unrealistic. If we lived in the northeastern corridor of New York or New England, it would be different. People around here are not going to ride bicycles and they are not going to ride the bus. He wished they would, but they're not. Some of this is elitist. Statements on pages 14 and 15 say that low paying jobs are less desirable, and national franchise and restaurants are not wanted. We, on this Council, agree that those are low paying jobs, but they are still jobs. When a community, council or a plan decides that we are going to decide what is a good job and what is a bad job is dangerous. Any job is better than no job. So he has a real problem with the wording. How are we going to grow our tax base with higher taxes, annexation, and the cost of housing? They are all placing a strain on our young people who can't afford a place to live. This Plan is loaded with regulations. This Plan might be counter productive to the City in the long run. On page 33 it lists successes in smart growth. It says the Gerber Urban Village is a success – there is nothing happening out there. It's still a vacant piece of land. Regarding Azalea Road Park - we're still waiting on the Blue Ridge Parkway to do something with that. The I-26 Connector Public Input Process was wonderful but we won't have it done until 2012. How can you say that's successful? When we put these kinds of things into the Plan that aren't even implemented yet and may not even work, why include them. On page 60, it says the City wants to have the responsibility to guide growth and development. It also states it has the ability. To him that means that staff, and not the private sector, will have the heavy hand. They will quote this Plan and implement the regulations. This scares him. If you carefully read page 65, staff already can micromanage site designs and now they want to manage structure designs. Where are we going to stop? If the staff can do all that plus regulate structures, then staff has a heavy hand and will probably continue to make business and development tough in the City. It says the reason for this is to make things streamlined. But in fact, it puts more power on the staff and to him it will be more erroneous in some ways that what we are trying to accomplish. On pages 158 and 159, it talks about trees. If the Plan is adopted, a person in the City who has trees to cut down will have to get a permit for it as well as hire a professional tree surgeon. This is a minor thing, but again that is more control. He can understand that if it's on the City's streets but not if it's in their backyards. It seems to him that the City wants to control people, property and permitting. There is even a suggestion in this Plan that new foliage for buffers has to be common and indigenous to western North Carolina. As an outdoorsman, he knows there is no way you can control that. If you look in the woods, there are trees from all over the southeast growing. There is an area that talks about the City of Asheville building, or helping to support, a railroad terminal in Biltmore. Railroading is a hobby he has had for 30 years. Northfork Southern's railroad ties aren't strong enough to support high speed rail. If the City's going to build this, Northfork Southern has a lot of work to do on their tracks before it will ever be high speed rail service. It seems to him this will be a long, long time coming and the money spent on this would be better off spent somewhere else. On page 208, there is only 1.5 pages out of over 200+ in this entire Plan about police. He, and members of this Council, have recently supported more police in our neighborhoods due to high crime rates. The unreported ones are the ones that worry him the worst. To put a 200+ page document together and say we don't have a police problem or a crime problem really disturbs. If our children aren't safe in their homes, why worry about where they are going to play. On page 47, it states that a mobile home can't be considered home ownership. Ask any person with a mortgage on a mobile home what they think about that statement. Some of these statements don't need to be in the Plan. Mr. Shuford responded that a mobile home is not taxed as real property so it can't be considered as a home. But he didn't disagree at all that a mobile home is considered as a home. Councilman Dunn then continued by saying that maybe technically it can't be considered, but if someone is paying for their home, you may have an argument there. In closing he pointed out the many areas of increased control, unrealistic expectations and goals. Many people have worked on this Plan and all of them have the best interest in Asheville. But all of us have different opinions. He would suggest that we change the verbiage in a lot of areas and put a disclaimer on it making it clear that it's a vision and not a plan. He sees places where we can waste money and create bad will in the community if we do some of this. The 2025 Plan has already been quoted by staff and it does include some areas of elitism in his opinion He can't support this document as it's written right now. Many things addressed in it are worthy, but there is room for further intrusion by City government into the lives of taxpayers. We already have a Unified Development Ordinance, a Planning Department and a City Development Office for this very purpose. When you look at the matrix, it will show you how tough this is going to be. Surely we can find a way to re-word and shorten this Plan and only undertake realistic steps. All these things will cost money and create more bureaucracy. Plans often change and visions are like ghosts – they only appear to certain people. Let's not put that much faith in either one of them.

Councilman Peterson said that the citizens committee and staff has done a great job with trying to further flush out some of the principles of smart growth and he feels this is a good solid document because there is a good solid foundation to build on. One area that he sees as a weakness is that whenever there is a new development going into any part of Asheville, either a park with the Armory or some housing development, the public comes in and says the roads can't handle it, the waterlines can't handle it, etc. Their concerns are always the infrastructure. Going hand in glove with greater density, particularly with infill, the City is going to have to make that commitment. There are some comments in the Plan that address this but it's not clearly linked that to encourage that greater density, in particular the infill, the City is going to make the commitment to improving infrastructure in areas that may have the old waterlines, or streets that need improvements. Particularly as we saw with the Richmond Hill area, when they see more development and more traffic, they want some traffic calming measures. He felt that if the City was more pro-active about it and said, we know with greater density we're going to need better infrastructure and we're going to make that commitment, that people will be more willing to accept it. He thinks that what most of the public hears staff say is, once you build all these new housing units, then there will be the demand for this infrastructure. The public wants the infrastructure before the development comes. He would like to see something that clarifies that smart growth means not just putting more people downtown or more people in the neighborhoods, but improving those qualities so that it doesn't bring everybody's quality of life down by just having more people.

Councilman Peterson said that on the flip side of focusing on having greater growth downtown and in the existing developed areas, he felt the document is very weak on managing growth in areas that we don't want to see greatly developed. That as long as people can develop up on the mountain ridges and build greater density, they won't have that pressure to do infill development. And, the impact doing something along the mountain ridges is going to be a greater impact than doing something with infill in the neighborhoods. He would like to see that link being made that we're not just going to open up the door for greater density closer in town, but to make it clear that that will mean growth management measures in other areas that we don't want some of that greater density. If we are going to make smart growth work, it has to be encouraging growth where we want it and limiting growth where we don't want it. He doesn't see that mentioned much in the Plan.

Vice-Mayor Bellamy asked about the other plans mentioned in the 2025 Plan. Mr. Shuford said that when the 2025 Plan is adopted, the attached Center City Plan would be adopted as well. Mr. Shuford explained that the reason the plans are separate is that we often get people who are interested in the downtown area and we wanted to have a document that we could separate and distribute to them that would deal only with that one area. He did say that there are a number of different plans mentioned in the 2025 Plan though. Some of those that are referenced in the Plan, which have already been officially adopted, are the Greenway Plan and the Pedestrian and Bike Plan. Some other plans mentioned are some small area plans in five priority areas. Those are plans that will come before Council in the future.

Councilman Mumpower said that we've inherited this from the previous Council and it's also had the touch of a whole lot of people, including staff. It is obviously supported by a number of my colleagues on Council. He is personally not interested in tossing a lot of disrespect toward any of those entities, so he will be brief. He has had many conversations with Mr. Shuford and a lot of correspondence about this and it is very clear that he has a significant number of concerns about this document. In summary of those, he does believe the document is much too large and bulky. Anything staff can do to condense it down to a more practical format that the average user can put to practical use is a good investment of time and energy. Secondly, he would question the title of the document. This is one of the things that threw him the most in the beginning. This document does not reflect what he, from a commonsense prospective and from the average person on the street, would see as a comprehensive city plan. There are just far too many things that are not addressed in the document. He hoped one day we could do a comprehensive plan. He would like to see this Council suggest a format and then see if there are some ways that we might pursue that. But for now, we're talking about Asheville's 2025 Land Use Guide. He thinks that would be a much more appropriate title and one that he personally he could feel more comfortable with. Without going into detail, he has some similar concerns about the content that Vice-Mayor Bellamy, Councilman Dunn and Councilman Peterson mentioned. He would be comfortable in communicating those concerns directly to Mr. Shuford. He does believe there is some detail in the Plan that could be changed. He is especially concerned about elitist language. He feels that when you do a document this large it's hard to do everything perfectly. But, there is a tone and comments made that he doesn't think reflect a good model for a community that is trying to be inclusive and considerate of our variety of peoples that want to make people bring decent jobs to this community feel welcome. People that work in jobs that may not be considered the ideal, best or elite need to feel good about what they do. The fact is that we need jobs of almost any decent sort here and he felt language that reflects otherwise is a poor investment in our future. He suggested we remove examples of non-existing or future projects. He thinks we reference examples that really haven't happened, may not happen and there should be examples out there that we can use to substantiate the content. Mr. Shuford agreed and he was as disappointed as anyone that, for example, the Gerber Urban Village has not moved forward. There are some reasons for that but he is hopeful that project will move forward soon. He agreed that referring to it in the document perhaps is a bit premature and there are other examples. Councilman Mumpower continued in that he hopes that we learn from this for our future. He's not sure this has been the best investment of our time and energies for our future. He tends to personally be more inclined toward activities that have a more concrete nature. He's heard us speaking really from both sides of our mouth on this document. On one hand we say it's a guide, it's nothing that locks us down, and it's nothing that Council has to vote on all these issues. It's played as not a terribly serious document. On the other hand we've had the input of hundreds of people and spent no telling how many staff hours. It's 200+ pages long and we know from past experience that we do reference these guides seriously and frankly, he thinks we should. He hoped in the future we can get settled on one place or the other. We either are going to have a serious document that deserves serious consideration and has serious buy-in by everyone, or if it's just a guide, or a vision, personally he's not sure this is the best place for us to put so much time and good energy on our future.

Councilwoman Jones said that there is a structure in the matrix, like the land use, air quality, economic development, City services, etc. that all makes good sense. But there are a couple of headings in the matrix that are very important, but they are sub-categories. For example, the entire development tools should be sections, because it's so much of what we do day in and day out as far as government services go. That applies to affordable housing too. It's just in those two places. In her very brief study of city planning, she understands that in strategic plans if the subsections are cross-referencing each other, that actually makes it a stronger plan because you're being consistent within the different functions. As we update it down the line, she suggested we do that to really build on each section. Some people may think it's duplicative, but really it's a stronger base. She expressed her gratitude towards the powerful public input and did think the input was from a cross-section of people. She really didn't care what we call the document – vision, guide or plan. She felt the word "vision" is powerful. She thinks that is part of what leadership has to offer a community is a vision. Then we have staff and citizens that help us live out the concrete part. She will interpret this document as a strong informative plan, guide, vision, or roadmap. She will take it very seriously and very seriously to heart. The word will not change the power. In terms of all the responsibilities of the City government including public safety, infrastructure and land use planning, we use the word balance. What is happening is we have to hold everything in tension and that, to her, is the hard work of Council. Balance at the end of the day is arbitrary as everyone's balance will be different. But what we need to do is keep everything in tension and she thinks this Plan actually does that. She hopes the economy turns around and we can allocate dollars to see these things put into action. She wanted to be clear where she will be coming from, in terms of how she will be interpreting this document and how she will be looking at budgeting going forward. She thinks it's a good job.

Mr. Shuford wanted to be clear that the intent of this Plan is an effort to establish a series of tasks for staff to work on and bring them forward for separate consideration. How Council acts on those tasks will determine how the plan is implemented. It's not an implementation, but a tool that gets you to the implementation.

Councilman Dunn said that five years from now another Council will be seated and since this Council adopted this Plan staff will have to implement it. He felt the next Council will be locked in to a certain degree. He sees some problems with that up the road. Mr. Shuford responded in that in five years he'd like to think there will be substantial changes to this document to reflect new things. Last year we had an Early Action Compact to deal with air quality issues, we have a Joint Planning Area concept, we've made significant progress in attempting to achieve the developer/neighborhood coordination communication aspects, we've had a number of different zoning districts adopted, and efforts to promote smart growth ranging from code amendments to development projects. Not updating this document on a regular basis is a huge mistake and so it must stay current with the times and hopefully that will mean that it's current with the councils.

Mayor Worley said that this is a guide. There is nothing in the document that carries the force of an ordinance that we enact. It may lead us to enact ordinances, but it's a guide, just like the 2010 Plan has been a guide. The 2010 Plan has been followed and it has been not followed on occasion where circumstances and a particular council thought it was in conflict with where they wanted to go. That certainly is the prerogative of this Council or any council. In reality, what you are telling us and what we intended with the 2010 Plan, but it didn't always happen, is that where a council chooses not to follow that Plan, that in itself constitutes an amendment to the Plan to bring it into consistency with whatever the philosophy of that council is. That is something we need to recognize that when we adopt this Plan, or if we adopt this Plan. We are not setting something in concrete that can't be changed. We are setting a guideline that as things come up we will see fit to follow or future councils will see fit to follow. If not, change the Plan. Things do change and things do come up that are unanticipated. There is a section in the Plan that deals with annexation and extraterritorial jurisdiction and certainly encourages us to continue expanding in that vein. There is no mention of our current agreement that we are working on with Buncombe County for a Joint Planning Area. That certainly changes the extraterritorial aspect of it. It was his recommendation to change the language to deal with that current situation. Mr. Shuford agreed and said that we are planning to do that. Mayor Worley continued by saying when he looked at the implementation timeline, it struck him as being rather aggressive in terms of the timeframe. When you look at the timeframe shown, it's either ongoing for a good number of things or for those that have dates, it's generally 2003 to 2005 time period. The 2003-05 time period struck him as being too aggressive since we're almost at the end of 2003. It seems like some of those things should be a little longer. He felt the Fire Department area was the only area he saw was stretched out as far as 2010. Mr. Shuford said we do plan on making some adjustments for a variety of reasons. Mayor Worley made an editing note by saying tax increment financing is now called project development financing. In area of transit planning and particularly efforts to manage transportation demand, he has served on the Transportation Demand Management Panel with the N. C. Dept. of Transportation and the final report from that is in the process of being prepared and will be circulated very soon. He believed that report was going to call for the creation of a couple of transportation demand associations to try and foster some alternative modes of transportation usage. Of the two that are recommended, one is recommended for Asheville. So, potentially incorporating what he thinks will be a forthcoming transportation demand association into the Plan would be consistent with what he thinks will be coming out from the N. C. Dept. of Transportation within the next month or so. Mr. Shuford said that he would contact Mary Clayton for verification.

Mr. Shuford thanked Council members for the comments. He will list all the changes report back to Council in a month or so.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Vice-Mayor Bellamy announced vacancies on the following boards and commissions: Clean Air Community Trust Board, Economic Development Strategic Plan Implementation Task Force, Historic Resources Commission, Board of Electrical Examiners, Noise Ordinance Appeals Board, Transit Commission and Tree Commission. For an application form please call the City Clerk at 2659-5601.

Councilman Ellis read a letter from Victor R. Trantham Jr., Vice-President of the Haywood Street Redevelopment Corporation, dated June 25, 2003, thanking all those who worked with diligence to ensure that the Haywood Street and Battery Park project went smoothly.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English felt the City should not be in the affordable housing business. He also felt that money allocated for bus passes should be used for something else.

Mr. Mike Fryar explained how City Council was misinformed by City staff about how much of his property was already in the City prior to his recent annexation and about development behind his property.

Mr. Gabriel Ferrari, west Asheville resident, alleged sabotage of his North Carolina Corporation by the Director of Building Safety in 1997. He said that after he related his allegations to the North Carolina Corporate Division, they advised him to hire a lawyer and sue the City for damages. He advised Council he would pursue that avenue.

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VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:26 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 15, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Utility Agreement with NC DOT to Relocate Water Line on US 19-23 at Bridge 123

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line in the State right-of-way on US 19-23 at Bridge 123 (Smoky Park).

The Water Resources Department operates a 6-inch water main along 19-23 under the policies of the Regional Water Authority of Asheville, Buncombe and Henderson (RWA), which is owned by the City of Asheville. According to the 1996 Master Plan, this line needs to be upgraded to an 8-inch line. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT and the City staff agreed to relocate the 6-inch water line and upgrade it to an 8-inch main to meet the requirements of the 1996 Master Plan. The NCDOT has estimated the construction cost of this relocation at $32,424.75. An additional $4,875.25 needs to be added to include contingency and inspections, so the total amount that is budgeted is $37,300.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City of Asheville upon completion of the project. The lump sum payment $32,424.75 is due within sixty days of invoicing by NCDOT. Funding will be available in the 35 Fund – Water Major Capital Improvements Fund effective July 1, 2003. The Fiscal Year 2003-2004 Transfer to Capital will fund this NCDOT project as well as other NCDOT Projects, Annexation Projects, and Treatment Plant Improvements.

Staff recommends that City Council approve a resolution authorizing the Mayor to execute a Utility Agreement with NCDOT to relocate a water line in the State right-of-way on US 19-23 at Bridge 123 (Smoky Park).

Interim Resources Director David Hanks responded to questions from Councilman Peterson regarding this improvement.

Clerk to Advertise Offer to Purchase Property between Courtland Avenue and Houston Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located between Courtland and Houston Streets.

The subject property is an RS-8 Residential Single-Family High Density District parcel located on Courtland Avenue and extending south to Houston Street comprising of approximately 3.8 acres (PIN No. 9639.20-91-4343). The Fair Reuse Value for the parcel is $65,600. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development. The property was appraised by Richard L. Smith, SRA, on May 22, 2003, at a value of $65,600.

Flynn Christian Fellowship Home has submitted a bid to purchase the property in the amount of $65,600. The proposal includes a plan to build three two-story buildings on Courtland Avenue for office and residential space along with an additional two story residential structure on Houston Street at an anticipated development cost of $700,000.

Approval of the resolution will establish a minimum price of $65,600 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution authorizing advertisement for upset bids.

Municipal Agreement with the N. C. Dept. of Transportation for Sidewalk Along US 19-23/74A

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for the installation of approximately 1,600 linear feet of concrete sidewalk along US 19-23/74A from Asheville School to the newly constructed bridge over the railroad tracks.

NCDOT is currently in the process of replacing a bridge on US 19-23/74A (also know as Smoky Park Highway). This bridge is located in front of Lowe's. As part of this project we have requested that sidewalk be installed along the section of roadway adjacent to the construction.

The agreement will require NCDOT to pay up to $50,000 for the construction of the sidewalk. The City of Asheville will be required to pay any costs above this amount. The City has an additional amount of $10,000 budgeted in this year's budget for this project. While the sidewalk has not been constructed, the cost of the sidewalk is not expected to exceed $60,000.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with NCDOT for the installation of approximately 1,600 linear feet of concrete sidewalk along US 19-23/74A from Asheville School to the newly constructed bridge over the railroad.

Modification of Fire Code Violations

Summary: The consideration of an ordinance amending the fire code violations in order to be consistent with the new State Fire Code.

The North Carolina State Building Code Council adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective January 1, 2002. Section C of Appendix B (Schedule of Civil Penalties) establishes Fire Code violations that coordinate with Chapter 6 of the Code of Ordinances, which is the Fire Code for the City of Asheville.

Staff recommends City Council adopt the ordinance amending Section C of Appendix B (fire code violations) of the Code of Ordinances in order to be consistent with the new State Fire Code.

Non-Warranty Deed on Westchester Drive

Summary: The consideration of a resolution authorizing the Mayor to convey by non-warranty deed whatever interest, if any, the City may have in a portion of Westchester Drive containing residential encroachments.

Westchester Drive is located between Chiles Avenue and Holland Place in the Kenilworth Community. Harry M. Weiss and wife Roberta J. Cole along with Mary Caudill Weiss own the real property located at the corner of Chiles Avenue and Westchester Drive, being 17 Chiles Avenue. Situated on the property at 17 Chiles Avenue is a residential structure with a garage. Approximately 3 ft. of the garage along with a portion of the porch and foundation wall, encroaches onto the right of way of Westchester Drive. It is unclear whether the encroachments existed before or after the right of way of Westchester Drive was established; although the evidence appears to indicate that the dwelling existed prior in time to the designated right of way. Due to future plans for the property, the property owners desire to resolve the encroachment issue as such is a potential cloud on title. City staff has investigated and determined that the encroachment of the garage and possibly the other encroachments have been in existence since 1925. The City has exercised neither dominion nor control of the area of the encroachments and has no interest in exercising such control. To the extent the City has any interest in the area of the encroachments, which the City believes it has no interest, conveying such interest is in the City's best interest.

The Public Works Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed conveying whatever interest, if any, the City has in the right of way containing the encroachments as specified above.

Demolition Contract for Haywood Street Parking Garage

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with E. Luke Green Co., Inc., in the amount of $184,377 for the demolition of four structures on the proposed Haywood Street Parking Garage Project.

In an effort to remove buildings for the new downtown parking deck, City staff, through the capital improvement process, has determined that four buildings have to be demolished. City staff solicited sealed bids from General Contractors, three of which were minority contractors, to provide demolition services. The following seven qualified bids were received:

E. Luke Green Co., Inc.	$184,377
Jones Grading & Fencing, Inc.	$224,000
Cherokee, Inc.	$230,500
Buncombe Const. Co., Inc.	$259,500
Still Enterprise, Inc.	$288,995
Taylor & Murphy Const. Co., Inc.	$327,889
Empire Dismantlement Corp.	$345,670

City staff has reviewed all bids and determined that E. Luke Green Co., Inc., is the lowest bidder. City staff recommends acceptance of the total bid amount of $184,377.

Approved funding is available in the capital improvement project account to pay for the demolition of these four buildings.

City staff recommends City Council authorize the City Manager to enter into an agreement with E. Luke Green Co., Inc., in the amount of $184,377 for the demolition of four

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structures on the proposed Haywood Street Parking Garage Project with the condition that the City own all the structures prior to authorizing the contract to proceed.

Upon inquiry of Vice-Mayor Bellamy, City Engineer Cathy Ball said that the contractor is responsible for removing the inert debris and they will probably take it to the Buncombe County landfill. Ms. Ball explained that there would be no surface parking where the structures will be demolished. A permanent construction fence will be built, noting that businesses and residents in the area are working with the schools to sponsor a program about the history of downtown Asheville, using plywood, which will be attached to the fence.

Upon inquiry of Councilman Mumpower, Ms. Ball said that the range of the bids are not uncommon for this type of project.

Upon inquiry of Councilman Dunn, Ms. Ball said that construction would start around August 1 and it will take approximately 45 days.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON MINIMUM HOUSING CODE

Director of Building Safety Terry Summey said that this is the consideration of receiving options from staff and the Citizen Task Force teams concerning amending the Minimum Housing Code, and consideration of setting a public hearing on August 12, 2003.

Since July 1994, the City has been aggressively implementing one of the most proactive Housing Codes in the country. During that period over 90% of the rental units in the City are in compliance with the Code. At least 25% of owner occupied units have been inspected for compliance with the Code. The program has been highly successful with minimum City Council or court action. The current Code with its fees, penalties and enforcement tools has resulted in owners and landlords bringing their units into compliance with the Code. Nevertheless, it is the opinion of the Director of Building Safety that the Code should be modified to reduce the burden and expense upon owners and landlords that comply with the code. Consequently, several options have been developed. Options A and B reflect the recommendations of the Housing Code Citizens Task Force groups. Options C and D reflect the recommendations of City staff based upon the issues presented at the worksession on March 18, 2003, informal discussions with all City Council members as well as members of the Housing Code Citizens Task Force group. The informal meetings with City Council members focused on options 1-4.

Four options have been summarized on the a matrix for further consideration by Council:

Option A	Recommendation developed by the Citizen's group interested in a complaint based code, with a mandatory program only for units with major life safety issues
Option B	Recommendation developed by the Citizen's group interested in maintaining a mandatory program with some changes and reductions to the enforcement process
Option C	Staff recommendation with an emphasis on reducing the percentage of rental units inspected
Option D	Staff recommendation to address only life safety issues for owner occupied properties, and reduce the percentage of rental properties inspected

The above options include but are not limited to:

- Editorial and technical changes with an emphasis on reducing costs and having a more flexible Code; these changes will be finalized after Council has decided the type of enforcement program to be used by the City
- Technical changes will include updates to references to the North Carolina State Building Codes and State laws
- Proposed new penalties for units not in compliance
- Changes to the Fees and Charges Manual
- Update and finalization to the inspection forms

City staff recommends that Council consider setting a public hearing on July 22 for a public hearing on August 12, 2003, to consider changes to the Housing Code. Staff recommends that Council first consider changes to how the Code will be enforced, and upon adoption of those changes, that Council then continue the public hearing to a specified date to consider editorial and technical amendments to the Housing Code, and amendments to the Fees and Charges Manual.

After Mr. Summey briefly explained Options A-D and Options 1-4, he responded to various questions/comments from Council, some being, but are not limited to, what is the difference in penalties from the different options; how many structures have been inspected and how many people are still working on bringing them into compliance; what happens if people do not pay the penalties; what percent does a homeowner have to pay to administer the program; ability for abuse by staff who will be looking for noncompliance to pay for their positions; what is the difference of Option A of the Citizen Task Force's recommendation for owner occupied inspections; there is no way the City can guarantee that all life safety issues are addressed; how many complaint calls have been received from people living in substandard housing; where is hard core proof that shows that the Minimum Housing Code is reducing fires; how does Asheville's Code regarding commercial properties compare to other cities; request for background information about third party inspectors and if they are useful; why does it state "not determined" under Options A & B of the fees/penalties; what types of checks and balances does the City use to not get into family feuds regarding complaints; do we currently require names and addresses for complaints; what is the cost to the City of a fire; and are our inspectors licensed to be home inspectors.

Upon inquiry of Councilman Mumpower, Mr. Summey said that Options C and D are staff generated options.

It was the consensus of City Council to have Mr. Summey make a collective recommendation to Council at their August 12, 2003, public hearing, and to reformat the information presented by adding an additional column at the end. Mr. Summey said that he would email the reformatted chart to Council and would also place a hard copy of the chart in Council's mailbox.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the July 22, 2003, formal City Council agenda to set a public hearing on August 12, 2003.

PUBLIC ART BOARD PRESENTATION – PURCHASE OF IDA KOHLMEYER SCULPTURE

Dr. Barbara Cary, Chair of the Public Art Board, explained the history of the Public Art Board and the City's Public Art Policy. She explained how the Board is carrying out its charge. She said that this is the consideration of a resolution approving the purchase of a piece of public art to be installed on City-owned property.

Ms. Barbara Clark, member of the Public Art Board, read an article from USA Today entitled "Arts create economic powerhouse for N.C. City" that talks about public sculptures making Asheville a popular destination. She also briefed Council on information of Ida Kohlmeyer and her works.

Ms. Pam Myers, member of the Public Art Board, said that the Board is requesting City Council approval for the purchase of a piece of art from the Ida Kohlmeyer collection known as "Conversation Piece #4C." As part of the approved Public Art Master Plan, the Public Art Board is given the authority to recommend the purchase of public art pieces for the City of Asheville. Currently, approximately $50,000 is appropriated per the approved ordinance to go towards public art for the City of Asheville. The ordinance requires the Public Art Board to raise half of the funds to be spent on the acquisition of public art. The Kohlmeyer piece will cost $55,000 with 1/3 of the cost being provided by the Kohlmeyer Foundation, approximately $18,000 raised by the Public Art Board through various fund raisers, and the balance coming from the funds already appropriated in the Public Art Board account by the City of Asheville. On June 22, 2003, another fundraiser was held in which an additional $5,800 in donations was received. She said that they are requesting $18,300 from the existing appropriation.

No decision has been reached on where the art piece will be placed. The Public Art Board is requesting City Council approval to proceed with the purchase of the Ida Kohlmeyer piece "Conversation Piece #4C."

Councilman Mumpower expressed concern about the investment in this piece of art. He believes that public art plays an important role in our community and he wouldn't want to do anything to harm the arts or to step beyond the reasonable perimeter regarding public art. However, he believes our public art money should be invested in what the majority of our citizens can embrace with acceptance and understanding and he was not sure that this piece of art accomplishes that goal. He was also concerned that the site has not been determined yet.

Mayor Worley spoke in support of the purchase noting that Asheville has been named as one of the top destinations for art. He thinks the piece will be a part of the uniqueness of Asheville.

Vice-Mayor Bellamy did note that this is a conversation piece and she felt we should try to meet the needs of all our citizens.

When Councilman Dunn asked what exactly the piece was supposed to be, various members explained what the piece meant to them.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 4:50 p.m., Mayor Worley announced a short break.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on July 22, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Revision to Requirements for Signs

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for signs.

This code amendment is a general "housekeeping" type amendment intended to add language allowing community identification signs, create sign code allowances for several new zoning districts, and to formalize prior interpretations of the code.

A summary of the Sign Code changes include:

- Adds language relating to approval bodies in first paragraph.
- Codifies community identification sign allowances and standards.
- Adds provisions for Urban Residential District, Urban Village District, and Neighborhood Corridor District.
- Achieves consistency with building code permitting requirements (previous requirement was for 60 day permit validity).

The Planning and Zoning Commission unanimously recommended approval of this code amendment on June 19, 2003 by a vote of 4-0. City staff also recommends approval of the proposed code amendment.

Upon inquiry of Councilman Mumpower, Mr. Shuford explained the different organizations that reviewed the ordinance amendment.

It was the consensus of City Council to place this public hearing on the July 22, 2003, formal City Council agenda.

Provision for Development Standard Bonuses in Residential Districts

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to provide for more flexible application of development standards, including density requirements, in all residential zoning districts.

This code amendment provides for more flexible application of development requirements in all residential zoning districts. Affected districts include: RS-2, RS-4, RS-8, RM-6, RM-8 and RM-16. Under certain circumstances, a conditional use permit process can be used to modify development standards, including increasing density above the maximum permitted in each of these zoning districts, if the applicant successfully demonstrates that the project would exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood, and would also achieve one or more of the following City goals:

- Promote the City of Asheville's affordable housing programs by providing housing that is affordable for purchase by people with household income below the area median or for rental by people with household income less than 80% of the area median, and particularly housing that meets the needs of people who have special needs or household income less than 60% of median income.
- Implement an officially-adopted development plan for the area.
- Exhibit exceptional site design that preserves critical environmental features on the site.
- Assist the City of Asheville in meeting critical infrastructure needs, including but not limited to the preservation of open space, the creation of regional stormwater retention facilities, and achieving greater interconnectivity of the street network.
- Effectively incorporate public transit as a primary mode of transportation to and from the development.

On June 19, 2003, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 4-0. City staff recommends approval of the proposed code amendment as well.

Councilman Peterson initiated discussion surrounding his concern that the protest petition process would be eliminated since the application of this amendment would not be considered a rezoning.

Upon inquiry of Councilman Mumpower, Mr. Shuford said that he has met with Mr. James Judd, who was very involved in the Ross Creek Commons Project, and Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods (CAN), on this amendment. In fact, Mr. Judd provided good suggestions for the code amendment. He was not certain if CAN officially voted on this amendment, but they have been involved in the entire process.

Upon inquiry of Councilman Mumpower, Mr. Shuford said that Council directed him to make a more streamlined developer process with more flexibility with regard to Council's decision-making process. He felt this code amendment accomplished that. To add the protest petition process would require the amendment to be modified substantially.

Upon inquiry of Councilman Peterson, City Attorney Oast said that he would explore the conditional use zoning process which has been approved in Charlotte to see if that might be something City Council would be interested in.

Councilman Ellis felt he could support his amendment as staff is following the direction of City Council to make the UDO streamlined.

Councilman Dunn felt it was time to appoint a Task Force to review the entire UDO. Mr. Shuford said if Council chooses to do that, he would recommend that the review not be undertaken by staff, but a consultant so staff can work on their day to day activities.

Councilwoman Jones felt this would be another good tool for Council to work with.

When Councilman Mumpower suggested he meet with Mr. Shuford to discuss his concerns, Mr. Shuford suggested the public hearing be postponed until August 12, 2003, in order to give him an opportunity to meet with Councilman Mumpower and time for the City Attorney to explore the Charlotte process.

It was the consensus of City Council to continue the public hearing originally scheduled for July 22, 2003, until August 12, 2003.

BOARDS & COMMISSIONS

It was the consensus of City Council to wait until the Clean Air Community Trust Board makes its recommendations for Council to confirm members to the Board.

It was the consensus of City Council to appoint Laura Webb (Webb Insurance Services), Jacqueline Grant (Roberts & Stevens) and Daniel Prevost (Institute of Biltmore) as members to the Economic Development Strategic Plan Implementation Task Force, as recommended by the Task Force members.

It was the consensus of City Council to appoint Brian Kintner and reappoint Tommy Wilson, Ronnie McAbee, Terry Ponder and Harold Garland to the Board of Electrical Examiners.

It was the consensus of City Council to reappoint Frank Thomson and Curtis Walk to the Asheville-Buncombe Historic Resources Commission.

It was the consensus of City Council to reappoint James Fink (regular member) and Scott Fowler (alternate member) and to appoint Sieglinde Anderson (regular member) to the Noise Ordinance Appeals Board. It was also the consensus of City Council to amend the terms of members of the Board from two years to three years, effective immediately.

It was the consensus of City Council to appoint Jennifer Knudtson to the Transit Commission. It was also the consensus of City Council to amend the terms of the members of the Commission from two years to three years, effective December 31, 2003.

It was the consensus of City Council to arrange interviews for a vacancy on the Tree Commission.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:55 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 22, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Joseph C. Dunn

PLEDGE OF ALLEGIANCE

Marine Corp Veteran Danny Roberts led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 12, 2003, AS "WORKPLACE PARTNERSHIP FOR LIFE CELEBRATION DAY"

Mayor Worley read the proclamation proclaiming Tuesday, August 12, 2003, as "Workplace Partnership for Life Celebration Day " in the City of Asheville. He presented the proclamation to Mr. Ed Jenest and Mr. Alan McKenzie who briefed City Council on some activities taking place during the day. They passed out to Council a lapel pin and an organ/tissue donor card.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 8, 2003, AND THE WORKSESSION HELD ON JULY 15, 2003

B. RESOLUTION NO. 03-116 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RELOCATE A WATER LINE IN THE STATE RIGHT-OF-WAY ON US 19-23 AT BRIDGE 123 (SMOKY PARK)

Summary: The consideration of a resolution authorizing the Mayor to execute a utility agreement with the N. C. Dept. of Transportation (NCDOT) to relocate a water line in the State right-of-way on US 19-23 at Bridge 123 (Smoky Park).

The Water Resources Department operates a 6-inch water main along 19-23 under the policies of the Regional Water Authority of Asheville, Buncombe and Henderson (RWA), which is owned by the City of Asheville. According to the 1996 Master Plan, this line needs to be upgraded to an 8-inch line. Under State law, NCDOT is requiring the owner, the City of Asheville, to relocate this water main during roadway construction. The NCDOT and the City staff agreed to relocate the 6-inch water line and upgrade it to an 8-inch main to meet the requirements of the 1996 Master Plan. The NCDOT has estimated the construction cost of this relocation at $32,424.75. An additional $4,875.25 needs to be added to include contingency and inspections, so the total amount that is budgeted is $37,300.

The Utility Agreement will authorize NCDOT to include the water main relocation in the highway construction project, with NCDOT administering the construction and invoicing the City of Asheville upon completion of the project. The lump sum payment $32,424.75 is due within sixty days of invoicing by NCDOT. Funding will be available in the 35 Fund – Water Major Capital Improvements Fund effective July 1, 2003. The Fiscal Year 2003-2004 Transfer to Capital will fund this NCDOT project as well as other NCDOT Projects, Annexation Projects, and Treatment Plant Improvements.

Staff recommends that City Council approve a resolution authorizing the Mayor to execute a Utility Agreement with NCDOT to relocate a water line in the State right-of-way on US 19-23 at Bridge 123 (Smoky Park).

RESOLUTION BOOK NO. 27 – PAGE 447

C. RESOLUTION NO. 03-117 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY BETWEEN COURTLAND AVENUE AND HOUSTON STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located between Courtland and Houston Streets.

The subject property is an RS-8 Residential Single-Family High Density District parcel located on Courtland Avenue and extending south to Houston Street comprising of approximately 3.8 acres (PIN No. 9639.20-91-4343). The Fair Reuse Value for the parcel is $65,600. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development. The property was appraised by Richard L. Smith, SRA, on May 22, 2003, at a value of $65,600.

Flynn Christian Fellowship Home has submitted a bid to purchase the property in the amount of $65,600. The proposal includes a plan to build three two-story buildings on Courtland Avenue for office and residential space along with an additional two story residential structure on Houston Street at an anticipated development cost of $700,000.

Approval of the resolution will establish a minimum price of $65,600 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution authorizing advertisement for upset bids.

RESOLUTION BOOK NO. 27 – PAGE 448

D. RESOLUTION NO. 03-118 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF SIDEWALK ALONG US 19-23/74A

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for the installation of approximately 1,600 linear feet of concrete sidewalk along US 19-23/74A from Asheville School to the newly constructed bridge over the railroad tracks.

NCDOT is currently in the process of replacing a bridge on US 19-23/74A (also know as Smoky Park Highway). This bridge is located in front of Lowe's. As part of this project we have requested that sidewalk be installed along the section of roadway adjacent to the construction.

The agreement will require NCDOT to pay up to $50,000 for the construction of the sidewalk. The City of Asheville will be required to pay any costs above this amount. The City has an additional amount of $10,000 budgeted in this year's budget for this project. While the sidewalk has not been constructed, the cost of the sidewalk is not expected to exceed $60,000.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with NCDOT for the installation of approximately 1,600 linear feet of concrete sidewalk along US 19-23/74A from Asheville School to the newly constructed bridge over the railroad.

RESOLUTION BOOK NO. 27 – PAGE 449

E. ORDINANCE NO. 3041 - ORDINANCE AMENDING APPENDIX B – SCHEDULE OF CIVIL PENALTIES – ESTABLISHING FIRE CODE VIOLATIONS

Summary: The consideration of an ordinance amending the fire code violations in order to be consistent with the new State Fire Code.

The North Carolina State Building Code Council adopted the International Fire Code with North Carolina amendments as the Fire Code for the State of North Carolina effective January 1, 2002. Section C of Appendix B (Schedule of Civil Penalties) establishes Fire Code violations that coordinate with Chapter 6 of the Code of Ordinances, which is the Fire Code for the City of Asheville.

Staff recommends City Council adopt the ordinance amending Section C of Appendix B (fire code violations) of the Code of Ordinances in order to be consistent with the new State Fire Code.

ORDINANCE BOOK NO. 20 – PAGE 385

F. RESOLUTION NO. 03-119 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY BY NON-WARRANTY DEED WHATEVER INTEREST THE CITY MAY HAVE IN A PORTION OF WESTCHESTER DRIVE

Summary: The consideration of a resolution authorizing the Mayor to convey by non-warranty deed whatever interest, if any, the City may have in a portion of Westchester Drive containing residential encroachments.

Westchester Drive is located between Chiles Avenue and Holland Place in the Kenilworth Community. Harry M. Weiss and wife Roberta J. Cole along with Mary Caudill Weiss own the real property located at the corner of Chiles Avenue and Westchester Drive, being 17 Chiles Avenue. Situated on the property at 17 Chiles Avenue is a residential structure with a garage. Approximately 3 ft. of the garage along with a portion of the porch and foundation wall, encroaches onto the right of way of Westchester Drive. It is unclear whether the encroachments existed before or after the right of way of Westchester Drive was established; although the evidence appears to indicate that the dwelling existed prior in time to the designated right of way. Due to future plans for the property, the property owners desire to resolve the encroachment issue as such is a potential cloud on title. City staff has investigated and determined that the encroachment of the garage and possibly the other encroachments have been in existence since 1925. The City has exercised neither dominion nor control of the area of the encroachments and has no interest in exercising such control. To the extent the City has any interest in the area of the encroachments, which the City believes it has no interest, conveying such interest is in the City's best interest.

The Public Works Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed conveying whatever interest, if any, the City has in the right of way containing the encroachments as specified above.

RESOLUTION BOOK NO. 27 – PAGE 450

G. RESOLUTION NO. 03-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH E. LUKE GREEN CO., INC., TO PROVIDE DEMOLITION SERVICES TO REMOVE FOUR BUILDINGS AT THE HAYWOOD STREET PARKING DECK LOCATION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with E. Luke Green Co., Inc., in the amount of $184,377 for the demolition of four structures on the proposed Haywood Street Parking Garage Project.

In an effort to remove buildings for the new downtown parking deck, City staff, through the capital improvement process, has determined that four buildings have to be demolished. City staff solicited sealed bids from General Contractors, three of which were minority contractors, to provide demolition services. The following seven qualified bids were received:

E. Luke Green Co., Inc.	$184,377
Jones Grading & Fencing, Inc.	$224,000
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Empire Dismantlement Corp.	$345,670

City staff has reviewed all bids and determined that E. Luke Green Co., Inc., is the lowest bidder. City staff recommends acceptance of the total bid amount of $184,377.

Approved funding is available in the capital improvement project account to pay for the demolition of these four buildings.

City staff recommends City Council authorize the City Manager to enter into an agreement with E. Luke Green Co., Inc., in the amount of $184,377 for the demolition of four structures on the proposed Haywood Street Parking Garage Project with the condition that the City own all the structures prior to authorizing the contract to proceed.

RESOLUTION BOOK NO. 27 – PAGE 451

H. MOTION SETTING A PUBLIC HEARING ON AUGUST 12, 2003, TO CONSIDER AMENDING THE MINIMUM HOUSING CODE

I. RESOLUTION NO. 03-121 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A LEASE WITH THE MEN'S GARDEN CLUB OF ASHEVILLE FOR ½ ACRE ON AZALEA ROAD

Summary: The consideration of a resolution authorizing the City Manager to enter into a lease with the Men's Garden Club of Asheville (MGCA) for 1/2 acre of land on Azalea Road.

The 1/2 acre on Azalea Road is a portion of the property acquired by the City of Asheville from John Moyer. The City previously leased the space to the MGCA for one year from November 1, 2001, to October 1, 2002.

The MGCA has offered to enter into a nine (9) year lease for the space where it currently has constructed a greenhouse and appurtenant facilities at a rent of $750.00 per year payable in goods and services. The proposed lease will enable MGCA to continue operating the greenhouse facility in its current location. The lease may be terminated by either party upon 60 days written notice.

The Parks and Recreation Department and Planning & Development Department staff recommend adoption of the resolution.

RESOLUTION BOOK NO. 27 – PAGE 452

J. RESOLUTION NO. 03-122 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE

Summary: This is the consideration of appointing members to the Sustainable Economic Development Implementation Plan Task Force.

There currently exists three vacancies on the Sustainable Economic Development Strategic Plan Implementation Task Force: Bob Roberts, Paula O'Hara and Jean Keen.

The Task Force has presented City Council with the following list of people who have been contacted and who have confirmed their willingness to serve, if asked: Laura Webb (Webb Insurance Services), Jacqueline Grant (Roberts & Stevens), John Mark Stroud (Fast Signs), Daniel Prevost (Institute at Biltmore), David McConville (Black Box Studio) and Peter Alberice (Camille-Alberice Architects).

On July 15, 2003, it was the consensus of City Council to appoint Laura Webb (Webb Insurance Services), Jacqueline Grant (Roberts & Stevens) and Daniel Prevost (Institute at Biltmore) to each serve a two year term, all terms to expire June 30, 2005

RESOLUTION BOOK NO. 27 – PAGE 453

K. RESOLUTION NO. 03-123 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

Summary: This is the consideration of appointing members to the Board of Electrical Examiners.

The terms of Tommy Wilson, Ronnie McAbee, Terry Ponder, Joe Enderle and Harold Garland expired on July 1, 2003.

On July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson (electrical contractor), Ronnie McAbee (journeyman electrician), Terry Ponder (utility representative) and Harold Garland (layman) to each serve an additional three-year term. All terms will expire on July 1, 2006, or until their successors have been duly appointed.

In addition, on July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Brian Kintner (licensed engineer) to serve a three year term, term to expire July 1, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 454

L. RESOLUTION NO. 03-124 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: This is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of Frank Thomson and Curtis Walk expired on July 1, 2003.

On July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Frank Thomson and Curtis Walk to each serve an additional three year term, terms to expire July 1, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 455

M. ORDINANCE NO. 3042 - ORDINANCE LENGTHENING THE TERMS OF THE NOISE ORDINANCE APPEALS BOARD FROM TWO YEARS TO THREE YEARS

Summary: The consideration of an ordinance increasing the length of term for Council appointees to Noise Ordinance Appeals Board from 2 years to 3 years.

In connection with its appointment of new citizen members to the Noise Ordinance Appeals Board, Council requested an amendment to the noise ordinance, increasing the length of the term from two years to three years. This three-year term length is consistent with most other boards and commissions in the City. The ordinance will be effective for the terms of Council's appointments made at this July 22 meeting.

ORDINANCE BOOK NO. 20 – PAGE 386

N. RESOLUTION NO. 03-125 - RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

Summary: This is the consideration of appointing members to the Noise Ordinance Appeals Board.

The terms of James Fink (Regular member), Susan Andrew (Regular member) and Scott Fowler (Alternate member) expired on July 1, 2003.

On July 15, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint James Fink (Regular member) and Scott Fowler (Alternate member) to each serve a three year term respectively, terms to expire July 1, 2006, or until their successors have been appointed.

In addition, on July 15, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Sieglinde Anderson (Regular member) to serve a three year term, term to expire July 1, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 456

O. RESOLUTION NO. 03-126 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Summary: This is the consideration of appointing a member to the Transit Commission.

Mickey Mahaffey has resigned as a member of the Transit Commission, thus leaving an unexpired term until December 31, 2003.

On July 15, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Jennifer Knudtson to serve the unexpired term of Mr. Mahaffey, term to expire December 31, 2003, or until her successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 457

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE DEVELOPMENT STANDARD BONUSES IN RESIDENTIAL DISTRICTS

Vice-Mayor Bellamy moved to continue this public hearing until August 12, 2003, in order to give Councilman Mumpower an opportunity to meet with Planning & Development Director Scott Shuford and time for the City Attorney to explore the Charlotte conditional use zoning process. This motion was seconded by Councilman Ellis and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REQUIREMENTS FOR SIGNS

ORDINANCE NO. 3043 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REQUIREMENTS FOR SIGNS

Mayor Worley opened the public hearing at 5:12 p.m.

Planning Development Services Director Joe Heard said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for signs. This public hearing was advertised on July 11 and 18, 2003.

This code amendment is a general "housekeeping" type amendment intended to add language allowing community identification signs, create sign code allowances for several new zoning districts, and to formalize prior interpretations of the code.

A summary of the Sign Code changes include:

- Adds language relating to approval bodies in first paragraph.
- Codifies community identification sign allowances and standards.
- Adds provisions for Urban Residential District, Urban Village District, and Neighborhood Corridor District.

- Achieves consistency with building code permitting requirements (previous requirement was for 60 day permit validity).

The Planning and Zoning Commission unanimously recommended approval of this code amendment on June 19, 2003 by a vote of 4-0. City staff also recommends approval of the proposed code amendment.

Mr. Heard said that the Coalition of Asheville Neighburhoods and the Council of Independent Business Owners have reviewed this amendment. He said that each group has had an opportunity to comment and amendments have been made accordingly.

Upon inquiry of Councilman Peterson, Mr. Heard explained the procedure of placing a sign in the median.

Mayor Worley closed the public hearing at 5:20 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 3043. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 388

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-127 - RESOLUTION AUTHORIZING CITY COUNCIL TO AUTHORIZE THE PUBLIC ART BOARD TO PROCEED WITH THE PURCHASE OF THE IDA KOHLMEYER PIECE TO BE PLACED ON CITY-OWNED PROPERTY

Dr. Barbara Cary, Chair of the Public Art Board, presented a proposal to City Council for the acquisition of a piece of sculpture by an American artist from the south, Ida Kohlmeyer. They are carrying out the charge made to the Board by City Council. That charge includes making recommendations to Council for the acquisition of high quality artwork that reflects Asheville's unique character, that will be visible and accessible to as many residents and visitors as possible, and that will promote Asheville as an arts destination city. The Board is a group made up of local artists, arts educators and other arts professionals. Knowledgeable about public art and mindful of the best interests of the people of Asheville, the Board has selected this artwork. It's a piece created by a distinguished, highly regarded American artist and we believe that it's an artwork that any art savvy American city would be proud to own. The following are some cities that own outdoor Ida Kohlmeyer art sculptures: Two in New Orleans, LA; Charlotte, NC; Mobile, AL; Palm Springs, CA; San Francisco, CA; Santa Fe, NM; Miami, FLA; Hampton, NY; and Chicago, IL. A list of major museums exhibiting Ida Kohlmeyer's work are: Tate Museum, London; New Orleans Museum of Art; Museum of Women in the Arts, Washington, DC; High Museum, Atlanta, GA; National Gallery, Washington, DC; Jewish Museum, NY City; and Metropolitan Museum and the Museum of Modern Art, NY City. The sculpture stands eight feet high on a two-foot display pad. It is constructed of ¼ inch aluminum and finished with a baked on paint like a car finish. It can be maintained in much the same way that you maintain a car finish, with annual waxing, which should protect it from weather and make graffiti easy to remove, if necessary. The expense of maintaining this piece will be minimal. Several sites for the piece have been considered by the Board including the Glenn's Creek Greenway on Weaver Boulevard, a site on Patton Avenue as a gateway sculpture, and in various park systems along the French Broad River. Because the Public Art Board Master Plan includes a provision for neighborhood and gateway art, it may not be placed downtown. Other reasons for a non-downtown site are that downtown is in a state of design flux right now and also that the downtown area is almost approaching art saturation. When installed, it will join the City's other 35 artworks as the only outdoor piece created by a woman.

Upon inquiry of Councilman Peterson, Dr. Cary said that the total cost of the piece is $55,000 and that doesn't include installation. Out of the $55,000, $32,000 has already been raised and $5,000 is yet to be raised by the Board. They are requesting $18,000 from the City, which has already been appropriated for public art. She said that this piece would help further tourism and attractions of Asheville as an art city. She said that the policy is to have the most diverse collection that can be acquired. Asheville has traditional representational pieces and what we wanted to do was to find something that would add some breath to our collection and add some diversity. She said most of our collection is conservative and more traditional and this piece is for people who don't have conservative tastes.

Upon inquiry of Councilwoman Jones, Dr. Cary explained how the board selected this piece. She said various artists made presentations to the Board of their work. The Board talked about the characteristics of the piece they wanted Asheville to acquire. This recommendation is being made after a lot of consideration was given. We wanted to acquire a piece by a woman artist, which was unlike anything else that we had, and a monumental piece. She said this is the first major acquisition that the Art Board has made to Council for art since the City set up the fund in 2000.

Upon inquiry of Councilman Ellis, Dr. Cary said that with outside public art vandalism is an on-going concern and something that can't be ensured against. This piece has a high resistant finish and if it is waxed and maintained, graffiti and those kinds of things are fairly easy to remove. We did research that and talked to people who were familiar with the conservancy of pieces like this.

Upon inquiry of Councilman Ellis, Ms. Pam Myers, member of the Public Art Board, said that Ida Kohlmeyer has passed away and the Foundation she set up continues to exist to safeguard the future of her work. They are placing remaining artworks in museums and with communities throughout the country. As with anything that becomes scarcer over time, the value will continue to increase.

Upon inquiry of Vice-Mayor Bellamy, Parks & Recreation Director Irby Brinson said that his department currently maintains the existing 35 pieces the City has under its ownership, which majority of that being the Urban Trail locations. We maintain those with in-house crews and they know how each piece is required to be maintained. We have a scheduled maintenance for each piece which is generally every 2-3 months and once vandalism or graffiti is seen we remove it that day. The on-going maintenance of this piece is probably less than what we are doing with some of the current Urban Trail pieces. Regarding the installation of this piece, Mr. Brinson said that we will probably have an engineer give us a drawing of what is needed and we will handle it in-house, as we do it all the time.

Upon inquiry of Vice-Mayor Bellamy, Dr. Cary said that they are making this recommendation to Council to broaden the collection. Asheville is an arts destination city. This is a sophisticated piece and for people who know something about art will enjoy.

Mr. Walter Plaue spoke in opposition of the purchase. He suggested the City donate a piece of property for the piece to be located on and the Public Art Board come up with the balance of the funds.

Mr. Fred English, Haw Creek resident, spoke against purchasing the piece in that Asheville already has too much diversity.

Mr. Chad Nesbitt spoke in opposition of the purchase. He felt that money should be allocated to the film business because that will put jobs back in our area.

Mr. Alan Ditmore, Leicester resident, spoke against the purchase and was concerned about the materials of the sculpture.

Mayor Worley said that Councilman Dunn could not be present at this meeting, but asked that he read the following statement on his behalf: "While I realize the value of the arts within our city, and how much it impacts the lives of many people, I feel I must go on record, despite the fact that I am not present for this vote. Public money that we spend on any issue must, in my opinion, look out for the well being and needs of the majority of our citizens. This is especially true in tight economic times. I would not be making these statements if our city found itself in a good financial situation. Art is a very subjective thing. It can bring out emotions in everyone that sees, hears, or feels the thoughts of the artist who create the piece. In this case, it is really not my place to judge the art. Whether I like it or not has nothing to do with my decision. My decision not to support this purchase is based on the fact that our city has not recovered from budget problems that have lead us into two stormy years of trying to get the maximum use of smaller amounts of money. I do not have to remind the Council that we have supported the Arts Council, the Civic Center, Parks and Recreation, and the list goes on and on. All of these ventures support art in one way or another. I also do not have to tell Council that many worthy causes were not supported by this last budget. Help-Mate was one of many that was not funded. But while we could not fund these areas, some members on Council are ready to support taxpayer dollars on a piece of art that is very costly! Sure, $18,000 does not seem like a lot of money, but to those citizens who are burdened by higher taxes and poorer service, this sends a message that their hard earned tax dollars are not being cared for as much as they should be! This piece of art does not reflect our city's or region's personality, culture or history. We have many local artists who can create art for our city in wonderful ways. This money could be kept within our community instead of going to New Orleans. I have serious doubt that a large majority of our citizens will appreciate this purchase. Those fine folks in our community who will appreciate it will be in a small minority. I feel our citizens will find this piece to be divisive in nature and create more conflict than study and reflection. The tax money taken from our citizens needs to be cared for carefully. To say that this purchase meets the needs of our city is 'very doubtful at best.' I had an email from a very hard working citizen who just wanted to know how we can spend this amount of money when her street has not been paved in 40 years? Another call left a message saying she did not want to hear Council crying about not enough funding for basic city services, where there is money available for these kinds of projects. I have to agree with them both. In closing, I do not feel our city is in the position of spending money on projects like these. If the arts community strongly feels this piece needs to come to Asheville, I would suggest they use their money to do so. Place it in a museum for those who will appreciate it and are willing to pay to see it. Let's turn our attention to local artists and allow them to create art for the public's consumption that reflects our region, state and city in a more understandable way! Finally, many citizens are being very careful with any small excess money they have. I feel City Council needs to show the same restraint. When this money was given to the board for art purchases, we were not in such a tough financial constraint. Circumstances change. We need to show that our decisions truthfully reflect situations as they now exist. Buying this piece at this time will send the wrong message to our citizens. Maybe at another time or place this could be appropriate, but tonight is not that time!"

Councilman Mumpower said it was not pleasant to resist folks that we have appointed to help us with this issue. He feels the Board knows what they are doing. Council is required to vote on this project for a number of reasons. One of them is we are charged to be good stewards with our money. He believes we have a responsibility to spend our limited public art money on projects that a reasonable majority of our citizens can embrace. He is concerned that this piece goes to an end of the spectrum that will lose a lot of folks who might otherwise appreciate a public art opportunity. Art should stimulate, but art can also alienate. He believes the Board when they say art is important to the community, but is concerned again that when we go to certain extremes we risk alienating people unnecessarily. We have a large pool of local artists in the community and he would like to see us spend our local money on local efforts. Whatever the vote is, he personally encouraged the Board to reach out to some of the local artists. If this becomes a private effort, he will donate a couple weeks of his City Council take-home pay to the Board. But, when it comes to spending the public's money on this effort, he was afraid that he will be compelled to say no. He thinks it steps a little further than he is personally comfortable with.

Councilwoman Jones said that she would support the purchase of this piece. City Council takes the job of placing people on our boards very seriously and this Council-appointed Board has studied this for three years. She knows this is a lot of money, however, there is buy-in from other sectors and that bodes well that a lot of people in this community do care about this piece and do want to see it here. She feels like putting in 1/3 of the purchase price is fair, particularly since the Board was charged with public art and expanding our collection. She was initially concerned about the artist's reputation, but with additional research she feels a lot better about that, particularly with a list of the other cities that have chosen to display her art. Even though art is not her passion, she does feel like we need to hold all of the citizens' interest and attention. Public art is something that we have charged this Board with and they have done their job. On a personal note, she is excited that we will have an outdoor piece of public art by a woman.

Councilman Ellis thanked the members on the Public Art Board for doing this. There is no question that this is not a conversation piece and the Board has raised the awareness of arts in this community to a level we haven't seen in a long time. He understands that is what the Public Art Board is doing tonight, but many times pubic hearings are held prior to coming to City Council. He used the Civic Center Commission and the Planning & Zoning Commission as examples: (1) The Civic Center Commission has held at least two public hearings regarding the possibility of hockey returning to Asheville and he felt they have done their due diligence in their recommendation to Council; and (2) The Planning & Zoning Commission always has at least one public hearing prior to coming to Council. In his opinion, because this is such a conversation piece in the community, and thus controversial, he would prefer to have a little more due diligence by the Public Art Board. He would like to see a little more effort to bring the community to a buy-in on a piece of this type. He was also concerned about the piece being safe and secure. He suggested the Board come back to Council after more public input on this piece and with a more definite location of it. He does want to support the Board because Council appoints boards to bring recommendations to Council on behalf of the citizens.

Mayor Worley said that he intends to support the acquisition of the piece. This is not about whether he likes or dislikes this particular piece. He recognizes that no matter what piece of public art we might seek to obtain, someone will like it and someone will dislike it. It's about individual tastes. It's not about diverting funds from some of our needs in the City. These funds were set aside for the purchase of public art long ago. It's not about local art vs. out of town art. We have a lot of public art that reflects our heritage. We are a diverse community. He thinks this is really about who we are and what we want to be for all of our citizens. We tend to view issues, like the acquisition of public art in isolation and we forget how they relate to the goals of the entire City. It's easy to say don't spend that money when we do have other needs in other areas. Again, these funds come from monies that have already been set aside. This is $18,000 to apply towards a purchase price of $55,000. This is a bargain in terms of the City's expenditures to acquire it. Our budgets are always tight. No matter what the art or when the occasion, you will have that thrown out as a reason not to purchase it. We have a lot of needs in the community.

First and foremost we need jobs. We are like many communities that have experienced the decline in the manufacturing jobs. We have infrastructure needs. But the question is how do we fulfill those needs. If you think about this in the big picture, we pay for those needs by attracting business to Asheville and by bringing people here. It's a changing climate when it comes to the economy and success in providing jobs. Sense of place becomes critical to our success in bringing companies here. We are in a new economy, a knowledge-based economy, and a technology-based economy that has replaced the traditional manufacturing. We are in an economy where those who control the jobs and those who can bring the jobs can live and work anywhere in the United States. It is that sense of place, along with the other basic infrastructures, such as broadband and things that we have developed, that enable us to be successful. For at least three years, Asheville has been named as one of the top 25 art destinations in the United States. That helps create the sense of place. We are in a wonderful area and art adds to that. When he looks at the acquisition of this art, he looks at it in the context of the big picture. Is this what we need to do to make Asheville successful, not just in the arts, but in all areas of economy in ways that will bring us jobs and ways that will keep our children here? He thinks the answer is yes. We need to maintain our place as one of the top art destinations in the county. He thinks we need to do more things like this that maintain and improve our sense of place. He thinks it's not just the acquisition of art, but an investment in our future.

Vice-Mayor Bellamy said that many years ago Council developed Amboy Road Park. When the idea was before Council it required a lot of money, including grants. She didn't like the idea, but she felt that there were citizens in our community who appreciate open spaces, greenways and parks. Earlier this month we received an award for that Park. Over 75,000 people last year enjoyed that Park. It required a leap of faith from the Council to support that Park in the beginning. Asheville is an arts destination. That is who we are. That is one of the reasons why tourists come to our City. Tourists pay taxes and taxes help pay for streets and sidewalks. City Council is made up of seven individuals who represent nearly 70,000 people. Of that 70,000 people, all of them do not like affordable housing, parks and greenways, or art; however, we have to keep collectively in mind that we can't only support our passions. We must keep in mind all of our citizens. She personally doesn't like the art piece, but it's not for her to decide on who does and doesn't like this art. She will support this acquisition because there are people in the community who believe this art should be here. Also, in her trip to Portland, Oregon, they have an ordinance mandating that every development in their downtown area set 1% aside that must be used for art. They believe it makes a difference in their economy. She doesn't think Asheville needs to go that far but feels we must be supportive of all the citizens in our community.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 03-127. This motion was seconded by Vice-Mayor Bellamy and carried on a 4-2 vote with Councilman Ellis and Councilman Mumpower voting "no".

Mayor Worley said that since Resolution No. 03-127 passed by a 4-2 vote and it involves the expenditure of public funds, it must have a second reading before final adoption. The second reading will be held on August 12, 2003.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that if a Council Member is absent from a meeting entirely, their vote doesn't count one way or the other.

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B. RESOLUTION NO. 03-128 - RESOLUTION MAKING APPLICATION FOR COVERAGE OF RETIREMENT COVERAGE GROUPS OF EMPLOYEES UNDER THE OLD AGE, SURVIVORS, AND DISABILITY INSURANCE PROVISIONS OF TITLE II OF THE FEDERAL SOCIAL SECURITY ACT

Human Resources Director Belinda Odom said that this is the consideration of a resolution approving Social Security Contributions for firefighters providing the referendum outcome on Monday, October 27, 2003, is approved by the majority of voters.

City Council, during the budget process, appropriated funds to cover Social Security Contributions for firefighters, provided firefighters, by majority vote, approve the referendum.

The State Treasurer's Office requires an approved resolution by City Council, an appointed referendum officer, an effective date of coverage, and the date of the referendum prior to the referendum taking place.

Adoption of this resolution will accomplish the following: (1) appoint Belinda Odom, Human Resources Director, as the appointed referendum officer; (2) establish October 27, 2003, as the date of the referendum and the effective date of coverage providing the referendum is approved; and (3) verify that there will be 203 eligible voters in the referendum.

City staff recommends City Council adopt a resolution approving the date of the referendum as October 27, 2003, on the question of mandatory social security contributions/deductions for all firefighters.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 03-128. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

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C. CIVIC CENTER MINOR LEAGUE PROPOSALS

Mr. Peter Crosa, Chair of the Civic Center Commission, made the following report to Council:

Recommendation #1 – We recommend that, while hockey is a viable event for the Civic Center, it would be best to wait until the following year (2004/2005) to schedule and host a hockey team.

- Booking hockey at the Civic Center represents 30 potentially profitable events, thus, further reducing the City's contribution to operating the Civic Center.
- It is understood that a hockey team would need six to 10 months to prepare for a successful season.
    a.) Attempting to execute a contract and initiate a Hockey season now (even by August 1, 2003) would only allow two months for a team to:
        - confirm investors,
        - set up offices and staff,
        - recruit players and coaches,
        - schedule games, and
        - sell tickets and sponsorships.

- Postponing a hockey season to October 2004 would allow the team a better choice of dates, thus, a greater chance for success.
- Postponing a hockey season to October 2004 would allow City staff to determine which league represents the best deal for the citizens of Asheville.

Recommendation #2 – We recommend that City staff and Council use this additional time to conduct thorough "due diligence" to determine which league has the greater potential for success and that staff negotiate the best possible contract with that league by November 10, 2003, for the hockey season starting October 2004.

- Due diligence should include:
  a. Adequate review of business plans,
  b. Learning the identity and commitment of investors,
  c. Review the general franchise document to determine investor commitment and liability to the team,
  d. Checking references of league and team owners,
  e. Evaluate management's (or proposed management) experience in sports management, marketing, recruiting, etc.,
  f. Community outreach,
  g. Review performance (financial, outreach, etc.) in cities with existing teams,
  h. Interview facility managers in other cities to determine the advantages and disadvantages of the league's team in that city's facility, and
  i. Establish a weighted evaluation template with the objective of an impartial, numerical representation of the relative value/viability of the teams, prior to beginning the "due diligence" function.

Upon inquiry of Councilman Mumpower, Mr. Crosa said that there has been no official statement by either league that they can put this together in a couple of months, but at least one investor questioned whether it was getting too late in the year to begin a new season.

When Vice-Mayor Bellamy asked about the timeframe for this to come back to City Council, Mr. Crosa said that the Commission and City staff will have a contract negotiated with the chosen league by November 10, 2003, for the hockey season starting October 2004. They will bring their recommendation to the November 18, 2003, City Council worksession with anticipated formal action on November 25, 2003.

Vice-Mayor Bellamy noted that the major reason for delaying a recommendation at this time is because of the timing. Mr. Crosa explained that it's not only the Commission's opinion that it is too late in the season, but the opinion of other experts in the field of sports team management that felt at least 6-10 months would be desirable to prepare for a new team in a given city.

Upon inquiry of Councilman Peterson, Mr. Crosa said that Asheville wants a viable team and to give the team the best possible chance for success. Bringing in a team two months before the season starts is a recipe for trouble. It would be better for the City and the Civic Center to do it right starting off and not just jumping in.

Councilman Ellis thanked the Commission for their hard work at arriving at the best possible solution at this time.

Councilman Peterson said this is a good example of a citizen advisory board reviewing the options and coming up with better suggestions to recommend to Council.

Upon inquiry of Councilman Peterson, Civic Center Director David Pisha said that if hockey were to begin this season, they would only have seven weekend dates. If they start next season, then the NBDL's contract allows for an equitable sharing of dates. As far as finances, there is a sliding rent scale that actually protects the City from a lot of the change-over costs because that is built into the rent. Both leagues have said they would accept that.

When Councilman Peterson asked about the cooling tower, Mr. Pisha said that the cooling tower could not be replaced within two months so delaying the season would give the City an opportunity to study that issue as well. City Manager Westbrook said that the cooling tower is a large dollar cost item and it's one of those long-term issues. We have been repairing the cooling tower part by part, so even though it is an old structure functionally, it is operating. He said he didn't anticipate replacing the cooling tower because it is very expensive, but he would be glad to work with a league if they would be willing to finance it.

Councilman Peterson asked if we have received any information about the NBDL staying in Asheville after their contract runs out at the end of this season. He said that if the timeline for making a decision about a hockey league is this fall, then it would make a big difference whether the NBDL is here or not. He said there seems to be a concern that there are only so many weekend dates and can the City support two teams trying to play at the same time at the same facility and how that affects public skating. Mr. Pisha responded that there will be public skating, with or without hockey. It was the consensus of City Council to have the City Manager contact the NBDL's representative to find out about their future plans.

Councilman Mumpower said that in his discussion with the NBDL's local representative, it was his understanding that they fully intend to stay in Asheville and that they are actually expanding the league into other regions.

Councilman Mumpower said that Mr. Pisha and the Commission have been very careful to make a cautious decision and weight out realities of the facility with the demographics of our community. He appreciated them taking measured, cautious steps that give consideration to the fact that ice is a desired resource in the community, but it's also a very expensive resource and a complex resource and when you are talking about an older facility maintaining it, is it tough.

Mr. Fred English stated that since the Civic Center has never turned a profit since it opened in 1974, it should be closed.

Councilman Ellis spoke strongly in support of the Civic Center. In fact, the subsidy has lost less money almost every year since it opened. He has not been able to find one Civic Center around the country where the building itself makes money. The Civic Center is here to serve the people of this area. The vibrant downtown with all the restaurants is made possible by the Civic Center. He also pointed out that more people have been going through the turnstiles at the Asheville Civic Center since the Greenville Bi-Lo Center opened.

Mr. Chad Nesbitt felt the Civic Center staff should reach out to bring in shows.

Mr. Alan Ditmore felt the role of government is human needs and not luxury activities.

Mr. Walter Plaue felt the City needed to start bringing in more entertainment at the Civic Center.

Mr. Cliff Finegold, Asheville resident, briefed Council on the present situation of hockey. The Atlantic Coast Hockey League (ACHL) has been attempting to negotiate with the City and locate a group of local investors since April of 2003. The success of hockey would hinge on local people being involved in the ownership and promotion. The World Hockey Association 2 has not sought any local ownership support. The ACHL makes good sense for an Asheville team. Travel expenses would be very manageable and rivalries, which promote more attendance, would be possible. He said that Mr. Ron Hansis, from the ACHL wanted him to ask the City Council what steps are necessary to get a commitment from Asheville for the ACHL. He told him as late as last night that the ACHL would still be willing to start this season in Asheville if an equitable lease could be negotiated in the next couple of days. With the limited number of Saturday dates available and the shortness of time between now and the beginning of the season in mid-October this is certainly not ideal, but they are still willing to make every effort to make this a success in Asheville for this coming season. If the lease cannot be worked out as soon as possible, he asked what the City Council would require of the ACHL to get the commitment for next season? Mr. Hansis will come to Asheville for meetings along with League Commissioner Mr. Jim Riggs whenever requested. The ACHL has its mid-winter meetings in January and they would very much like to announce and have representation from Asheville at those meetings. The Civic Center will make money from a hockey lease and concessions, public skating, figure skating clubs, youth hockey and adult recreation league hockey. The City will profit from increased use of downtown parking, taxes from increased usage of downtown restaurants and hotels, and enhancement of the quality of life.

Mr. Dennis Justice felt the NBDL is committed to being in Asheville, but they may want to negotiate their lease. The City has not heard from any league on how they can help address the renovations of the Civic Center,

A Candler resident hoped that the City Council will bring hockey back to Asheville.

Councilman Mumpower moved to instruct City staff and the Civic Center Commission to continue exploration of a tenant relationship with an appropriate hockey league for the 2004-05 season with anticipated resolution of contractual discussions by November 10, 2003. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

D. MOTION SETTING A PUBLIC HEARING ON AUGUST 12, 2003, FOR THE SALE OF DOWNTOWN PROPERTY TO THE GROVE PARK INN

City Attorney Oast said that this is the consideration of adoption of a motion setting a public hearing on August 12, 2003, on the conveyance of City-owned property.

Earlier this year, the City entered into a Downtown Development Agreement with Grove Park Inn for the possible development of two sites for mixed use buildings. Site #1 is a relatively small site (approximately four-tenths acre) located at the southeast corner of the intersection of Market Street and College Street, and is traversed diagonally by Patton Avenue. Site #2 is a larger tract consisting of several acres in several tracts on the south side of City Hall (the parking lot). The agreement provides that the City will consider entering into option agreements with the Grove Park Inn for purchase of the properties, and further provides that Council will have a public hearing on the options as required by law, and that those hearings will occur on or before August 12, 2003. The purpose of this motion is to set the public hearing date for the option as to Site #1.

The option will incorporate the material terms of the Development Agreement, and will include a more precise description of the property, as well as a selling price (which has yet to be determined), and this information will be summarized in the required public notice.

For a variety of reasons, neither the City nor Grove Park Inn are in a position to proceed with the option on Site #2 at this time, but we anticipate doing so soon. An extension of the public hearing date for this option may be required.

City staff recommends City Council setting a public hearing for August 12, 2003, on the conveyance of City-owned property.

City Attorney Oast said that when Council votes on this issue, it would be approving the City entering into an option. That could lead to a sale. Again, Council would be approving the terms of that sale to be incorporated into an option that would be consummated within 3-6 months.

After a brief discussion initiated by Councilman Peterson, it was the consensus of City Council to not vote on the proposed sale to the Grove Park Inn immediately after the August 12, 2003, public hearing to give an opportunity for Council and the public to become more informed. City Clerk Burleson was instructed to note on the August 12, 2003, agenda that it is the intent of City Council to not vote on the item immediately after the hearing.

Vice-Mayor Bellamy pointed out that the public hearing on August 12, 2003, is for Site #1 only and that is for the site east of the Biltmore Building and borders on College Street and Market Street.

Councilman Peterson moved to set a public hearing on August 12, 2003, for the sale of downtown property to the Grove Park Inn. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Upon inquiry of Councilman Peterson about the public hearing for Site #2, City Attorney Oast said that the Grove Park Inn is not interested in moving as fast on Site #2 and they have informally asked of we would postpone that public hearing date. We do not need to do that right now and he will have a better idea soon of when that public hearing might occur.

E. RESOLUTION NO. 03-129 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Vice-Mayor Bellamy said that this is the consideration of appointing a member to the Tree Commission.

Kasty Latven has resigned as a member of the Tree Commission, thus leaving an unexpired term until December 31, 2005.

On July 15, 2003, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Robert Wieselman and Bill Jones.

It was the unanimous recommendation of Council to appoint Bill Jones to serve the unexpired term of Mr. Latven, term to expire December 31, 2005, or until his successor has been appointed.

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VI. OTHER BUSINESS:

Minimum Housing Code Public Hearing

After a brief discussion, it was the consensus of City Council to hold the public hearing on August 12, 2003, and after the hearing to make a determination on whether Council is prepared to vote or not.

Claims

The following claims were received by the City of Asheville during the period of June 13-July 10, 2003: Tara L. Johnson (Transit Services), Miriam Weinstein (Inspections), Amie Paul (Transit Services), Lyna Brigman (Water), Bellsouth (Water), United Producers (Streets), Gary Sergent (Sanitation), McDonalds (Water), Ted Knicely (Water), Robin Williams (Sanitation), Kathy Tweed (Sanitation), Martin K. Anderson (Police) and Mountainbrook Long Term Care (Water).

The following claims were received by the City during the period of July 11-17, 2003: Charlie Tucker Jr. (Water), BellSouth (Water), BellSouth (Water), Adrienne Crowther (Parks & Recreation), Ted Warner – Broadways (Water), Heidi Muelenberg (Water) and BellSouth (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. and Mrs. Atkins, owners of a loft at the Sawyer Motor Building located at the corner of Hilliard Avenue and Coxe Avenue, asked for City Council's help in cleaning up the prostitutes and drug dealers in their immediately area. City Council instructed the City Manager to meet with the Atkins' to see what the Asheville Police Department can do to combat these problems.

Mr. Fred English spoke about several different issues ranging from Asheville being too diverse to never receiving any City services in the Haw Creek area.

Mr. Mike Fryer spoke about the high property taxes in the City and felt the City wants to expand, but provide no services. He felt he was picked out specifically for annexation and Council was mislead by City staff.

Mr. Chad Nesbitt spoke about the good quality of work by APAC and Taylor-Murphy on the new 19-23 Connector to Tennessee.

Mr. Dennis Justice felt that City Council needs a smart strategy plan to get money for renovations at the Civic Center. He noted that Ashevilleciviccenter.com has been cyber-squatted and if Ashevilleciviccenter.org isn't reserved by August 21, 2003, he will get it himself and cyber-squat it.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:30 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 29, 2003
Shiloh Community Center
121 Shiloh Road

7:09 p.m. – Community Meeting

Present: Mayor Charles Worley, Presiding; Vice-Mayor Terry Bellamy; Councilman Jim Ellis; Councilwoman Diana Hollis Jones; Council Member Dr. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: Councilman Dr. Joseph C. Dunn; Councilman Brian L. Peterson

The following topics were raised by residents and addressed by City Council and City staff: questions were asked concerning the status of the Police Department's use of the Shiloh Community Center for such items as report writing, etc.; City staff was commended for the effectiveness of the recent community walk in the Shiloh vicinity; a traffic stop was requested for the area near Forest Street and Hendersonville Road, especially due to the Biltmore Forest turn off, which causes confusion for motorists; assistance with parked cars and overgrown shrubbery along Brooklyn Road and White Avenue, and throughout the Shiloh community; problems with trash collection along roadsides, including West Chapel and Brooklyn Road, were addressed; traffic hazards caused by nearby Sweeten Creek Road were raised; concerns about continuing drug activity in the community and its impact on the children and property values was raised; the need for the reestablishment of locally-owned, small businesses within the Shiloh community was raised; a request was made for a three-year summary of the type of assistance that has been offered to persons who have been convicted of drug related crimes, including job training and treatment programs, with the summary to be sent to the Shiloh Residents Association; concerns about speeding on Rock Hill Road and Craven Street were discussed, as well as a request for speed bumps on Caribou Road and near the end of Shiloh Road; the status of the Appledorn project was asked, and whether the traffic impact of the project on the community has been considered; staff was asked about a possible land purchase by Mission-St. Joseph Hospital on Caribou Road and what future plans were for the location; the 2025 Plan was discussed and staff asked how the plan will impact the Shiloh community; a suggestion was made to allow adult volunteers to ride school buses to encourage good behavior and build relationships with the students; the need for more affordable housing in the community was raised; the spirit of cooperation and community concern exhibited during the meeting was commended, as well as Ms. Marilyn Bass' return to the Asheville community in her capacity with Neighborhood Housing Services (NHS); the need for improved street maintenance in Shiloh was requested; Chris Slusher with NHS spoke on future plans for a task force to work in concert with the Shiloh community; Mrs. Bessie Greenlee of the Shiloh community was commended for her efforts in collecting roadside litter.

Mayor Worley adjourned the meeting at 7:55 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 5, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brian L. Peterson (arrived at 3:32 p.m.); City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor Terry M. Bellamy and Councilman Joseph C. Dunn

CONSENT AGENDA:

Recommendation to Name Creek in West Asheville "Rhododendron Creek"

Summary: The consideration of a resolution to name a creek in West Asheville as Rhododendron Creek.

The Asheville Greenway Commission has identified a potential site for a neighborhood greenway in West Asheville that would connect Vance School, the West Asheville Library, and other locations west of Sand Hill Road with the West Asheville Park. This greenway would provide a safe pedestrian and bike route from the West Asheville community to the French Broad River. The proposed greenway would be along parts of an unnamed creek that runs along Sand Hill Road south of Wachovia Bank on Haywood Road, through the West Asheville Park, crossing Shelburne Road and running into Hominy Creek. In an effort to obtain community support for this greenway, the Greenway Commission sponsored a "Name the Creek Contest." The winner of the contest was announced at West Fest in May and was 12- year old Henry McGuire. Henry has been instrumental in spearheading a clean-up of this creek. Henry's research included a number of interviews with long-time West Asheville residents who remember Rhododendron Park that was located near the confluence of this creek and Hominy Creek at the present day Aston Park Health Center. Henry's recommendation along with the Asheville Greenway Commission is to name this creek Rhododendron Creek in recognition of this former park. The process requires that this recommendation be submitted to City Council and that City Council forward this request to the United States Board of Geographic Names for official recognition and adoption.

The Asheville Parks and Recreation Department and the Asheville Greenway Commission recommends City Council's approval to name an unnamed creek in West Asheville as Rhododendron Creek and requesting that this recommendation be forwarded to the United States Board of Geographic Names for official recognition and adoption.

Interlocal Agreement with Buncombe County for Parking Enforcement

Summary: The consideration of a resolution authorizing the City Manager to sign an Interlocal Agreement with Buncombe County to patrol County parking lots and issue city tickets for illegally parked cars.

Buncombe County has asked the City Of Asheville to patrol their parking lots and issue citations to all vehicles illegally parked. They have passed an ordinance prohibiting parking by all but permitted vehicles.

Enforcement will be carried out by the City of Asheville, using current Parking Enforcement Officers. No additional personnel will be required to carry out this task, and all proceeds from citations will be retained by the City of Asheville. All appeals will go to the Parking Services Division and will be decided on the basis of existing City policies concerning parking citation appeals.

City staff requests that City Council approve the resolution authorizing the City Manager to sign an Interlocal Agreement with Buncombe County to patrol County parking lots and issue city tickets for illegally parked cars.

Kimberly Avenue Paving Project, Phase I

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with APAC Atlantic, Inc. to mill, crack seal and pave Kimberly Avenue between Gracelyn Avenue and Beaverdam Road.

The City is in need of a contractor to repair and pave Kimberly Avenue, Phase 1, from Gracelyn Avenue to Beaverdam Road. This project will include: The milling of 14,000 square yards of existing asphalt, cleaning and crack sealing all longitudinal and transverse joints, adjustment of all utilities to be equal to final pavement level, and repaving of 1,538 tons of heavy duty asphalt mix. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for these construction services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
APAC Atlantic, Inc.		Yes		$107,452.00
Precision Contracting, Inc.	100%	Yes		$121,706.00
Asphalt Unlimited of Asheville, Inc.	100%	Yes		$143,800.00

The Public Works Department staff recommends City Council adopt the resolution to repair the pavement on Kimberly Ave from Beaverdam Road to Gracelyn Avenue.

GIS Grant from the Governor's Crime Commission

Summary: The consideration of a budget amendment, in the amount of $50,000, to accept a grant from the N.C. Dept. of Crime Control and Public Safety for GIS training and software and to enhance the GIS Capabilities Emergency Operations Center.

In January the Asheville Police Department applied for a $50,000 grant from the Governor's Crime Commission (GCC) for GIS training and software, a large plasma PC monitor and a GIS Specified Workstation for the Emergency Operations Center. There was a 25% match requirement of $12,500 for the grant and the remainder, $37,500, came from GCC. The matching funds are available from the Asheville Police Department's Drug Tax Revenue, which are dispersed to the department by the State of North Carolina.

The purpose of the grant was to use the variety of applications of Geographic Information Systems (GIS) to help improve the services provided by public safety officials. The City of Asheville Police Department will use the training and additional software to enhance the capabilities of the Asheville Police Department Crime Analysis Unit. This will improve public safety for the citizens of Asheville by assisting the Police Department in clearing more cases through better identification of suspects and an enhanced capacity to identify crime patterns and trends.

City staff recommends City Council adopt a budget amendment, in the amount of $50,000, to accept a grant from the N.C. Dept. of Crime Control and Public Safety for GIS training and software and to enhance the GIS Capabilities Emergency Operations Center.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PACK SQUARE DESIGN GUIDELINES

Planning & Development Director Scott Shuford said that this is the consideration of a resolution adopting the design guidelines for the Pack Square Renaissance Project. The development of design guidelines for the Pack Square Renaissance project area is a contractual obligation of the Pack Square Conservancy, Inc. in its agreement with the City.

The Pack Square Conservancy (PSC) has prepared design guidelines for City Council approval as required in their contract with the City of Asheville. These guidelines will provide design criteria and requirements for the publicly owned space within the boundary established by this contract. Since the PSC is raising millions of dollars of private funds for improving this critical public space, it is important that it has a definite say in how development within this space occurs. The PSC has held meetings with City staff, stakeholder groups and the public in late July to get input regarding these guidelines. Changes have been made to the guidelines to reflect this input.

The PSC is proposing both general guidelines for the entire area, and specific guidelines for separate development sites. The general guidelines provide direction for composition, ground floors, upper floors and setbacks, building tops, entryways, materials and windows. These guidelines should result in new structures that complement and enhance the surrounding development and the future development of the park. Based on staff review of the draft of the guidelines, we recommend the guidelines be approved. This draft incorporates earlier staff comments that address applicability of the guidelines to particular sites and appropriate height limits for Site A.

City staff recommends City Council approve the guidelines.

Ms. Carol King, Chair of the Downtown Association and member on Pack Square Conservancy Inc., explained to Council that the design guidelines are meant to present an overview of the vision for Pack Square and City-County Plaza. The guidelines outline specific massing guidelines for each site, as developed by the Pack Square Conservancy, in order to provide consistency in façade articulation and special features. She reviewed the design principles for great urban spaces. She said that the Pack Square Conservancy retains authority, as part of these design guidelines, to grant minor variances to these guidelines on a project specific basis. All interpretations of these guidelines by Pack Square Conservancy shall be final. She then reviewed the general guidelines consisting of composition; ground floors; upper floor setbacks and terraces; building tops; entryways and portals; materials; and windows and bays.

Ms. King then briefly reviewed the design guidelines for Sites A and D and the suggested design guidelines for Sites B and C. She also reviewed the sun/shadow study.

Ms. King answered various questions/comments from Council, some being, but are not limited to: what kind of public input was obtained, and why is the Jackson Building the standard regarding height.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ASHEVILLE-BUNCOMBE VISION DIALOGUES

Mr. Joe McGuire invited City Council to participate in the 2003 VISION Community Dialogues and explained that the goal of Asheville-Buncombe VISION Inc. is (1) to encourage discussion among diverse residents in order to promote understanding of how local issues affect different segments of our community and (2) to encourage citizens to collaborate on efforts that benefit the whole community. This year's topic, "How Do We Create the Housing that Matches our Community Needs", will focus on community housing needs.

When Councilwoman Jones suggested using the Government Channel to publicize the meetings, Mr. McGuire said that they have done that in the past and they will try to do it again.

UPDATE ON THE METROPOLITAN PLANNING ORGANIZATION MEMORANDUM OF UNDERSTANDING

City Engineer Cathy Ball said that this is the initial review of Memorandum of Understanding for the French Broad River Metropolitan Planning Organization.

The Metropolitan Planning Organization (MPO) is in the process of expanding to include all of the local governments in Buncombe, Haywood, and Henderson Counties. As a part of the expansion, the MPO must draft a new agreement known as the Memorandum of Understanding (MOU). All of the local governments must sign the agreement in order to participate in the MPO process.

This final draft of the Memorandum of Understanding was approved by the Transportation Advisory Committee on July 17, 2003. The agreement establishes the membership and voting policies for the Transportation Advisory Committee (TAC) and Technical Coordinating Committee (TCC).

The TAC and TCC developed this draft Memorandum over several months. The document is a result of significant negotiation and discussion regarding representation and voting policies. At the end of the negotiation process, the TAC unanimously approved the draft.

The draft Memorandum establishes the membership of the TAC with two representatives for Asheville, two for Buncombe County, two for Haywood County, and two for Henderson County. Each of the other jurisdictions will have one representative. The draft Memorandum also includes a number of provisions to give local governments the ability to make decisions about projects that directly impact their jurisdiction. These provisions would provide for local veto power or weighted voting on certain project decisions.

This draft agreement has been mailed to all eighteen jurisdictions for their review and comment. The N. C. Dept. of Transportation has asked us to complete the expansion process by October 1, 2003. The MPO staff has asked all of the jurisdictions to provide comments on the draft by August 20, 2003. Once all of the comments have been received, staff will coordinate a process to address any concerns, and if necessary, make changes to the document.

If this process proceeds according to schedule, City Council will be asked to formally approve the document sometime during the month of September. Once Council has reviewed the document, please provide staff with any comments, questions, or concerns.

Ms. Ball explained the purpose of the MPO; the MPO expansion; the boundary agreed upon, but would need to be altered to include the Town of Mills River; the current member governments; the new member governments; the major MPO functions; the MOU, and the TAC representation. She then reviewed the weighted voting with an example on how that voting would take place.

Ms. Ball then answered various questions/comments from Council, mostly relating to the weighted voting, membership proxies, TAC membership, and TCC membership.

SETTING A PUBLIC HEARING TO CONSIDER THE JANE HALL LIDDELL BATTLE HOUSE LOCATED AT 288 MACON AVENUE AS A LOCAL HISTORIC LANDMARK

Ms. Stacy Merten, Director of the Historic Resources Commission, said that this is the consideration of setting a public hearing on August 26, 2003, to consider an ordinance designating the Jane Hall Liddell Battle House located at 288 Macon Avenue as a local historic landmark.

The Battle House is located within the Grove Park Neighborhood, at 288 Macon Avenue, approximately 1 mile northeast of its intersection with Charlotte Street, on a 1.76-acre tract of land. The boundaries of the proposed designated property, however, do not include the full tax parcel, but encompass a 1.23-acre parcel. The structure is located between the Grove Park Inn and the Bynum House, on the west side of Macon Avenue. The house stands below the elevation of the street and overlooks the former Asheville Country Club Golf Course, now owned by the Grove Park Inn.

The Battle House was built in 1927-1928 for prominent Asheville resident Mrs. Jane Hyde Hall Liddell Battle, the widow of Dr. Samuel Westray Battle. The house is a highly refined example of the Tudor Revival style and is architecturally unusual in its features as compared to most other housed in Asheville designed in this style. The Battle House is significant for its association with Jane Hall Liddell Battle, landscape designer Earl Summer Draper and prominent New York architect Warringon G. Lawrence. The Battle House is the only known example of Lawrence's work in Asheville.

In 1954 the Battle House was bought by Skyway Broadcasting Company. Skyway owned an AM and FM radio station with the call letters WLOS. On September 18, 1954, WLOS-TV aired the first VHF station in Asheville, channel 13, from their new radio and television studios in the Battle House. Some $200,000 in renovations and new equipment transformed the stately home on into a technological landmark. With VHF transmission from one of the country's highest transmitters atop Mount Pisgah, national and local programming could be enjoyed with a high level of clarity throughout the entire Western North Carolina region. WLOS-TV broadcast from this location until 2000, when it was purchased by the Grove Park Inn Resort and Spa.

The house retains the majority of its original exterior features and detailing with some minor exceptions. The most substantial changes to the building's exterior are the additions on the south side, constructed in 1974 & 1983 to house the WLOS-TV's offices and studio. The large two story additions obscure the original south elevation, but the remainder of the building's appearance was not significantly affected. Other alterations include the replacement of several original windows and doors. Unfortunately little of the original interior survives except for the entrance hall. Additionally, much of the original exterior landscape features have been lost.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes, which is approximately $4,300. Currently the tax appraisal for the property is $1,686,800 with the house alone appraised at $1,510,800 and the land valued at $176,000.

The ordinance designates the Battle House a local historic landmark. The property included in the designation consists of the Battle House and 1.23 acres. The designation

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includes the exterior of the house, garage and remaining landscape features as described in the report. Also included are the paneled entrance door, interior paneled closet doors, main stair and balustrade, stair hall windows and marble mantel in the former library.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC). All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Although the State Historic Preservation Office expressed concern that the Battle house may have lost integrity due to the alterations and additions made while WLOS occupied the Building, the HRC found that the use of the building by WLOS as the first VHF station in Asheville was culturally significant in its own right and that the structure continues to convey its significance. The HRC voted unanimously, with two members abstaining, to recommend to the Asheville City Council that the Battle House be designated a local historic landmark. Staff concurs with the recommendation of the HRC for this designation. Additionally, while not related to the historic aspects of the property, the Planning staff recommends the designation to encourage the utilization of the property to help buffer the existing neighborhood from any proposed new development by the Grove Park Inn.

City staff recommends City Council set a public hearing on August 26, 2003, to consider an ordinance designating the Jane Hall Liddell Battle House located at 288 Macon Avenue as a local historic landmark.

Mr. Gerald Green, representing the Grove Park Inn, explained why the Grove Park Inn no longer supports this designation, even though the originally request was by them.

Mr. Bill Wescott, member of the HRC, explained that the HRC discussed the Grove Park Inn's non-support of the designation, but decided they would support the designation.

Discussion by Council surrounded the role of the State Historic Preservation Office in local designations and information received by that organization concerning this landmark designation request.

Mayor Worley asked that pertinent letters and information from the State and the Grove Park Inn be submitted to Council prior to the public hearing on August 26, 2003.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the August 26, 2003, formal City Council agenda.

OTHER BUSINESS:

It was the consensus of City Council to cancel the September 9, 2003, formal City Council meeting due to the Chamber of Commerce's InterCity visit to Providence, Rhode Island.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:55 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 12, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Veteran Brenda Graham led City Council in the Pledge of Allegiance.

AGENDA CHANGES

It was the consensus of City to consider the Unfinished Business item regarding the second reading of purchasing a public art piece after the Consent Agenda.

Due to the items on the agenda, it was the consensus of Council to meet until 10:30 p.m. and at that time determine whether or not to continue the remaining items on the agenda to another date.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 22, 2003; THE COMMUNITY MEETING HELD ON JULY 29, 2003; AND THE WORKSESSION HELD ON AUGUST 5, 2003**

B. **RESOLUTION NO. 03-130 - RESOLUTION NAMING CREEK IN WEST ASHEVILLE "RHODODENDRON CREEK" AND REQUESTING THIS RECOMMENDATION BE FORWARDED TO THE U.S. BOARD OF GEOGRAPHIC NAMES FOR OFFICIAL RECOGNITION AND ADOPTION**

Summary: The consideration of a resolution to name a creek in West Asheville as Rhododendron Creek.

The Asheville Greenway Commission has identified a potential site for a neighborhood greenway in West Asheville that would connect Vance School, the West Asheville Library, and other locations west of Sand Hill Road with the West Asheville Park. This greenway would provide a safe pedestrian and bike route from the West Asheville community to the French Broad River. The proposed greenway would be along parts of an unnamed creek that runs along Sand Hill Road south of Wachovia Bank on Haywood Road, through the West Asheville Park, crossing Shelburne Road and running into Hominy Creek. In an effort to obtain community support for this greenway, the Greenway Commission sponsored a "Name the Creek Contest." The winner of the contest was announced at West Fest in May and was 12- year old Henry McGuire. Henry has been instrumental in spearheading a clean-up of this creek. Henry's research included a number of interviews with long-time West Asheville residents who remember Rhododendron Park that was located near the confluence of this creek and Hominy Creek at the present day Aston Park Health Center. Henry's recommendation along with the Asheville Greenway Commission is to name this creek Rhododendron Creek in recognition of this former park. The process requires that this recommendation be submitted to City Council and that City Council forward this request to the United States Board of Geographic Names for official recognition and adoption.

The Asheville Parks and Recreation Department and the Asheville Greenway Commission recommends City Council's approval to name an unnamed creek in West Asheville as Rhododendron Creek and requesting that this recommendation be forwarded to the United States Board of Geographic Names for official recognition and adoption.

RESOLUTION BOOK NO. 27 – PAGE 462

C. RESOLUTION NO. 03-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY TO PATROL COUNTY PARKING LOTS AND ISSUE CITY TICKETS FOR ILLEGALLY PARKED CARS

Summary: The consideration of a resolution authorizing the City Manager to sign an Interlocal Agreement with Buncombe County to patrol County parking lots and issue city tickets for illegally parked cars.

Buncombe County has asked the City Of Asheville to patrol their parking lots and issue citations to all vehicles illegally parked. They have passed an ordinance prohibiting parking by all but permitted vehicles.

Enforcement will be carried out by the City of Asheville, using current Parking Enforcement Officers. No additional personnel will be required to carry out this task, and all proceeds from citations will be retained by the City of Asheville. All appeals will go to the Parking Services Division and will be decided on the basis of existing City policies concerning parking citation appeals.

City staff requests that City Council approve the resolution authorizing the City Manager to sign an Interlocal Agreement with Buncombe County to patrol County parking lots and issue city tickets for illegally parked cars.

RESOLUTION BOOK NO. 27 – PAGE 463

D. RESOLUTION NO. 03-132 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH APAC ATLANTIC INC. FOR THE KIMBERLY AVENUE PAVING PROJECT, PHASE I

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with APAC Atlantic, Inc. to mill, crack seal and pave Kimberly Avenue between Gracelyn Avenue and Beaverdam Road.

The City is in need of a contractor to repair and pave Kimberly Avenue, Phase 1, from Gracelyn Avenue to Beaverdam Road. This project will include: The milling of 14,000 square yards of existing asphalt, cleaning and crack sealing all longitudinal and transverse joints, adjustment of all utilities to be equal to final pavement level, and repaving of 1,538 tons of heavy duty asphalt mix. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for these construction services were solicited and three responses were received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
APAC Atlantic, Inc.		Yes		$107,452.00
Precision Contracting, Inc.	100%	Yes		$121,706.00
Asphalt Unlimited of Asheville, Inc.	100%	Yes		$143,800.00

The Public Works Department staff recommends City Council adopt the resolution to repair the pavement on Kimberly Ave from Beaverdam Road to Gracelyn Avenue.

RESOLUTION BOOK NO. 27 – PAGE 464

E. ORDINANCE NO. 3044 - BUDGET AMENDMENT FROM N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR GIS SOFTWARE AND TRAINING

Summary: The consideration of a budget amendment, in the amount of $50,000, to accept a grant from the N.C. Dept. of Crime Control and Public Safety for GIS training and software and to enhance the GIS Capabilities Emergency Operations Center.

In January the Asheville Police Department applied for a $50,000 grant from the Governor's Crime Commission (GCC) for GIS training and software, a large plasma PC monitor and a GIS Specified Workstation for the Emergency Operations Center. There was a 25% match requirement of $12,500 for the grant and the remainder, $37,500, came from GCC. The matching funds are available from the Asheville Police Department's Drug Tax Revenue, which are dispersed to the department by the State of North Carolina.

The purpose of the grant was to use the variety of applications of Geographic Information Systems (GIS) to help improve the services provided by public safety officials. The City of Asheville Police Department will use the training and additional software to enhance the capabilities of the Asheville Police Department Crime Analysis Unit. This will improve public safety for the citizens of Asheville by assisting the Police Department in clearing more cases through better identification of suspects and an enhanced capacity to identify crime patterns and trends.

City staff recommends City Council adopt a budget amendment, in the amount of $50,000, to accept a grant from the N.C. Dept. of Crime Control and Public Safety for GIS training and software and to enhance the GIS Capabilities Emergency Operations Center.

ORDINANCE BOOK NO. 20 – PAGE 393

F. RESOLUTION NO. 03-133 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Summary: Mr. James Grant has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2004.

On June 24, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint John Broadbooks to serve the unexpired term of Mr. Grant, term to expire June 30, 2004, or until his successor has been appointed.

RESOLUTION BOOK NO. 20 – PAGE 465

G. RESOLUTION NO. 03-134 - RESOLUTION MODIFYING THE SCHEDULED 2003 CITY COUNCIL MEETINGS IN ORDER TO CANCEL THE SEPTEMBER 9, 2003, FORMAL MEETING

RESOLUTION BOOK NO. 20 – PAGE 466

H. RESOLUTION NO. 03-135 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY BETWEEN COURTLAND AVENUE AND HOUSTON STREET TO FLYNN CHRISTIAN FELLOWSHIP HOME

Summary: The consideration of a resolution authorizing the Mayor to convey property located between Courtland Avenue and Houston Street to Flynn Christian Fellowship Home for the amount of $65,600.

The subject property is an RS-8 Residential Single-Family High Density District parcel located on Courtland Avenue and extending south to Houston Street comprising of approximately 3.8 acres (PIN No. 9639.20-91-4343). The Fair Reuse Value for the parcel is $65,600. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development. The property was appraised by Richard L. Smith, SRA, on May 22, 2003, at a value of $65,600.

Flynn Christian Fellowship Home has submitted a bid to purchase the property in the amount of $65,600. The proposal includes a plan to build three two-story buildings on Courtland Avenue for office and residential space along with an additional two story residential structure on Houston Street at an anticipated development cost of $700,000.

On July 22, 2003, the City Council directed the City Clerk to advertise for upset bids on the subject property. The advertisement ran in the Asheville Citizen-Times on July 25, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Flynn Christian Fellowship Home in the amount of $65,600 was not upset and the sale to Flynn Christian Fellowship Home should be approved.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey property to Flynn Christian Fellowship Home in the amount of $65,600.

RESOLUTION BOOK NO. 27 – PAGE 467

I. RESOLUTION NO. 03-136 - RESOLUTION SETTING A PUBLIC HEARING ON AUGUST 26, 2003, FOR THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS CEDAR HILL ROAD AREA

Summary: The consideration of a resolution fixing the date of a public hearing on August 26, 2003, on the question of the voluntary annexation of property located east of Pisgah View Road and identified as the Cedar Hill Road Area.

The applicant, Lynda Rerych, has submitted an annexation petition for the Cedar Hill Road Area, which is located on the eastern side of Pisgah View Road near the intersection of

Pisgah View Road and Cedar Hill Road. This area is contiguous to the existing corporate limits, being bordered to the south by the city.

The area proposed for annexation consists of 5.326 acres and is currently undeveloped. This area is within the extraterritorial jurisdiction and currently zoned RM-8 Residential Multi-Family Medium Density District.

City services for the area will begin on the effective date of annexation, which the applicant has requested be six months from approval date of the petition, or February 26, 2004.

City staff recommends City Council adopt a resolution fixing the date of a public hearing on August 26, 2003 on the question of the voluntary annexation of property located east of Pisgah View Road and identified as the Cedar Hill Road Area.

RESOLUTION BOOK NO. 27 – PAGE 468

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. UNFINISHED BUSINESS:

A. SECOND READING OF RESOLUTION NO. 03-127 – RESOLUTION AUTHORIZING THE PUBLIC ART BOARD TO PROCEED WITH THE PURCHASE OF THE IDA KOHLMEYER PIECE

Mayor Worley announced that the first reading of Resolution No. 03-127 was held on July 22, 2003. Since the resolution passed by a 4-2 vote and it involves the expenditure of public funds, it must have a second reading before final adoption.

Vice-Mayor Bellamy moved for the final adoption of Resolution No. 03-127. This motion was seconded by Councilman Peterson and carried on a 4-3 vote with Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 27 – PAGE 458

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING THE MINIMUM HOUSING CODE

Mayor Worley opened the public hearing at 5:17 p.m.

Director of Building Safety Terry Summey said that he is recommending that all residential rental buildings (except new structures built since 7/1/94) receive a Housing Certificate under the standards of the Minimum Housing Code and thereafter, be enforced pursuant to a complaint based program. In addition, that owner occupied residential properties be inspected pursuant to a complaint-based program. This public hearing was advertised on August 1 and 8, 2003.

Since adoption of the 1994 mandatory inspection program, housing conditions in the City have substantially improved. The program is almost 10 years old and to a large degree has accomplished the intended goal of providing decent and safe rental properties, as well as mandating improvements to owner occupied properties at the time of sale. While there continues to be those who escape the mandatory inspection program for various reasons, thousands of landlords and owners have complied with the Code. It is the opinion of the Director of Building Safety, that the Code should be modified to reduce the burden and expense upon those who have complied with the code. Any future efforts to improve housing conditions in the City should be focused on those rental properties not in compliance with the Code and/or dwellings that physically impact neighborhoods.

Owner Occupied Dwellings: In 1994, the General Assembly enacted N. C. Gen. Stat. sec. 143-151.46, which established a Home Inspector Licensure Board. This law provides a program to license and regulate the activities of those engaging in the profession of conducting home inspections. In 1996, the N.C. General Assembly enacted Chapter 47E, Residential Property Disclosure Act, which in part, requires, with some exceptions, Owners of residential properties to provide to the Buyer a disclosure statement regarding the conditions of the property. With the disclosure statement, and the right of the Buyer to obtain a home inspection, the need for stringent regulation by the City is reduced.

Rental Dwellings: Staff believes that the current inspection program is one of the most successful programs in the United States. The program has resulted in approximately 90% of the rental units being brought into compliance with the Code. For landlords who have complied with the Code, there is tremendous incentive for them to maintain them due to the increased marketability of their properties and the right of the tenant to lodge a complaint for their failure to do so. Therefore, staff time could be better utilized if the focus is upon rental properties not in compliance with the Code, and ensuring through a complaint based system that properties continue to maintain compliance.

The above recommendations include but are not limited to:

- Editorial and technical changes with an emphasis on reducing costs and having a Code focused upon complaints lodged by those in a position to know, the tenant; technical changes to include updates to references to the North Carolina State Building Codes and State laws
- Changes to the Fees and Charges Manual; propose dealing with noncompliance by increasing the penalties
- Update and finalization to the inspection forms

It is recommended that the Housing Code be amended to mandate that all residential rental buildings have at least one inspection to ensure compliance with the City's Housing Code. For those residential rental buildings that obtained the required housing certificates in accordance with the Code, no further inspections shall be required. For those that did not obtain the required inspections and receive a housing certificate, that such buildings remain subject to a one-time mandatory inspection program. For those residential rental buildings constructed as of July 1, 1994 or thereafter, that such properties be inspected pursuant to a complaint based enforcement program. Owner occupied properties are recommended to be inspected pursuant to a complaint based program. Council should consider changes to how the Code will be enforced and upon adoption of those changes, that Council then continue the public hearing to September 23 to consider editorial and technical amendments to the Housing Code, and amendments to the Fees and Charges Manual.

Mr. Summey reviewed with Council the Housing Code enforcement options, noting the current code and the Citizen Task Force recommendations. He summarized by saying that the current Code has been successful with updating the housing stock in the City. Since the 1994 implementation of the Code, state laws have been passed for Licensing Home Inspectors, and providing for a Disclosure Statement by sellers. He therefore recommended Option #3 – (1) each rental building completing one cycle of inspections since 1994, and receiving a Housing Certificate, moves the building into a complaint based program; (2) annexed properties would follow a program of inspecting 20% of the units/building within 5 years; (3) owner occupied properties on a complaint based program; and (4) new residential properties built since 7/1/94 will be a complaint based program.

Mr. Summey and Assistant City Attorney Martha McGlohon answered various questions and comments from Council, some being, but are not limited to: what are the questions in Options A and B that renders those options not to be considered by City Council at this time; is the Building Inspections Department fully staffed to handle the current Code system enforcement; can the City guarantee that a home is completely safe after an inspection; what is the current process of a structure being inspected but it's not in compliance; how does the City characterize "lost and found" units; of a city Asheville's size, what is the percentage of rentals yet to be discovered; what are the tools the City has with enforcement of the Code; what is the penalty range; what are some of the changes to the life safety issues City staff would suggest; how was this recommended Code change developed; was Asheville's housing stock compared with other cities; will a complaint based system, strongly enforced, maintain our current housing; why does the data show that other cities in North Carolina which don't have a code have seen a reduction in fires; how many landlords are there in Asheville; what is the state law regarding complaints; how does the Building Inspections Department follow-up on complaints received; does a person need to supply their name for a complaint to be investigated; is the name of the complainant confidential; is disclosure of a complainant optional; is there a written policy on how complaints are investigated; does the Code Enforcement Officer have the discretion to follow up on a complaint or not; is there anything in State law to prohibit City Council from requiring all complaints to be investigated; how much does it cost to demolish a structure; what is the volume of complaint calls; has the number of complaint calls decreased since adoption of the existing mandatory code; how many cities in North Carolina have this type of existing mandatory enforcement; what does staff feel are items on inspection checklist that are cosmetic in nature; how is lead-based paint and radon handled; does the City do all re-inspections; and how does the third-party inspector program work.

Councilman Ellis suggested a compromise on owner-occupied residential properties. He suggested staff identify 17 life safety issues (with citizen input) and then when the property changes ownership, there be one mandatory inspection, which would be limited to the 17 life safety standards.

Councilwoman Jones' biggest concern is with the rental properties being complaint based. With rental properties being complaint based, we expect the landlords in Asheville to keep their properties in good condition. But, what has made a difference in our successful existing Code enforcement has been the water turn-on policy and the penalties. That is how we have gotten people to come into compliance.

There was a lot of Council discussion about the pros and cons of having a complaint-based program for rental properties.

At 7:33 p.m., Mayor Worley announced a short recess.

At 8:05 p.m., Vice-Mayor Bellamy moved to continue the remaining three items on Council's agenda to Tuesday, August 19, 2003, at 3:30 p.m., in the Council Chamber of the City Hall Building due to the length of the public hearing on the Minimum Housing Code. Those items being: (1) Public hearing to consider entering into an option to convey certain City-owned property in the Central Business District to the Grove Park Inn for a mixed use development project; (2) Public hearing relative to amending the Unified Development Ordinance to provide development standard bonuses in residential districts; and (3) Resolution approving the Pack Square design guidelines. This motion was seconded by Councilwoman Jones and carried unanimously.

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, but speaking on behalf of the Affordable Housing Coalition of Asheville and Buncombe County, supported Compromise B from the Citizen Task Force, which is mandatory inspections. He felt Compromise B would reduce the frequency and number of required inspections, but would not seriously impact safety. He explained the pros of Compromise B for homeowners and rentals. A complaint-based system depends on the competence, diligence, honest and goodwill of the landlord. In cases where that is missing or when a competent landlord falls down on the job, then the enforcement falls back to the tenant, which depends on the tenant having both the knowledge and courage to ask for safety and if necessary to stand up and insist safety. If that enforcement depends on the tenant having both the technical knowledge and courage to make a complaint, he feels that a dangerously small percentage of the hazards in rental homes and apartments will be corrected.

The following individuals spoke in support of keeping the existing mandatory Code for several reasons, some being, but are not limited to: the preservation of the local housing code is in the best interest of the City's residents; keep mandatory inspections of rental homes for the safety of the families who will live there as well as for the sake of housing stock preservation in the City; tenants who are young, old or inexperienced in housing maintenance and safety maybe unlikely or unable to recognize potential safety hazards; tenants cannot report in a complaint-driven system something they do not recognize as a hazard but Code inspections can catch such situations; tenants fear retaliation by landlords; people complain when they move because that is when they feel safe to complain; people with fixed or low income will pay financially for problems because furnaces are not running properly or broken windows are allowing cold air into their homes; health risks increase; people will not willingly have their homes inspected; the system works now and to change it would be moving backwards; mandatory inspections is the best way to preserve the housing stock in Asheville; if the Code is not mandatory, all leases for rental properties should have an attachment about the Housing code and the way to make complaints; our existing Code has been envied across the state; people will be living in substandard housing because the City did not require an inspection; keep mandatory inspections on rentals, but delete them from owner-occupied residences; and the current Code requires people to maintain their homes:

Ms. Nelda Holder, President of the League of Women Voters of Asheville-Buncombe County
Mr. Joe Scarborough, member of the N. C. Electrical Contractors Association
Ms. Pat Farmer, resident at Vanderbilt Apartments
Mr. Bill Whalen, staff attorney with Pisgah Legal Services
Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods
Ms. Pauline Council, resident in Willow Ridge Apartments
Ms. Leni Sitnick, Asheville resident
Mr. Fred English, Haw Creek resident
Ms. Robin Merrill, attorney with Pisgah Legal Services
Mr. Grant Millin, Oteen resident
Ms. Joyce Peek, tenant
Ms. Beth Trigg, Asheville resident
Ms. Minnie Jones, Asheville resident
Ms. Lottie Myers, West Asheville resident
Recent Asheville resident
Ms. Geraldine Melendez, Homeownership Educator at the Affordable Housing Coalition
Ms. Rebecca Campbell, Weaverville resident

Ms. Robin Jacobs, Co-President of the Young Lawyers Division of the 28th Judicial District Bar
Ms. Beth Maczka, Asheville resident
Ms. Elizabeth Bocklet, West Asheville resident
Mr. James Davis, third-party inspector
Mr. Tony Sayer
Mr. Dudley Wilson, Kenilworth resident
Mr. Goldwag, West Asheville resident
An employee with the Affordable Housing Coalition
Mr. Jim Barrett, Asheville resident
Mr. Christopher Slusher, North Asheville resident

The following individuals spoke in support of (1) all residential rental buildings (except new structures built since 7/1/94) receive a Housing Certificate under the standards of the Minimum Housing Code and thereafter, be enforced pursuant to a complaint based program; and (2) that owner occupied residential properties be inspected pursuant to a complaint based program, for several reasons, some being, but are not limited to: fires have declined everywhere - not just in Asheville because of the mandatory Housing Code; there are severe penalties for retaliation by landlords; there is duplication because there is state law that affects buyers and sellers and laws that affect the rights of tenants; there are multiple City inspections already; suggestion of grace period of approximately 12 months from date of implementation so everyone can make corrections and get their Certificate of Compliance without penalty; one of the reasons people are getting out of the rental business is because of the Certificate of Occupancy process; landlords will not let their property run down because they will want to keep their tenants and get more rent from the apartment; the City needs to put their attention to the problem areas and not require re-inspection of properties that are okay; inspections add to the cost of housing; there is a problem with the current Code enforcement; and we are adding burdens on the people that can help with affordable housing by requiring duplication of inspections:

Mr. Steven Duncan, member of the Housing Task Force
Ms. Judy Carver, member of the Housing Task Force
Mr. John Carroll, Vice-President of the Council of Independent Business Owners
Mr. Tom Wilson, North Asheville resident
Mr. Ed Siler, resident on Cisco Road
Mr. Curt Booth, President of the Asheville Board of Realtors
Mr. Bill Goacher, member of the Housing Task Force
Mr. George Morosoni, property manager
Mr. Mike Summey, property manager
Mr. Colin Robertson, member of the Housing Task Force
Mr. Bill Stamey, member of the Housing Task Force
Ms. Julie Brant, property manager
Ms. Helen Morrison, West Asheville resident
Mr. Ben Holloway
Mr. Alan Ditmore, Leicester resident
Mr. Walter Plaue

Mayor Worley closed the public hearing on the enforcement issues at 10:40 p.m. The issues regarding technical and editorial changes to the Minimum Housing Code will remain open and be continued to September 23, 2003.

At 10:40 p.m., Mayor Worley announced a short recess.

Councilman Ellis moved to adopt staff's recommendation to inspect residential rental buildings one time and then go to a complaint based program; that owner occupied properties be subjected to a one-time mandatory inspection upon property transfer for life safety issues only (said issues to be developed by City staff with citizen input) and thereafter be enforced pursuant to a complaint based program. This motion was seconded by Councilman Dunn.

Councilman Peterson moved to amend Councilman Ellis' motion so that rental properties continued to be subjected to a mandatory inspection program; that multi-family that complies with verifiable maintenance program have only 10% of units/buildings inspected, and that the tenant sampling be reduced to 20% of units/buildings. He said that he would not amend Councilman Ellis' original motion regarding owner occupied properties.

Upon inquiry of Vice-Mayor Bellamy, Councilman Peterson said that the mandatory inspection for rental properties would be on the current inspection schedule. She then asked if Councilman Peterson would include in his amendment that all rental properties built since July 1, 1994, be exempt from the mandatory schedule for 15 years. Councilman Peterson agreed to include that amendment to his motion.

Vice-Mayor Bellamy then seconded Councilman Peterson's amended motion.

Councilman Peterson said that the 1990 Census showed 1/3 of the City's housing stock was substandard and the existing Code worked to address that. If Council abolishes mandatory inspections, he feels that after the next census in 2010, we will start seeing those same sorts of numbers again.

Councilwoman Jones spoke on how she supported the amended motion in that she felt it is a true compromise.

The amendment to the original motion was voted on and failed on a 4-3 vote with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

Vice-Mayor Bellamy said that she could not support the original motion. She would be interested in hearing what the staff will be doing to educate the citizens of their rights, landlord responsibilities, etc. She understands that the existing Code wasn't the only thing that changed our community, but the Code did help change the mind-set of the individuals in our community to make them responsible for their property. She feels the staff recommended motion gives away too much.

Councilman Peterson felt Council is gutting the Housing Code to serve the financial self-interest of a small group of people.

Councilman Ellis feels what the City has done in the past ten years has made great strides in bring our housing stock up. He feels we are wasting our resources in inspecting million dollar houses and he wants the City to concentrate on the areas were there are problems. He pledges to try to come up with additional resources to do even more for the areas where we have problems. Let's spend our money to help people that need help.

Councilman Dunn feels that inspections are subjective, they cost a lot of money, and there is no way inspections can guarantee that a home is safe. He feels that the existing Code is a heavy hand on people and it does hurt the affordable housing stock.

Councilwoman Jones explained how there are some real fundamental inconsistencies with this Council and all of Council needs to be held accountable. She was curious to see in next year if more affordable housing will come to Asheville since we already have the 10 years of proof of what the Code has done for the quality of housing now.

Councilman Mumpower said that he doesn't pander to special interests on either side of the fence. He does try to listen to people and weigh out the facts and try to make an informed decision. The laws and the safety net has changed since this ordinance was adopted. If it turns out that is not true and some of the fears are realized then he feels this Council has the courage to fix it. We are trying to balance safe, affordable and available housing. He doesn't think that balance can be reached with extremes either way. He feels we are not walking away from people who are shy, have trouble in raising complaints, have disabilities, or are less capable than others. What we are trying to do is share the load between property owners, tenants, government and a free society. In the next phase of the public hearing he will be serious about enforcement – fair, consistent, and enthusiastic enforcement.

Mayor Worley was on the Council in 1993 when the existing Minimum Housing Code was adopted. He recalled adopting this because the old Code was not effective because it wasn't enforced and there was no awareness of the problems of the rights that tenants had under the old complaint driven system. The current Code has certainly raised that awareness and it has succeeded in bringing our housing stock up to good shape. He believed that it is worth trying the recommendation from staff after the process they have gone through. Even if a tenant is reluctant to complaint until they leave the property, the average turnover is 1-1.5 years so a complaint will trigger an inspection in that process perhaps even quicker than it might otherwise. He wants to be certain that we put steps in to educate our tenants and to encourage complaints and perhaps even requiring some sort of notice be given to each tenant of their rights under the Minimum Housing Code.

The original motion made by Councilman Ellis and seconded by Councilman Dunn carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

Councilman Ellis moved to continue the public hearing on the Minimum Housing Code's technical and editorial changes until September 23, 2003. This motion was seconded by Councilman Dunn and carried unanimously.

At 11:23 p.m., Mayor Worley recessed this meeting unit 3:30 p.m. on Tuesday, August 19, 2003, in the Council Chamber of the City Hall Building, Asheville, N.C.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 19, 2003 - 3:00 p.m.
1st Floor North Conference Room – City Hall

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

New Street Name Approval – Trellis Circle

Summary: The consideration of a resolution accepting the new proposed street name "Trellis Circle."

The City of Asheville's Community Development Division, owner of lots in Brotherton Commons off of Virginia Avenue, has petitioned the City of Asheville to accept the street name " Trellis Circle." The new street will begin at Virginia Avenue and end at Brotherton Avenue.

City staff recommends adoption of the resolution accepting the new street name of "Trellis Circle."

New Street Name Approvals – Strawbridge Court and Lovely Lane

Summary: The consideration of a resolution accepting the new proposed street names of "Strawbridge Court" and "Lovely Lane."

The Givens Estates United Methodist Retirement Community, owner of lots in Givens Estates off of Sweeten Creek Road and Wesley Branch Drive, have petitioned the City of Asheville to accept the street names of "Strawbridge Court" and "Lovely Lane."

The new street Strawbridge Court will begin at Wesley Branch Drive and end at Lovely Lane.

The new street Lovely Lane will begin a Wesley Branch Drive and end at the cul-de-sac on Lovely Lane.

City staff recommends adoption of the resolution accepting the new proposed street names of "Strawbridge Court" and "Lovely Lane."

New Street Name Approval – Prarie Path

Summary: The consideration of a resolution accepting the new proposed street name of "Prarie Path."

Mayfair Partners LLC, owners of lots off of Dillingham Road, have petitioned the City of Asheville to accept the street name " Prarie Path." The new street will begin at Dillingham Road and end on Prarie Path.

City staff recommends adoption of the resolution accepting the new proposed street name of "Prarie Path."

New Street Name Approval – Restaurant Court

Summary: The consideration of a resolution accepting the new proposed street name "Restaurant Court."

Pinnacle Properties, LLC, owners of lots off of Tunnel Road, have petitioned the City of Asheville to accept the street name " Restaurant Court." The new street will begin at Tunnel Road and end on Restaurant Court.

City staff recommends adoption of the resolution accepting the new proposed street name of "Restaurant Court."

New Street Name Approval –Catalina Court

Summary: The consideration of a resolution accepting the new proposed street name "Catalina Court."

Mr. Charles Burnett, owner of lots in Bradford Park off of Sand Hill Road, has petitioned the City of Asheville to accept the street name " Catalina Court." The new street will begin at Sand Hill Road and end at Catalina Court.

City staff recommends adoption of the resolution accepting the new proposed street name "Catalina Court."

Agreement with the Asheville Humane Society

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

On July 1, 2002, Buncombe County required the City to pay for animal shelter services with the Asheville Humane Society who has contracted to run the shelter. On July 1, 2003, the City approved the budget for Fiscal Year 2003-2004, and in that budget approved $121,000 to pay for shelter services. The City and Humane Society need to enter into an agreement for shelter services for the term of July 1, 2003, through June 30, 2004.

City staff recommends adoption of the resolution for animal shelter services for the term of July 1, 2003, through June 30, 2004.

Minority Business Commission Appointment

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two (2) of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Mr. Thomas Kling has been named by Eagle Market Streets Development Corporation (EMSDC) to represent them on the Minority Business Commission. Mr. Kling has been nominated to fill the position left vacant by Mr. Iba Taye who resigned effective January 21, 2003. Mr. Kling's term will run through August 2004 to complete the current term of Mr. Taye.

City staff recommends City Council adopt the resolution confirming the appointment of a member of the Minority Business Commission.

Grant for Crash Investigation Equipment and Software

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program for crash investigation equipment and software and travel/training money for the Asheville Police Department's Regional County Coordinator, and accompanying budget amendment in the amount of $8,000.

The Governor's Highway Safety Program has $10,000 available through their Small Highway Safety Project Contract for highway safety equipment and travel/training for regional county coordinators. The Police Department has identified $5,000 in crash investigation equipment and software needs and $3,000 in travel/training needs for the regional coordinator. There is no match requirement for these funds.

The crash investigation equipment and software will enhance the capabilities of the Police Department to investigate vehicular accidents and provide greater safety to the officers at the scene of an accident. The travel/training funds will allow the Regional Coordinator to participate in highway safety meetings throughout the southeast offered by the Federal government as well as those in North Carolina offered by the State government to fulfill their duties as the Regional Coordinator.

City staff recommends the adoption of a resolution and budget amendment, in the amount of $8,000, to accept a grant from the N.C. Governor's Highway Safety Program for crash investigation equipment and software and travel/training funds for the Regional Coordinator.

Speed Limit Changes and Establishments of Through Truck Prohibitions

Summary: The consideration of an ordinance to enact or change speed limits and enact through truck prohibitions on specific city streets.

The streets listed below have been identified for speed concerns or truck concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, or other City staff. Transportation Services Division staff has conducted field reviews of street geometry and conditions and/or speed studies. Streets with requests for truck prohibitions have been reviewed for appropriateness. The Police Department supports these recommendations.

Through Truck Prohibitions

The following streets are residential streets on which it is recommended that through trucks be prohibited.

1. Catawba Street, in its entirety
2. Olney Road, in its entirety
3. Swannanoa Avenue, in its entirety
4. Vance Crescent, in its entirety
5. Vance Crescent Extension, in its entirety

15 Miles Per Hour

The following streets are narrow residential streets with extreme street geometry problems, including severe and frequent crests and curves, and heavily used on-street parking. These streets warrant a significantly lower speed limit than the typical 25 mph. The recommended safe operating speed on these streets is 15 mph:

1. Circle Street, in its entirety
2. Huntington Street, in its entirety
3. Knob Street, in its entirety
4. Pine Street, in its entirety
5. Tuskeegee Street, in its entirety

20 Miles Per Hour

Most of the following streets are narrow residential streets with street geometry problems, including frequent crests and curves, and heavily used on-street parking. These streets warrant a lower speed limit than the typical 25 mph. Brook Street and Oak Street are business district streets with a combination of operating characteristics and street geometry features that warrants a speed limit slower than the current 35 mph speed limits. Pedestrian crossings and on-street parking maneuvers are frequent, and the roadway width is constrained. As stated in Section 19-111 of the Asheville Code of Ordinances, business district streets are to be 20 mph. The recommended safe operating speed on these streets is 20 mph:

1. Brook Street (US 25A), between Biltmore Plaza and Fairview Road (NCDOT)
2. Clemmons Street, in its entirety
3. Dundee Street, in its entirety
4. Grail Street, in its entirety
5. Hilderbrand Street, in its entirety
6. Jordan Street, in its entirety
7. Lincoln Avenue, in its entirety
8. McTindle Circle, in its entirety
9. Mountain Street, between Martin Luther King, Jr. Boulevard and Hilderbrand Street
10. Oak Street (Central Business District), in its entirety
11. Peeler Drive, in its entirety
12. Ridge Street, in its entirety
13. South Beaumont Street, between Martin Luther King, Jr. Boulevard and Hazzard Street
14. South Jordan Street, in its entirety

25 Miles Per Hour

Most of the following streets are typical local residential streets without street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. Eliada Home Road and Chestnut Street are residential collector streets which have a combination of street geometry features which warrant speed limits slower than the typical speed limit for residential collector streets of 30 mph. The recommended safe operating speed on these streets is 25 mph:

1. Eliada Home Road (SR 1318), between New Leicester Hwy and east corporate Limits (NCDOT)
2. Bevlyn Drive, in its entirety
3. Birch Court, in its entirety
4. Birch Lane, in its entirety
5. Broadview Drive, between Fairview Road and Onteora Boulevard
6. Carroll Avenue, in its entirety
7. Charlotte Street, between Edwin Place and Evelyn Place

8. Cherry Street (S. Asheville), between Royal Pines Drive and Birch Court
9. Chestnut Street, between Charlotte Street and Montford Avenue
10. Cumberland Avenue, in its entirety
11. Dover Street, in its entirety
12. Elkmont Drive, in its entirety
13. Farrwood Avenue, in its entirety
14. Hazzard Street, between Charlotte Street and Knob Street
15. Hazzard Street, between Pine Street and College Street
16. Highland Street, in its entirety
17. Linden Street, in its entirety
18. Max Street, in its entirety
19. Mimosa Drive, in its entirety
20. Mountain Street, between Martin Luther King, Jr. Boulevard and College Street
21. Mulberry Street, in its entirety
22. North Oak Forest Drive, in its entirety
23. Oak Forest Boulevard, in its entirety
24. Pheasant Drive, in its entirety
25. South Oak Forest Drive, in its entirety
26. Swannanoa Avenue, in its entirety

30 Miles Per Hour

The following streets are streets with features that warrant operating speeds less than the typical collector street speed limit of 35 mph. Charlotte Street is a transitional overlay district intended to promote street-oriented businesses and pedestrian use, and has significant pedestrian and bicyclist usage adjacent to the travel lanes. Fairview Road is a narrow winding collector street with limited sight distance in a number of locations and residential frontage in many areas. Both streets have frequent roadside hazards (i.e. utility poles) within the desired "clear zone", the space between the curb and hazards necessary for 35 mph. Moody Avenue is a primarily residential street that exhibits characteristics of a collector street and has adequate sight distance. Woodfin Street is located in the Central Business District but does not exhibit the characteristics that warrant the typical 20 mph business district speed limit. The recommended safe operating speed on these streets is 30 mph:

1. Charlotte Street, between Orchard Street and Edwin Place
2. Fairview Road, between Sweeten Creek Road and Fairview Street
3. Moody Avenue, between Monte Vista Road and Brookside Circle
4. Woodfin Street, between North Market Street and Oak Street

The Engineering Department requests that City Council approve the ordinance amending these speed limit and through truck prohibition changes.

Mr. Anthony Butzek, Traffic Engineer, answered various questions from Council, some being but are not limited to, the cost of signage and how speed limit changes are investigated.

When Councilman Mumpower suggested the City contact some of the people who would be affected by these speed limit changes, City Engineer Cathy Ball explained how these changes are based upon technical factors of the street.

Councilman Mumpower was concerned about the enforcement of our existing speed limits. City Engineer Ball explained that speed limits and signs are not traffic calming measures, but safety issues.

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Setting Public Hearing to Close a Portion of the Right-of-Way known as Greenbriar Road West from Bent Street to Parkwood Road

Summary: The consideration of a resolution of intent to close a portion of the right-of-way known as Greenbriar Road West from Bent Street to Parkwood Road and setting a public hearing on September 23, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Steven Goldstein, on behalf of PT Business Park, LLC, has requested the City of Asheville close the right-of-way known as Greenbriar Road West from Bent Street to Parkwood Road.

Public Works Department staff have researched and determined that Greenbriar Road West from Bent Street to Parkwood Road is a City maintained right-of-way. The only lot abutting the affected portion of Greenbriar Road West is identified by the PIN No. 9628.12-86-6464.

PT Business Park, LLC intends to upgrade Bent Street from Greenbriar Road West to Patton Avenue to a paved width of twenty feet. Additionally, PT Business Park will grant the City a vehicle access easement and a pedestrian access easement across their property connecting Parkwood Road and the portion of Greenbriar Road that will remain open.

City staff recommends that City Council adopt the resolution setting a public hearing for September 23, 2003, to close Greenbriar Road West from Bent Street to Parkwood Road.

Clerk to Advertise for Upset Bids for Disposal Parcels 162 and 163 on Baxter Street

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for Disposal Parcels 162 and 163 located on Baxter Street.

The subject parcels, zoned RS-8 Residential Single-Family High Density District and comprising 0.03 acres each are located on the south side of Baxter Street (PIN Nos. 9649.19-60-6613 and 6681). The current tax values for the parcels are $900 each for a total value of $1,800. The proposed land use for the subject property in the East End/Valley Street Community Improvement Program is for assemblage with adjoining residential property.

David Freck, who owns the improved property adjoining and in between the subject parcels, has submitted a bid to purchase both parcels for the sum of $1,800. Mr. Freck desires to assemble the parcels with the property he owns to provide yard space and off-street parking for his tenants.

Approval of the resolution will establish minimum prices of $900 each and initiates the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution authorizing advertisement for upset bids for Disposal Parcels 162 and 163 on Baxter Street.

Agreement for Temporary Services with Forsyth Initiative for Residential Self-Help Treatment Inc.

Summary: The consideration of a resolution to approve a Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation Division), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past two years with excellent results.

City staff recommends City Council approve the Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

Setting Public Hearing to Close Bellview Road from Belvedere Road to London Road

Summary: The consideration of a resolution of intent to close the right-of-way known as Bellview Road from Belvedere Road to London Road and setting a public hearing on September 23, 2003.

N. C. Gen. Stat. sec. 160A -299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Scott Buchanan, on behalf of Thoms Community Care Foundation, has requested the City of Asheville close the right-of-way known as Bellview Road from Belvedere Road to London Road.

Public Works Department staff have researched and determined that Bellview Road from Belvedere Road to London Road is a City maintained right-of-way. The only lot abutting the affected portion of Bellview Road is identified by PIN No. 9647.08-98-5093.

Thoms Community Care Foundation intends to construct and dedicate a new public right-of-way to the City to be known as "New Bellview Road," prior to closing Bellview Road.

City staff recommends that City Council adopt the resolution setting a public hearing for September 23, 2003 to close Bellview Road from Belvedere Road to London Road.

State Law Requirements for SkatePark

Director of Parks & Recreation Irby Brinson said that this is the consideration of an ordinance requiring participants at the Food Lion SkatePark to wear helmets, elbow pads and kneepads, and to ensure appropriate signage is posted.

In the last General Session of the N.C. General Assembly, Senate Bill 774 was approved for the establishment of certain guidelines for operating skate parks within local governments. This Bill requires operators of skateboard parks to post appropriate signage and require participants who use the park to wear helmets, elbow pads and kneepads. The results of this Bill have been posted at the Food Lion SkatePark for the last few months in order to inform participants of this change from the N.C. General Assembly.

The Parks and Recreation Department and the Risk Management Department have not received any claims for the operation of the Food Lion SkatePark since it was opened two years ago. However, both departments feel that this requirement will further ensure the safety of the participants and reduce any potential claims with the City of Asheville.

The Parks and Recreation Department requests City Council approval of the ordinance requiring participants to wear helmets, elbow pads and knee pads and to post appropriate signage.

Provisions for Alcohol at Two Festivals

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Lexington Avenue Arts & Fun Festival, and La Fiesta Grande de La Musica.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Lexington Avenue Arts & Fun Festival, scheduled for August 31, 2003, is a festival committed to helping raise money for Arts 2 People and the Asheville Mural Project as well as promoting Lexington Avenue businesses.

- La Fiesta Grande de La Musica, scheduled for September 20, 2003, at Memorial Stadium and is a concert proposed as an entertainment event for the local Hispanic population in WNC.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on August 26, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Group Homes in Certain Residential Zoning Districts

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for group homes in certain residential zoning districts.

This code amendment provides for group homes in the RS-8 Residential Single-Family High Density District, RM-6 Residential Multi-Family Low Density District and RM-8 Residential Multi-Family Medium Density District residential zoning districts as a conditional use. Additionally, the amendment adds group homes to the Urban Residential District as a use by right subject to special requirements (i.e., treating it the same as RM-16 Residential Multi-Family High Density District). This amendment was prepared pursuant to City Council direction to expand the zoning districts that group homes may be allowed in. The amendment includes design and operational standards for group homes in these zoning districts.

The amendment has been routed to Coalition of Asheville Neighborhoods, the Affordable Housing Task Force of Asheville and Buncombe County, CREIA, and Council of Independent Business Owners for review and comment.

On August 6, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0, including two amendments. City staff recommends approval of the proposed code amendment as amended.

After discussion by Council, it was the consensus to place this public hearing on the August 26, 2003, formal City Council agenda.

BOARDS AND COMMISSIONS

It was the consensus of City Council to appoint Ms. Bonnie Love and Ms. Carol Ann Pothier to the ADA Compliance Committee.

It was the consensus of City Council to determine who to interview for vacancies on the Planning & Zoning Commission at the August 26, 2003, formal meeting, with interviews being held prior to the September 2, 2003, worksession. It was also the intent of Council to make appointments to the Commission at the September 2, 2003, worksession.

It was the consensus of City Council to reappoint Mr. Herman Turk to the Buncombe County Tourism Development Authority.

At 3:40 p.m., Mayor Worley announced the remainder of the August 12, 2003, meeting would take place in the Council Chamber on the Second Floor of the City Hall Building.

CONTINUATION OF AUGUST 12, 2003, CITY COUNCIL MEETING

PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ENTERING INTO AN OPTION TO CONVEY CERTAIN CITY-OWNED PROPERTY IN THE CENTRAL BUSINESS DISTRICT TO THE GROVE PARK INN FOR A MIXED USE DEVELOPMENT PROJECT

Mayor Worley opened the public hearing at 3:55 p.m. Mayor Worley announced that it is the intent of City Council to not take formal action at this meeting, but to receive the input and apply it to the proposal.

City Attorney Oast said that this is the consideration of entering into an option to convey certain City-owned property in the Central Business District to the Grove Park Inn (GPI) for a mixed use development project. This public hearing was advertised on August 1 and 8, 2003.

In May, following a discussion at a Council meeting, the City entered into a Downtown Development Agreement with the GPI that involved the potential development of two properties overlooking City-County Plaza. One of the sites (Site #1) is located just east of the Biltmore Building, at the intersection of Market Street and College Street, and is partially traversed by Patton Avenue; it is six-tenths of an acre in size. The other site (Site #2) is located to the south of the City building, is approximately 3 acres in size, and is currently used as a parking lot for City employees. Part of Site #2 is currently owned by Buncombe County but the City and County have agreed for the City to acquire it, which should occur soon.

Ordinarily, when the City sells property, it uses an upset bid or other competitive-type process, and there is no requirement for a public hearing. The downtown development agreement law, N.C.G.S. 160A-458.3, provides that cities may in essence "place" City-owned property with a selected developer in connection with a downtown development project. There is no upset bid or other competitive process requirement, provided that there is a public hearing, and provided that the consideration received is not less than the appraised value of the property.

Since entering into the Downtown Development Agreement, the GPI's attorneys and the City have obtained a survey and appraisal, and performed some title research, and worked with the Pack Square Conservancy (Conservancy) on some design issues. All of this work was done in connection with Site #1, and we have drafted an option agreement setting out the proposed terms of the conveyance.

City Attorney Oast used a map to describe what used to be on Site #1. This was part of a redevelopment area that was established by the City Council in the late 1950's and early 1960's. The process actually began around 1958 and a redevelopment plan was adopted in 1962. The properties that were there (which were primarily in private hands) were acquired by the Redevelopment Commission. That Commission was a separate political entity from the City. Some properties were sold by private sale or by condemnation to redevelopers and the City for purposes consistent with the plan. The property we acquired was developed basically as a park and for street purposes as it was intended to be under that plan. Those restrictions were recorded in the Buncombe County Register of Deeds Office and they expired on December 31, 1987. It is his opinion that those conditions are no longer binding.

In summary, the terms of the draft option agreement are:

Sale price	$656,000 plus some non-monetary considerations in the nature of public amenity improvements. Appraised Fair Market Value (November 2002)
Description:	A copy of a part of a survey of the property is attached to the draft option agreement. Further title work may cause the boundaries to change slightly, reducing the size of the property conveyed, but these changes should not be significant. The building footprint will be substantially smaller than the property sold, but GPI's plans are to put much of the parking for the building underground, for which some subterranean horizontal area is required. The area over the parking will be restored as a park in accordance with plans for the area.
Design:	The building will comply with the Pack Square Design Guidelines, which are currently being developed by the Conservancy, and will be subject to approval by the City.
Other matters:	Any area disturbed by GPI during construction will be restored in accordance with the approved plans for City-County Plaza.

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Use: The option does not specify what uses are to be made of the building, but the Downtown Development Agreement specifies mixed use, and this is the use intended by GPI. The option period (at least six months) will provide an opportunity to develop more information as to the range of uses.

Termination: If GPI decides to terminate the option, the City will be entitled to GPI's earnest money ($10,000). If the City decides to terminate the option or for some reason does not convey the property, GPI will receive a refund of its earnest money, together with up to $5000 in costs.

At Council's direction, the vote on whether to authorize the City to enter into this option will occur at a later meeting. This is to enable staff to address any issues that come up during or as a result of the public hearing.

The Downtown Development Agreement will need to be amended to revise the schedule as to Site #2, and a resolution to that effect will be submitted under a separate Staff Report.

City Attorney Oast and Planning & Development Director Scott Shuford responded to various questions/comments from Council, some being, but are not limited to: since the footprint of the building is contemplated to be smaller than the property proposed to be sold, what protects the City from selling that to the GPI and the Conservancy allows the footprint to be the entire parcel; how can City be assured of design standards if the Conservancy can grant variances to the guidelines; if the City is asking for significant restrictions regarding height and the footprint, those should be in the agreement between the City and the buyer and not left to the Conservancy who is not appointed by Council; the height guidelines are set out in the Downtown Development Agreement which is incorporated into the Option; what exactly are the height restrictions and can they be set out in the option; clarification of subterranean parking; can Council design the box that the building goes in and then make restrictions; why did the City not use a competitive bidding process to see what other developers might have proposed for that area; is there anything in the downtown development agreement law that requires the City to sell the property for the appraised value; has the City been approached by others who want to build something different on that property; what are the non-monetary considerations to the sales price and what is the value of those considerations; can the GPI's underground parking extend further than the property line; is there space for pedestrian-friendly sidewalks around the proposed building; can concerns about pedestrian access, view lines and height restrictions be incorporated into the option; since the appraisal was done in November of 2002, is there a need for a newer one; if the building is over a certain size, will it require a public hearing for a Level III conditional use permit; and will there be a net gain of open space or a loss of green space.

Mr. James Craig Madison, President and Chief Executive Officer of the Grove Park Inn Resort and Spa, said that they are committed to work together with the Conservancy, Eagle-Market Streets Development Corporation, City staff and City Council on these projects. Twenty years ago the GPI employed 50 full-time people and decisions were made to grow and expand. Today the GPI is the 16th largest resort in America in terms of sales per available room and he employs 1,000 people. The decisions of the past affect the economy of today. We have just received the design guidelines and have spent a great deal of money to where we are today. To move forward we need to make sure that the option for Site #1 is secure. The GPI has a vested interest in the quality growth of downtown. We are in the final stages of choosing an architect to work with the Conservancy to work within the guidelines to build a quality product that is right for the City, but has the quality that matches our name. We look at Site #1 as the beginning of moving toward to Site #2. The combined increase in property tax is $1.5 Million. If we are successful in completing the retail component on Site #2 we are talking about another $1.6 Million in sales tax. The most conservative figure of the two projects combined will create over 500 new jobs. Our parent company is Sammons Enterprises with assets of $20 Billion. He said the combined investment is $225 Million. He stressed that capital follows capital. If they can move forward on this investment, they will expose this region to new levels of investment. There needs to be strong leadership in both the public and private sector because the decisions we make today have a tremendous impact on the economic vitality of the future.

Upon inquiry of Councilwoman Jones, Mr. Madison explained the kind of jobs he envisioned.

In response to Vice-Mayor Bellamy, Mr. Madison said that they haven't begun extensive programming, particularly on Site #2, however, he sees is a connection point from the park to the Eagle Street area. There is tremendous opportunity to border the Spruce Street and Eagle Street area with retail, both in terms of shops and restaurants. Based on early modeling, we will have to build 350,000 square feet of parking on Site #2, but no matter where you put a business, people want to park close. Again, he believes they are the connection point from the park to Eagle-Street Market Development Corporation.

The following individuals spoke in support of the option to convey Site #1 to the GPI for several reasons, some being, but are not limited to: need for City to disseminate information concerning project to the public; the GPI has a rich tradition of corporate citizenship; development of both parcels could result in the addition of 350 new jobs and a $225 Million investment in our region; this would be one of the largest single economic development projects in the history of Western North Carolina; such mega-projects create significant milestones in the history of a local economy, with benefits multiplied across a region; architectural style will fit in with the historical nature of our community; need to make sure the view corridor is protected; proposal is good for business, good for Asheville and will benefit the tax-payer; there are safeguards in place to address the majority of concerns; Asheville needs to welcome business; and job creation only happens when business is created:

Mr. Don Yelton, resident of Jupiter
Mr. Dale Carroll, President & Chief Executive Officer of AdvantageWest-N.C.
Mr. Nathan Ramsey, resident of Fairview
Mr. John Lantzius, resident of Fletcher
Mr. Dennis Justice, resident of Fletcher
Ms. Katina Zoumbos, downtown property owner
Ms. Margaret Koutris, downtown property owner
Mr. Scott Osborn, resident of Arden
Mr. Jay Winer read a letter from Eugene W. Ellison
Ms. Janice Nash, Buncombe County resident

The following individuals spoke in opposition of the City selling City-owned property to the GPI for several reasons, some being, but are not limited to: minimum wage jobs or more service level jobs will not help the City with raising the income level; will parking be available to the public; will the upscale condominiums be a wall, instead of a bridge, to the Eagle-Market Streets area; there should have been a competitive bidding process; although it can be argued that deed restrictions on the properties with constitute Site #1 have expired, the sale and use of the properties for other than park and street purposes are clearly contrary to principles adopted as part of the urban renewal plan in the 1960's; the view corridor, which is sought to be protected in the Pack Square design guidelines, would be greatly intruded upon by the proposed building on Site #1; question of legal authority to sell the properties and the procedure used to sell the properties; the sale and private use of the properties contravenes the purposes of the condemnation of the properties, contradicts the planned uses of the properties as shown on the urban renewal plan, conflicts with the draft Pack Square Design Guidelines, and may not be legally or otherwise proper; the construction of a building on Site #1 and the draft guidelines do not address vehicular and pedestrian traffic patterns adequately, infrastructure requirements, underground and above-ground easements, festival use and access, U.S. Dept. of Interior guidelines nor the impact on the Urban Trail artwork; the re-routing of vehicular traffic from Patton Avenue will be greatly affected and may impact the safe routing of fire trucks from the Municipal Building; major concern on Site #2 is the need for input from the Eagle-Market Street community because there is already a considerable amount of development occurring in that area; what affect will this have on the Grove Arcade's ability to lease it's space; can our downtown sustain these major undertakings; loss of green space; destruction of surrounding area when construction begins; not enough information given on projects; downtown Asheville will be walled in; don't close off the Eagle-Market Street area; Asheville-Buncombe Historic Resources Commission should be involved in the interpretation of the Pack Square design guidelines as well as the Conservancy; concern over the size of the buildings; increase in density should not be forced on Pack Square or the City-County Plaza; not enough input from community; Asheville needs affordable housing not luxury high rises; how was the height restriction of the Jackson Building determined; Pack Square design guidelines are vague; need for a current appraisal on property; City should emphasize renovation of existing buildings rather than build new buildings; City should find out what they want and then put the design out for bid; building will not provide recreation or living space for our poor; no design competition for prime piece of real estate; public space is priceless and should not be sold for monetary gain; other cities are planting more trees and adding more green space; and GPI should buy a block on Coxe Avenue and fix it up:

Mr. Walter Plaue, Buncombe County resident
Ms. Patsy Brison Meldrum, attorney representing The Biltmore Company Inc. (referred to a letter to Council dated August 11, 2003)
Mr. James Geter, representing Eagle-Market Streets Development Corporation
Ms. Sue Watts, Asheville resident
Mr. Fred English, Asheville resident
Mr. Mike McCreary, Asheville resident
Ms. Mary Linda, Asheville resident
Ms. Hazel Fobes, Asheville resident
Mr. Bill Wescott, member of the Asheville-Buncombe Historic Resources Commission and President of the Preservation Society
Mr. William Robertson, Asheville Resident
Ms. Julie Brandt, Asheville resident
Mr. Alan Ditmore, Leicester resident
Ms. Amina Spengler, Asheville resident
Ms. Ruth Clark, Asheville resident
Ms. Rebecca Campbell, Asheville resident
Mr. Ukiah Morrison
Ms. Nelda Holder
Ms. Karen Daily
Mr. Adam McBroom, Asheville resident
Mr. Bill Spencer, Asheville resident

After discussion and input from Mr. W. Louis Bissette Jr., attorney representing the GPI, at 7:03 p.m., Mayor Worley announced that he would not close the public hearing, but continue it until a date to be determined prior to the close of this item on the agenda.

Mr. Shuford then responded to many questions raised by the public, some being, but are not limited to: how input was solicited for public involvement from the Conservancy; soil testing by the GPI; emergency vehicle access; festival access; impact on other downtown businesses; dumpster outside building; two types of design guidelines; and the competitive bidding process.

Mr. Shuford then responded to various questions/comments from Council, some being, but are not limited to: will there be infrastructure costs and what will be the City's responsibility in those costs; do we need to get a more current appraisal of the property; is there a construction timetable; will the downtown development agreement need to be amended to adjust the date for the Site #2 public hearing; the Site #1 building was identified on the site in the plan approved by City Council; are the plans available to the public and can we put as much information as possible on the City's website; and is the City going against the intent of the urban renewal plan.

Councilman Ellis felt this would be a smart development in that we will be putting the property back on the tax base and after both sites are developed we will have more green space.

Councilman Peterson said that the Pack Square design guidelines were unclear about the height restriction. He asked that the restriction be clarified and inserted in our option with the GPI that the height limitation shall not including the penthouse, red roof or the bell tower. In addition, he asked for clarity on what is the footprint and in the area that we are going to be selling, are there any limits on what will be done in that space. Another issue is sidewalks. If the design standards talk about having a pedestrian oriented design, and on 2 or 3 sides of the building there is no sidewalks, it won't be pedestrian oriented. He would like to make sure that the building will fit in as surrounding property to a park. He requested information on how normal traffic and emergency traffic will be re-routed. Finally, he asked for clarify on the non-monetary considerations in the sale price.

Mr. Shuford stated that any street closing will have to be a separate public hearing by City Council.

Vice-Mayor Bellamy asked if staff could provide Council with the level of services at the major intersections in that particular area.

Upon inquiry of Councilman Peterson, City Attorney Oast explained the termination clause in the option and the timeline of the option.

Upon inquiry of Councilman Jones, City Attorney Oast explained why the City used the downtown development agreement law and not the competitive bidding process on these projects. He said the City was presented with an opportunity to not only get Site #1 developed with a building that we thought would add to the downtown, but also Site #2. It also gave Council a good opportunity to control that development. This is with a corporate entity that has had a long presence in Asheville and an interest in seeing that things are done in a sound manner. If you use an upset bid process, you lose a little bit of control over who gets the property and ultimately you don't have to see the property, but if you do sell it, you have to sell it to the highest bidder.

Councilwoman Jones was concerned about the public perception and their being included in the process and informed of the process. She suggested that a link of frequently asked questions about this proposal should be put on the web.

Vice-Mayor Bellamy asked if we could require some mixed income housing. Mr. Shuford felt that the opportunity for affordable housing was more pronounced in Site #2 because the scale of it is much larger. The GPI has had some concerns they have been able to overcome with regard to the scale of the footprint of the Site #1 building based upon the design guidelines. He thinks they have a limited tolerance of additional restrictions on what they might be able to realize in terms of their financial investment on that site. Site #2 is much larger and has much more opportunity for us to look at that type of requirement.

Councilman Mumpower said that this is extraordinary development and this is how extraordinary development happens. This is a $225 Million on a 6/10 acre.

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Mayor Worley spoke about the need of an option and the City's need to get some assurances on what the building will look like.

City Attorney Oast said that any restrictions can be clarified in the option and he felt that two weeks would be sufficient in order for him to draft the option for Council consideration.

At 8:20 p.m., Councilman Dunn moved to (1) revise the September 2, 2003, worksession time from 3:00 p.m. to 4:00 p.m. and move it from the 1st Floor North Conference Room to the Council Chamber, Second Floor of the City Hall Building; (2) continue this public hearing until Tuesday, September 2, 2003, at 4:00 p.m. in the Council Chamber, Second Floor of the City Hall Building; and (3) to take action on entering into an option to convey certain City-owned property in the Central Business District to the Grove Park Inn for a mixed use development project at Council's worksession on September 16, 2003. This motion was seconded by Councilman Ellis and carried unanimously.

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE DEVELOPMENT STANDARD BONUSES IN RESIDENTIAL DISTRICTS

Mayor Worley said that this public hearing was continued from the July 22, 2003, meeting. Mayor Worley then opened the public hearing at 8:32 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for more flexible application of development standards, including density requirements, in all residential zoning districts. This public hearing was advertised on July 11 and 18, 2003.

This code amendment provides for more flexible application of development requirements in all residential zoning districts. Affected districts include: RS-2, RS-4, RS-8, RM-6, RM-8 and RM-16. Under certain circumstances, a conditional use permit process can be used to modify development standards, including increasing density above the maximum permitted in each of these zoning districts, if the applicant successfully demonstrates that the project would exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood, and would also achieve one or more of the following goals:

- Promote the City of Asheville's affordable housing programs by providing housing that is affordable for purchase by people with household income below the area median or for rental by people with household income less than 80% of the area median, and particularly housing that meets the needs of people who have special needs or household income less than 60% of median income.
- Implement an officially adopted development plan for the area.
- Exhibit exceptional site design that preserves critical environmental features on the site.
- Assist the City of Asheville in meeting critical infrastructure needs, including but not limited to the preservation of open space, the creation of regional stormwater retention facilities, and achieving greater interconnectivity of the street network.
- Effectively incorporate public transit as a primary mode of transportation to and from the development.

On June 19, 2003, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 4-0. City staff recommends approval of the proposed code amendment as well.

Councilman Peterson initiated discussion surrounding his concern that the proposed amendment would not provide for the use of protest petitions by residents opposed to developments.

Discussion surrounded organizations that have received copies of the proposed ordinance and their comments, the conditional use permit process, and the neighborhood/developer meetings.

At the suggestion of Councilman Mumpower, Mr. Shuford amended two places in the proposed ordinance by deleting the word "city" when referring to goals.

At the suggestion of Vice-Mayor Bellamy, Mr. Shuford said that he would report back to Council in the future on whether this amendment is achieving goals identified.

Mr. Mike Lewis, Asheville resident, voiced opposition to the proposed amendment.

Mayor Worley closed the public hearing at 9:05 p.m.

Discussion occurred amongst Council regarding restrictive covenants and whether they control or City ordinances control.

Vice-Mayor Bellamy and Councilwoman Jones indicated their prior support for the amendment was wavering due to their concerns that the developments approved using the development standards bonus conditional use permit process would not be properly maintained if the Minimum Housing Code was modified.

Councilwoman Jones felt it was important for City Council members to know when developments are brought before them for review if they have restrictive covenants.

Councilman Mumpower moved to adopt the proposed ordinance with the two amendments outlined by Mr. Shuford. This motion was seconded by Councilman Dunn.

Vice-Mayor Bellamy and Councilwoman Jones asked that this matter be postponed until after the September 23, 2003, meeting regarding the Minimum Housing Code.

Vice-Mayor Bellamy didn't feel that we have the foundation to help ensure the residential neighborhoods will be protected.

Councilman Mumpower felt we have to make a responsible effort to address affordable housing and if we find this amendment doesn't work, it can be amended.

Vice-Mayor Bellamy moved to continue this matter until October 14, 2003. This motion was seconded by Councilman Dunn and carried on a 5-2 vote, with Councilman Ellis and Councilman Mumpower voting "no."

NEW BUSINESS:

A. RESOLUTION NO. 03-137 - RESOLUTION APPROVING THE PACK SQUARE DESIGN GUIDELINES

Planning & Development Director Scott Shuford said that this is the consideration of a resolution adopting the design guidelines for the Pack Square Renaissance Project. The development of design guidelines for the Pack Square Renaissance project area is a contractual obligation of the Pack Square Conservancy, Inc. in its agreement with the City.

The Pack Square Conservancy (PSC) has prepared design guidelines for City Council approval as required in their contract with the City of Asheville. These guidelines will provide design criteria and requirements for the publicly owned space within the boundary established by this contract (see Exhibit A.). Since the PSC is raising millions of dollars of private funds for improving this critical public space, it is important that it has a definite say in how development within this space occurs. The PSC has held meetings with City staff, stakeholder groups and the public in late July to get input regarding these guidelines. Changes have been made to the guidelines to reflect this input.

The PSC is proposing both general guidelines for the entire area, and specific guidelines for separate development sites. The general guidelines provide direction for composition, ground floors, upper floors and setbacks, building tops, entryways, materials and windows. These guidelines should result in new structures that complement and enhance the surrounding development and the future development of the park. Based on staff review of the draft of the guidelines, we recommend the guidelines be approved. This draft incorporates earlier staff comments that address applicability of the guidelines to particular sites and appropriate height limits for Site A.

City staff recommends City Council approve the guidelines.

After discussion initiated by Councilman Peterson, Mr. Shuford suggested if Council is concerned about design issues on Site #1, those should be addressed in the option agreement and not through these design guidelines. He did note that Buncombe County will have to approve these guidelines as well.

Ms. Carol King, Chair of the Downtown Association and member on Pack Square Conservancy Inc., explained to Council that the design guidelines are meant to present an overview of the vision for Pack Square and City-County Plaza. The guidelines outline specific massing guidelines for each site, as developed by the Pack Square Conservancy, in order to provide consistency in façade articulation and special features. She reviewed the design principles for great urban spaces. She said that the Pack Square Conservancy retains authority, as part of these design guidelines, to grant minor variances to these guidelines on a project specific basis. All interpretations of these guidelines by Pack Square Conservancy shall be final. All projects subject to these guidelines, "Permanent Improvements," must be approved as conforming with these guidelines by the Pack Square Conservancy prior to being permitted or approved by the City of Asheville or other regulatory agencies, as applicable. Sufficient project information, as determined b the Pack Square Conservancy, must be submitted at least 21 days prior to the date requested for review. The Pack Square Conservancy will notify the applicant as to the actual date of the review after its receipt of all pertinent information. The Pack Square Conservancy will be available for preliminary review at design stages, including preliminary review at design stages, including preliminary building massing and site design, material and roof form design, or such other design stages, prior to consideration of the final design for approval. She then reviewed the general guidelines consisting of composition; ground floors; upper floor setbacks and terraces; building tops; entryways and portals; materials; and windows and bays.

Ms. King then briefly reviewed the design guidelines for Sites A and D and the suggested design guidelines for Sites B and C.

When Councilman Mumpower asked what the Public Art Board's involvement is in these guidelines, Ms. King replied that they are involved in the Park, but not involved in the design review guidelines.

Councilman Mumpower explained his concern that the entrepreneurial spirit may be of risk in these guidelines

City Attorney Oast responded to various questions of Council, some being but are not limited to: can Council turn down a plan purely on aesthetics; what areas of the City does this guideline cover; can Council impose stricter standards than the guidelines call for; exactly what is the Conservancy's role and the City's in these guidelines;

When Councilman Mumpower asked for the reason for these guidelines, Mr. Shuford said that the Conservancy is raising millions of dollars and they want some assurance that the development that occurs within the area they are raising money for (1) is going to be compatible with the architecture of the area and the Park; and (2) they want to have long term control over that because, as you have seen from the pictures presented today, there is a tendency for inappropriate things to be put in at the Square and the City-County Plaza.

Mr. Scott pointed out that the Conservancy has not skimped on design advice.

After Councilwoman Jones found a consistency in the guidelines, Ms. King asked that the last sentence in the design guidelines for Site A should read, "Ground floor uses shall be active and pedestrian oriented."

Councilwoman Jones' concern is the height of the building as well and wasn't sure if she wanted the standard to be the height of the Jackson building, until that height was clarified.

Ms. Julie Brandt voiced concern about the process for developing these guidelines. She suggested this matter be tabled for further citizen input.

Mr. Fred English felt it would be inappropriate for the Renaissance Hotel to sell its parking lot.

Mr. Alan Ditmore said that if Council commits to height limits, they would be unable to waive them to negotiate a deal for a percentage of affordable housing units.

Ms. Patsy Meldrum Brison, attorney representing the Biltmore Company, (1) explained how the Pack Square design guidelines conflict with the existing downtown design guidelines regarding height; (2) how the view corridor will be intruded upon by the proposed building on Site #1; (3) why the building mass that could be approved on Site #1 is simply too large; and (4) questioned the Council's legal authority to delegate to another body the design review guidelines, especially variances.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 03-137, with the amendment read by Ms. King.

Councilman Mumpower acknowledged some discomfort with the complexities of these guidelines.

Councilman Peterson felt these guidelines were a good start, however, explained some of his concerns relating to the height, and the delegation of authority to the Conservancy especially regarding variances.

The motion made by Councilman Dunn and seconded by Councilman Ellis carried on a 6-1 vote, with Councilman Peterson voting "no."

RESOLUTION BOOK NO. 27 – PAGE 470

OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of July 18-24, 2003: Heather Tate (Sanitation), Claudia Hudson (Water), Jessica Curcio (Water) and Self Help Ventures Fund (Water).

The following claims were received by the City during the period of July 25 – August 7, 2003: Kame Stanley (Parks & Recreation), Mary Bryan Roberts (Streets), Robert Wise (Transit Services), Days Inn (Water), Linda Frankl (Sanitation) and Daren Pinkerton (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English said that all government property should be sold to the highest bidder and if any portion of public property is sold, he will form a citizens group to stop it.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:56 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 26, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

CHANGES TO AGENDA

I. PROCLAMATIONS:

A. SISTER CITY GIFT

Mr. G. Carroll Hughes, President of Asheville Sister Cities Inc., and Dr. Tom Jones, Chairman of the San Cristobal Committee, presented Mayor Worley with a hand-carved wooden statue of a Chamula Indian as a gift from the Municipal President Enoc Hernandez Cruz, San Cristobal de las Casas in the State of Chiapas, Mexico.

II. CONSENT AGENDA:

At the request of City Manager Westbrook, and consensus of Council, a resolution amending the September 2, 2003, worksession time and place was added to the Consent Agenda.

Vice-Mayor Bellamy asked that Consent Agenda Items "R" and "S" be removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 12, 2003, AND THE WORKSESSION HELD ON AUGUST 19, 2003

B. RESOLUTION NO. 03-138 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "TRELLIS CIRCLE" OFF OF VIRGINIA AVENUE AND BROTHERTON AVENUE

Summary: The consideration of a resolution accepting the new proposed street name "Trellis Circle."

The City of Asheville's Community Development Division, owner of lots in Brotherton Commons off of Virginia Avenue, has petitioned the City of Asheville to accept the street name " Trellis Circle." The new street will begin at Virginia Avenue and end at Brotherton Avenue.

City staff recommends adoption of the resolution accepting the new street name of "Trellis Circle."

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RESOLUTION BOOK NO. 27 – PAGE 471

C. RESOLUTION NO. 03-139 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "STRAWBRIDGE COURT" AND "LOVELY LANE" IN THE GIVENS ESTATE METHODIST RETIREMENT COMMUNITY

Summary: The consideration of a resolution accepting the new proposed street names of "Strawbridge Court" and "Lovely Lane."

The Givens Estates United Methodist Retirement Community, owner of lots in Givens Estates off of Sweeten Creek Road and Wesley Branch Drive, have petitioned the City of Asheville to accept the street names of "Strawbridge Court" and "Lovely Lane."

The new street Strawbridge Court will begin at Wesley Branch Drive and end at Lovely Lane.

The new street Lovely Lane will begin a Wesley Branch Drive and end at the cul-de-sac on Lovely Lane.

City staff recommends adoption of the resolution accepting the new proposed street names of "Strawbridge Court" and "Lovely Lane."

RESOLUTION BOOK NO. 27 – PAGE 472

D. RESOLUTION NO. 03-140 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "PRARIE PATH" OFF DILLINGHAM ROAD

Summary: The consideration of a resolution accepting the new proposed street name of "Prarie Path."

Mayfair Partners LLC, owners of lots off of Dillingham Road, have petitioned the City of Asheville to accept the street name " Prarie Path." The new street will begin at Dillingham Road and end on Prarie Path.

City staff recommends adoption of the resolution accepting the new proposed street name of "Prarie Path."

RESOLUTION BOOK NO. 27 – PAGE 473

E. RESOLUTION NO. 03-141 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "RESTAURANT COURT" OFF TUNNEL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Restaurant Court."

Pinnacle Properties, LLC, owners of lots off of Tunnel Road, have petitioned the City of Asheville to accept the street name " Restaurant Court." The new street will begin at Tunnel Road and end on Restaurant Court.

City staff recommends adoption of the resolution accepting the new proposed street name of "Restaurant Court."

RESOLUTION BOOK NO. 27 – PAGE 474

F. RESOLUTION NO. 03-142 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "CATALINA COURT" OFF SAND HILL ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Catalina Court."

Mr. Charles Burnett, owner of lots in Bradford Park off of Sand Hill Road, has petitioned the City of Asheville to accept the street name " Catalina Court." The new street will begin at Sand Hill Road and end at Catalina Court.

City staff recommends adoption of the resolution accepting the new proposed street name "Catalina Court."

RESOLUTION BOOK NO. 27 – PAGE 475

G. RESOLUTION NO. 03-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

On July 1, 2002, Buncombe County required the City to pay for animal shelter services with the Asheville Humane Society who has contracted to run the shelter. On July 1, 2003, the City approved the budget for Fiscal Year 2003-2004, and in that budget approved $121,000 to pay for shelter services. The City and Humane Society need to enter into an agreement for shelter services for the term of July 1, 2003, through June 30, 2004.

City staff recommends adoption of the resolution for animal shelter services for the term of July 1, 2003, through June 30, 2004.

RESOLUTION BOOK NO. 27 – PAGE 476

H. RESOLUTION NO. 03-144 - RESOLUTION APPOINTING THOMAS KLING AS THE REPRESENTATIVE OF THE EAGLE-MARKET STREETS DEVELOPMENT CORPORATION ON THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of a member of the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The Minority Business Commission consists of 11 members, 9 of whom are nominated by various groups and two (2) of whom are minority business owners nominated by the Minority Business Commission. All nominees are considered and appointed by both the City Council and County Board of Commissioners.

Mr. Thomas Kling has been named by Eagle Market Streets Development Corporation (EMSDC) to represent them on the Minority Business Commission. Mr. Kling has been nominated to fill the position left vacant by Mr. Iba Taye who resigned effective January 21, 2003. Mr. Kling's term will run through August 2004 to complete the current term of Mr. Taye.

City staff recommends City Council adopt the resolution confirming the appointment of a member of the Minority Business Commission.

RESOLUTION BOOK NO. 27 – PAGE 477

I. RESOLUTION NO. 03-145 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR A GRANT TO THE POLICE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program for crash investigation equipment and software and travel/training money for the Asheville Police Department's Regional County Coordinator, and accompanying budget amendment in the amount of $8,000.

The Governor's Highway Safety Program has $10,000 available through their Small Highway Safety Project Contract for highway safety equipment and travel/training for regional county coordinators. The Police Department has identified $5,000 in crash investigation equipment and software needs and $3,000 in travel/training needs for the regional coordinator. There is no match requirement for these funds.

The crash investigation equipment and software will enhance the capabilities of the Police Department to investigate vehicular accidents and provide greater safety to the officers at the scene of an accident. The travel/training funds will allow the Regional Coordinator to participate in highway safety meetings throughout the southeast offered by the Federal government as well as those in North Carolina offered by the State government to fulfill their duties as the Regional Coordinator.

City staff recommends the adoption of a resolution and budget amendment, in the amount of $8,000, to accept a grant from the N.C. Governor's Highway Safety Program for crash investigation equipment and software and travel/training funds for the Regional Coordinator.

RESOLUTION BOOK NO. 27 – PAGE 478

J. ORDINANCE NO. 3045 - BUDGET AMENDMENT FOR GRANT FOR CRASH INVESTIGATION EQUIPMENT AND SOFTWARE AND TRAVEL/TRAINING MONEY FOR REGIONAL COUNTY COORDINATOR FOR THE POLICE DEPARTMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY

Summary: See Consent Agenda Item "I" above.

ORDINANCE BOOK NO. 20 – PAGE 395

K. RESOLUTION NO. 03-146 - RESOLUTION CALLING FOR A PUBLIC HEARING ON SEPTEMBER 23, 2003, TO CONSIDER THE CLOSING OF A PORTION OF THE RIGHT-OF-WAY KNOWN AS GREENBRIAR ROAD WEST FROM BENT STREET TO PARKWOOD ROAD

Summary: The consideration of a resolution of intent to close a portion of the right-of-way known as Greenbriar Road West from Bent Street to Parkwood Road and setting a public hearing on September 23, 2003.

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N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Public Works Department staff have researched and determined that Greenbriar Road West from Bent Street to Parkwood Road is a City maintained right-of-way. The only lot abutting the affected portion of Greenbriar Road West is identified by the PIN No. 9628.12-86-6464.

PT Business Park, LLC intends to upgrade Bent Street from Greenbriar Road West to Patton Avenue to a paved width of twenty feet. Additionally, PT Business Park will grant the City a vehicle access easement and a pedestrian access easement across their property connecting Parkwood Road and the portion of Greenbriar Road that will remain open.

City staff recommends that City Council adopt the resolution setting a public hearing for September 23, 2003, to close Greenbriar Road West from Bent Street to Parkwood Road.

RESOLUTION BOOK NO. 27 – PAGE 479

L. RESOLUTION NO. 03-147 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR DISPOSAL PARCELS 162 AND 163 ON BAXTER STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for Disposal Parcels 162 and 163 located on Baxter Street.

The subject parcels, zoned RS-8 Residential Single-Family High Density District and comprising 0.03 acres each are located on the south side of Baxter Street (PIN Nos. 9649.19-60-6613 and 6681). The current tax value for the parcels are $900 each for a total value of $1,800. The proposed land use for the subject property in the East End/Valley Street Community Improvement Program is for assemblage with adjoining residential property.

David Freck, who owns the improved property adjoining and in between the subject parcels, has submitted a bid to purchase both parcels for the sum of $1,800. Mr. Freck desires to assemble the parcels with the property he owns to provide yard space and off-street parking for his tenants.

Approval of the resolution will establish minimum prices of $900 each and initiates the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution authorizing advertisement for upset bids for Disposal Parcels 162 and 163 on Baxter Street.

RESOLUTION BOOK NO. 27 – PAGE 480

M. RESOLUTION NO. 03-148 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC.

Summary: The consideration of a resolution to approve a Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation Division), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past two years with excellent results.

City staff recommends City Council approve the Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

RESOLUTION BOOK NO. 27 – PAGE 481

N. RESOLUTION NO. 03-149 - RESOLUTION CALLING FOR A PUBLIC HEARING ON SEPTEMBER 23, 2003, TO CONSIDER THE CLOSING OF BELLVIEW ROAD FROM BELVEDERE ROAD TO LONDON ROAD

Summary: The consideration of a resolution of intent to close the right-of-way known as Bellview Road from Belvedere Road to London Road and setting a public hearing on September 23, 2003

N. C. Gen. Stat. sec. 160A -299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Scott Buchanan, on behalf of Thoms Community Care Foundation, has requested the City of Asheville close the right-of-way known as Bellview Road from Belvedere Road to London Road.

Public Works Department staff have researched and determined that Bellview Road from Belvedere Road to London Road is a City maintained right-of-way. The only lot abutting the affected portion of Bellview Road is identified by PIN No. 9647.08-98-5093.

Thoms Community Care Foundation intends to construct and dedicate a new public right-of-way to the City to be known as "New Bellview Road," prior to closing Bellview Road.

City staff recommends that City Council adopt the resolution setting a public hearing for September 23, 2003 to close Bellview Road from Belvedere Road to London Road.

RESOLUTION BOOK NO. 27 – PAGE 482

O. ORDINANCE NO. 3046 - ORDINANCE REQUIRING PARTICIPANTS AT THE FOOD LION SKATEPARK TO WEAR HELMETS, ELBOW PADS AND KNEE PADS, AND TO ENSURE APPROPRIATE SIGNAGE IS POSTED

Summary: This is the consideration of an ordinance requiring participants at the Food Lion SkatePark to wear helmets, elbow pads and kneepads, and to ensure appropriate signage is posted.

In the last General Session of the N.C. General Assembly, Senate Bill 774 was approved for the establishment of certain guidelines for operating skate parks within local governments. This Bill requires operators of skateboard parks to post appropriate signage and require participants who use the park to wear helmets, elbow pads and kneepads. The results of this Bill have been posted at the Food Lion SkatePark for the last few months in order to inform participants of this change from the N.C. General Assembly.

The Parks and Recreation Department and the Risk Management Department have not received any claims for the operation of the Food Lion SkatePark since it was opened two years ago. However, both departments feel that this requirement will further ensure the safety of the participants and reduce any potential claims with the City of Asheville.

The Parks and Recreation Department requests City Council approval of the ordinance requiring participants to wear helmets, elbow pads and knee pads and to post appropriate signage.

ORDINANCE BOOK NO. 20 – PAGE 398

P. RESOLUTION NO. 03-150 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: The term of Herman Turk, as a member on the Buncombe County Tourism Development Authority, in the position of an owner or operator of a hotel/motel over 100 rooms, expires on August 30, 2003.

On August 19, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Herman Turk to serve a three year term, term to expire August 30, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 27 – PAGE 483

Q. RESOLUTION NO. 03-151 - RESOLUTION APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The terms of Carole Williams and Glenda McDowell, as members on the ADA Compliance Committee, expired on August 22, 2003.

On August 19, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Bonnie Love (representing the business or non-profit sector) and Carol Ann Pothier (representing the education/health/medical profession) as members to the ADA Compliance Committee to each serve a three year term respectively, terms to expire August 22, 2003, or until their successors have been appointed.

RESOLUTION BOOK NO. 27 – PAGE 484

R. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL

This item was pulled from the Consent Agenda by the request of Vice-Mayor Bellamy.

S. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LA FIESTA GRANDE DE LA MUSICA

This item was pulled from the Consent Agenda by the request of Vice-Mayor Bellamy.

194.

T. **RESOLUTION NO. 03-152 - RESOLUTION AMENDING THE 2003 CITY COUNCIL MEETING AGENDA TO CHANGE THE SEPTEMBER 2, 2003, WORKSESSION AGENDA TO BEGIN AT 4:00 P.M. IN THE COUNCIL CHAMBER, SECOND FLOOR, CITY HALL BUILDING**

RESOLUTION BOOK NO. 27 – PAGE 485

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 03-153 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON AUGUST 31, 2003

RESOLUTION NO. 03-154 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LA FIESTA GRANDE DE LA MUSICA ON SEPTEMBER 20, 2003

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Lexington Avenue Arts & Fun Festival, and La Fiesta Grande de La Musica.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- Lexington Avenue Arts & Fun Festival, scheduled for August 31, 2003, is a festival committed to helping raise money for Arts 2 People and the Asheville Mural Project as well as promoting Lexington Avenue businesses.

- La Fiesta Grande de La Musica, scheduled for September 20, 2003, at Memorial Stadium and is a concert proposed as an entertainment event for the local Hispanic population in WNC.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Councilman Dunn moved for the adoption of Resolution No. 03-153. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 27 – PAGE 486

Councilman Dunn moved for the adoption of Resolution No. 03-154. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 27 – PAGE 488

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER DESIGNATING THE JANE HALL LIDDELL BATTLE HOUSE LOCATED AT 288 MACON AVENUE AS A LOCAL HISTORIC LANDMARK

Mayor Worley said that the Planning and Development Department staff recommends tabling the consideration of the ordinance designating the Jane Hall Liddell Battle House (208 Macon Avenue) as a local historic landmark in order to allow us time to resubmit the amended report to the State Historic Preservation Office for additional comment and to confer with the Grove Park Inn regarding their continued support for the nomination. Staff has discussed this approach with both the Historic Resources Commission Executive Committee and the Grove Park Inn and all parties are in agreement with tabling the ordinance.

Vice-Mayor Bellamy moved to table the designation of the Jane Hall Liddell Battle House located at 288 Macon Avenue. This motion was seconded by Councilman Dunn and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF TWO LOTS LOCATED ON POLE CREASMAN ROAD AND BREVARD ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM 8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Planning & Development Director Scott Shuford said that on August 25, 2003, the applicant's representative informed the Planning Department that the compromise zoning proposal agreed to during the Planning and Zoning Commission is no longer being pursued by his client. The compromise proposal contemplated the rezoning of only a portion of the property owned by the applicant and this property was what was advertised.

The whole site is now proposed for rezoning, which will require re-advertisement. Since a public hearing has been scheduled for this date, Council will need to take action to continue the request until September 23 or October 14 to allow us time to advertise it properly. Alternately, you could refer the request back to the Planning and Zoning Commission since their vote reflected the compromise proposal. He believes the six members present when this item came before the Commission would not have supported the rezoning of the entire property. If Council chooses this latter approach, he recommended Council refer it back to the Commission with the understanding that it will be considered at the October 1 Commission meeting.

Vice-Mayor Bellamy moved to remand this rezoning request back to the Planning & Zoning Commission. This motion was seconded by Councilman Ellis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED ON STARNES AVENUE AND FLINT STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3047 - ORDINANCE TO REZONE TWO LOTS LOCATED ON STARNES AVENUE AND FLINT STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley then opened the public hearing at 5:20 p.m.

Mr. Carter Pettibone, Planner II, said that this is the consideration of an ordinance to rezone two lots located on Starnes Avenue and Flint Street from Neighborhood Business District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on August 15 and 22, 2003.

The property owners, Thomas Wolfe and David Crossley, wish to rezone the properties in order to develop one lot, which is vacant, as a single-family residence and to bring the existing single-family residence on the other lot into compliance with the Unified Development Ordinance (PIN Nos. 9649.17-22-4097 and 9649.18-21-5938). The intent of the RM-8 District is to permit a full range of medium density multi-family housing types along with single-family detached and attached residences. The Neighborhood Business District does not allow detached single-family residential as a use permitted by right.

The properties, which total 0.17 acres, are located in the City limits on the northwest and southwest corners of the intersection of Starnes Avenue and Flint Street. The subject properties are also located in the Montford Historic District. The predominant land use in the area is single family residential, even though there are number of vacant and multi-family uses in the vicinity. All properties directly surrounding the subject parcels are zoned RM-8.

Due to the vacant parcel's location within the Montford Historic District, the owner of the lot, Mr. Wolfe, will also need to obtain approval of the Asheville-Buncombe Historic Resources Commission for the design of the building and for flexible development standards if the proposed rezoning is approved in order to build a single-family residence on the property.

Rezoning the lots to RM-8 would allow one property owner the opportunity to build a single-family home and bring the existing single family home on the other property into compliance with the Unified Development Ordinance. The RM-8 zoning would fit into the existing zoning pattern seamlessly because the properties are entirely surrounded by RM-8 zoning. There are also two other Neighborhood Business districts within the Montford Neighborhood, as well as two Community Business I Districts in close proximity that would provide alternative locations for small scale, neighborhood-oriented business uses that could serve the general neighborhood.

In consideration of the above, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

The Planning and Zoning Commission voted 6-0 to recommend approval of the rezoning of the properties at Starnes Avenue and Flint Street from Neighborhood Business District to RM-8 Residential Multi-Family Medium Density District. Staff recommends approval of the rezoning request as well.

Mr. Thomas Wolfe, property owner, spoke in support of the rezoning.

Mayor Worley closed the public hearing at 5:25 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3047. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 400

D. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR THE BUNCOMBE COUNTY DETENTION CENTER EXPANSION ON PROPERTY BORDERED BY DAVIDSON, VALLEY AND MARJORIE STREETS

ORDINANCE NO. 3048 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE BUNCOMBE COUNTY DETENTION CENTER EXPANSION ON PROPERTY BORDERED BY DAVIDSON, VALLEY AND MARJORIE STREETS

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:28 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Alan Glines, Urban Designer, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a conditional use permit request to construct an 53,700 square foot addition to the existing Buncombe County Detention Center on property owned by the City of Asheville but under contract by Buncombe County.

On, June 26, 2003, Bruce Youngberg, AIA, from Cort Architectural Group, submitted plans for proposed additions to the Buncombe County Detention Facility. Under the Unified Development Ordinance (UDO) requirements, a jail facility is a conditional use in the Central Business District.

The conditional use request is for a 53,700 square foot addition to the existing detention facility. The parcel is approximately .65 acre (PIN No. 9649.19-50-4467) and is located adjacent to the existing detention facility and behind the City Building (City Exhibit 3 – Location Map). The addition will provide facilities for men and women. The lower levels of the structure will provide space for a coordinated 911 Call Center and Emergency Medical Service (EMS) facility.

The new structure will share its primary entrance with the existing Buncombe County Detention Center on Davidson Street. The building will front on Davidson Street and Valley Street (City Exhibit 4). The remainder of the lot (with frontage on Marjorie Street) will be used for parking. This parking area may be used at a future date for expansion of the facilities. Access to the parking area will be from Davidson Street and Valley Street. Landscaping will be included in the project in the form of street trees and parking lot landscaping (City Exhibit 5).

The height of the proposed structure will be below the height of the balustrade on the second floor of the City Building. This height restriction was a requirement of City Council for the transfer of the property for this use.

The Technical Review Committee (TRC) met on July 21, 2003, and recommended approval of the detention facility addition with conditions noted below.

As a part of the conditional use review process City Council must state if the project meets or does not meet each of the standards for Detention centers, jails and related correctional facilities found in section 7-16-2(c) of this chapter.

- Design Standards - The project must comply with the design guidelines for projects located in this area:

  The project was reviewed by the Downtown Commission for compliance with the design guidelines. They requested some variations with some materials used. The architect for the project was able to work those changes into the plan. The Downtown Commission allowed a variance for fewer openings for the street facing facades because of the special nature of the use. The project appears to meet the design guidelines for downtown.

- Fencing - No chain link, barbed wire, razor wire or similar fence material shall be used in areas that are visible from adjacent properties or from the public way unless specifically permitted by the City Council approving the conditional use permit.

  No chain link is proposed adjacent to the public way or visible from the public way.

- Fenced Areas - Fenced areas shall not abut any principal street unless specifically permitted by the City Council.

  No fenced areas are proposed on the plan.

- Lighting - Lights in pedestrian areas and parking lots shall not exceed 16 feet in height. All lights other than those in public pedestrian areas, including security lights, shall be full cut-off type fixtures, and shall not produce direct glare or light trespass on adjacent properties.

  Lighting provided as a part of the project will comply with these requirements.

- Signage - All signage must be reviewed and approved as part of the conditional use permit application. City Council may attach conditions addressing the location, size, number, and illumination of signs based upon circumstances related to the location and impact of the sign.

  The detention facilities will share an entrance with the Buncombe County Detention Center located on Davidson Street. Buncombe County is seeking an additional sign on Marjorie Street. City staff recommends approval of a sign up to 12 square feet to be worked by City and County staff. No additional signage will be required. In addition the other uses in the basement of the structure are not proposing additional signage.

- Operational Standards - No outdoor speaker systems shall be permitted. Vehicle entering and or leaving the facility shall not use sirens or emergency lights unless responding to an emergency.

  No outdoor speaker systems are proposed for the project and vehicles will not use sirens unless responding to an emergency.

- Loading and Unloading - All loading and unloading areas shall be located internally on the site and screened from view from adjacent properties and public ways. All loading and

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- Operational Standards - No outdoor speaker systems shall be permitted. Vehicle entering and or leaving the facility shall not use sirens or emergency lights unless responding to an emergency.

  No outdoor speaker systems are proposed for the project and vehicles will not use sirens unless responding to an emergency.

- Loading and Unloading - All loading and unloading areas shall be located internally on the site and screened from view from adjacent properties and public ways. All loading and unloading activities shall take place between the hours of 6:00 a.m. and 9:00 p.m. unless specifically waived by the City Council

Loading and unloading of inmates will take place as part of in the existing detention facility inside to the building.

- Exercise Yard – Exercise yards and other outdoor activity areas shall be located internally on the site and screened from view from adjacent properties and public ways.

  Exercise yards are inside the building and are not visible from adjacent properties or public ways.

- Vehicle Storage - All vehicles associated with the use shall be stored in an enclosed or screened area. The vehicle storage area may be screened with vegetation, fences, a combination or fences and landscaping material or other means designed to effectively screen the stored vehicles from adjacent properties and the public way.

  No vehicles will be stored on the property. Parking will be used by Buncombe County employees. Ambulances used as a part of the EMS unit will be stored inside the building in vehicle bays.

In addition to the specific conditions pertaining to detention facilities, City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)). Staff's preliminary review, absent the benefit of public input, indicates that all seven standards are met provided certain impacts are mitigated through site design modifications and off site road improvements.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The use or development as proposed will create no public health or safety problems as determined by TRC review.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The proposed development is essentially an in-fill project and is compatible with the topographic features of the site.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The location of this special use adjacent to the existing detention facility is appropriate and will not injure the value of nearby property.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The detention center addition went through the design review process and was approved by the Downtown Commission. As proposed, the building and development will be in scale and harmony with buildings in the vicinity.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

Locating the detention facility addition on an in-fill lot adjacent to the existing facility makes good sense. It will ease coordination of security and operations issues for the long term. These factors fit in well with smart growth goals.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The Detention Center Addition will be suitably located for all of these services. These issues were studied during the TRC review process.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The plans will not cause undue traffic congestion or create a traffic hazard

Staff recommends approval with the following conditions: (1) Water line extension plans must be submitted through the City of Asheville Engineering Department for review and approval; and (2) A construction-related traffic control plan will need to be developed and submitted to the City Traffic Engineer for review and approval.

When Councilman Mumpower asked about the loss of City employee parking, Mr. Glines said that the Parking Services staff has reviewed this and advises that City employee parking will be handled through existing parking.

Upon inquiry of Councilman Dunn, Mr. Jon Creighton, Assistant County Manager, explained that the existing facility is not a country club. He said the existing facility is experiencing severe problems with overcrowding, especially with the female population. The existing facility today has 393 inmates but they can only house sufficiently 353 inmates.

Councilman Dunn asked if the addition would house prisoners from other counties. Mr. Creighton responded that they would not be bringing in any other prisoners from other parts of western North Carolina, but if there is space available and the need arises, they will house prisoners from other facilities, which will be at a cost borne by that county.

When Councilman Dunn asked about when the facility might need to expand again, Mr. Creighton said it would be in approximately 8-9 years. He said the construction costs for this addition is $10 Million and construction is anticipated to take two years.

Upon inquiry of Councilman Mumpower about the design of the facility, Mr. Creighton responded that they did go through downtown design review and have made changes to lessen the impact as what people would say what they like or dislike about the appearance.

It was Vice-Mayor Bellamy's understanding that when the County approached the City with this idea approximately two years ago, the County was to have met with the surrounding neighborhood prior to bringing this before Council. She was disappointed that did not happen. Mr. Creighton responded that he didn't realize that, but would be happy to set up a neighborhood meeting.

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Councilwoman Jones' comments on the need for a future expansion included her hope (1) that the City will do its part to be tough on crime so in the long run it will become apparent that we are a community that will not tolerate crime; and (2) that in the County's long-term plans, they think about prevention of crime.

Mayor Worley spoke about the good working relationship between the City and County on this project.

Mr. Fred English spoke in support of building this addition to the Detention Facility.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:52 p.m.

Councilman Mumpower moved to adopt Ordinance No. 3048, to issue a conditional use permit for the Buncombe County Detention Center expansion on property bordered by Davidson, Valley and Marjorie Streets, subject to the following conditions: (1) Water line extension plans must be submitted through the City of Asheville Engineering Department for review and approval; (2) A construction-related traffic control plan will need to be developed and submitted to the City Traffic Engineer for review and approval; and (3) Buncombe County staff have an informational opportunity for the local residents about the planned addition. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 402

E. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS THE CEDAR HILL ROAD AREA

ORDINANCE NO. 3049 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED EAST OF PISGAH VIEW ROAD AND IDENTIFIED AS THE CEDAR HILL ROAD AREA

Mayor Worley then opened the public hearing at 5:53 p.m.

Mr. Carter Pettibone, Planner II, said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include property located east of Pisgah View Road and identified as the Cedar Hill Road Area. This public hearing was advertised on August 15, 2003.

The applicant, Lynda Rerych, has submitted an annexation petition for the Cedar Hill Road Area, which is located on the eastern side of Pisgah View Road near the intersection of Pisgah View Road and Cedar Hill Road. This area is contiguous to the existing corporate limits, being bordered to the south by the city.

The area proposed for annexation consists of 5.326 acres and is currently undeveloped. This area is within the extraterritorial jurisdiction and currently zoned RM-8 Residential Multi-Family Medium Density District.

City services for the area will begin on the effective date of annexation, which the applicant has requested be six months from approval date of the petition, or February 26, 2004.

City staff recommends City Council adopt an ordinance extending the corporate limits of the City of Asheville to include property located east of Pisgah View Road and identified as the Cedar Hill Road Area.

Upon inquiry of Councilman Ellis about any costs anticipated with this annexation, Mr. Pettibone said that the City would assume any debt to the fire department that is currently serving that area.

Upon inquiry of Councilwoman Jones, Mr. Pettibone said that Ms. Rerych is working with our Community Development Division on an affordable housing development of approximately 120 affordable units on this property and another piece of property to the south. On this particular property, approximately 42 units are proposed.

Mayor Worley closed the public hearing at 5:55 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3049. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 408

F. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTY KNOWN AS THE KENSINGTON-WINDSOR AREA TO BE ZONED RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3050 - ORDINANCE TO INITIALLY ZONE RECENTLY ANNEXED PROPERTY KNOWN AS THE KENSINGTON-WINDSOR AREA RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley then opened the public hearing at 5:56 p.m.

Mr. Carter Pettibone, Planner II, said that this is the consideration of an ordinance to initially zone recently annexed property known as the Kensington-Windsor area RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District. This public hearing was advertised on August 15 and 22, 2003.

The RS-4 District is intended to establish a medium-density residential area for single-family dwellings. The RM-16 District is intended to permit a full range of high density multi-family housing types along with limited institutional, public, and commercial uses appropriate within high density residential areas.

The Kensington-Windsor Annexation Area, which consists of 66.7 acres and 30 properties, was annexed by the City on June 30, 2003. The area is located south and east of the existing zoned districts on the east side of Sweeten Creek Road south of Mills Gap Road. Land uses in the annexation area include single-family and multi-family residential and vacant properties to the north, a large multi-family development along Sweeten Creek Road (Kensington Place Apartments), and a single-family subdivision to the south (Windsor Park).

In terms of surrounding zoning, there is RM-16 to the north along Mills Gap Road and to the west across Sweeten Creek toward the southern portion of the area. Commercial Industrial exists to the west across Sweeten Creek Road along the majority of the area's frontage and to the northwest towards the intersection of Sweeten Creek Road and Mills Gap Road. Properties to the east are outside the City Limits and zoned as part of Buncombe County's Limestone Township zoning.

The Planning and Development Staff recommends approval of the proposed initial zoning for the area for a number of reasons. In the northern section of the annexation area an RM-16 District would provide for the existing multi-family developments as well as for possible redevelopment of the adjacent and rather sizable parcels that are currently used for low density residential uses or are vacant. All the existing land uses in the proposed district are use permitted by right in the RM-16 District except for a mobile home which is located on the easternmost parcel along Mills Gap Road. This mobile home would most likely become a legally non-conforming use. RM-16 zoning would also continue the existing pattern of the RM-16 from the existing zoning to the north of the annexation area.

RS-4 zoning to the south would provide appropriate zoning for the existing single-family detached homes in the Windsor Park subdivision, which consists of 22 lots. No non-conforming use situations would result from rezoning this portion of the annexation area RS-4.

The Planning and Zoning Commission voted 6-0 to recommend approval of the proposed initial zoning for the Kensington-Windsor Annexation Area to RS-4 Residential Single-Family Medium Density District and RM-16 Residential Multi-Family High Density District. Staff recommends approval of the initial zoning as well.

Upon inquiry of Councilman Dunn, City Attorney Oast said that if the non-conforming use is damaged by fire or other casualty, it could be replaced, but not expanded, subject to specific provisions in the Code.

Mayor Worley closed the public hearing at 6:03 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3050. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 410

G. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTY KNOWN AS THE LEICESTER HIGHWAY AREA TO BE ZONED COMMERCIAL BUSINESS II DISTRICT AND HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3051 - ORDINANCE TO INITIALLY ZONE RECENTLY ANNEXED PROPERTY KNOWN AS THE LEICESTER HIGHWAY AREA TO BE ZONED COMMERCIAL BUSINESS II DISTRICT AND HIGHWAY BUSINESS DISTRICT

Mayor Worley then opened the public hearing at 6:05 p.m.

Mr. Carter Pettibone, Planner II, said that this is the consideration of an ordinance to initially zone recently annexed property known as the Leicester Highway area to be zoned

Commercial Business II District and Highway Business District. This public hearing was advertised on August 15 and 22, 2003.

The Highway Business District is established to address the needs of commercial development along major thoroughfares. The Community Business II District is established to provide areas for medium-to-high density business and service uses serving several residential neighborhoods.

The City annexed the Leicester Highway Annexation Area on June 30, 2003. The unzoned portion of the annexation area consists of 12 properties and 18.9 acres and makes up the area bounded by New Leicester Highway to the east, Eliada Home Road to the south, and Old County Home Road to the west. The remainder of the annexation area was part of the City's extraterritorial jurisdiction and was zoned at the time of annexation. Land uses in the proposed zoning area include a mix of commercial, vacant, and residential uses.

Currently, there is RS-8 Residential Single-Family High Density and Highway Business zoning to the east across New Leicester Highway and RM-6 Residential Multi-Family Medium Density and Community Business II/Conditional Use to the south across Eliada Home Road. Properties to the west are outside the City limits and unzoned.

In the southern portion of the annexation area, Highway Business zoning would mirror the existing Highway Business zoning to the east across New Leicester Highway. It would also accommodate the existing commercial uses in the proposed zoning district, which include a flea market, veterinarian clinic, retail sales, and automobile sales, as well as the remaining single-family residences, since all are permitted uses in the district. The only uses in the area that would not be permitted under Highway Business zoning would be two mobile homes, but they could remain as legally non-conforming uses. This zoning could also provide for the possible future redevelopment of the vacant and/or residential parcels on New Leicester Highway, which is a heavily traveled thoroughfare. Highway Business is proposed for eight of the twelve parcels that make up the unzoned area.

Staff feels Community Business II is an appropriate zoning district for the four remaining parcels to the north due to the proximity of the existing RS-8 zoning and residential development across Leicester Highway to the east. The existing land uses in this area (office, residential, and vacant) are permitted uses in the Community Business II District. In addition, since these parcels are generally shallower as measured from New Leicester Highway than those to the south, they would benefit from the smaller setbacks allowed in the Community Business II District if they were to be redeveloped.

The Planning and Zoning Commission voted 6-0 to recommend approval of the proposed initial zoning for unzoned portion of the Leicester Highway Annexation Area to Highway Business District and Community Business II District. City staff recommends approval as well.

Mayor Worley closed the public hearing at 6:07 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3051. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 413

H. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR GROUP HOMES IN CERTAIN RESIDENTIAL ZONING DISTRICTS

ORDINANCE NO. 3052 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO PROVIDE FOR GROUP HOMES IN CERTAIN RESIDENTIAL ZONING DISTRICTS

Mayor Worley opened the public hearing at 6:10 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for group homes in certain residential zoning districts. This public hearing was advertising on August 15 and 22, 2003.

This code amendment provides for group homes in the RS-8 Residential Single-Family High Density District, RM-6 Residential Multi-Family Low Density District and RM-8 Residential Multi-Family Medium Density District residential zoning districts as a conditional use. Additionally, the amendment adds group homes to the Urban Residential District as a use by right subject to special requirements (i.e., treating it the same as RM-16 Residential Multi-Family High Density District). This amendment was prepared pursuant to City Council direction to expand the zoning districts that group homes may be allowed in. The amendment includes design and operational standards for group homes in these zoning districts.

The amendment has been routed to Coalition of Asheville Neighborhoods, the Affordable Housing Task Force of Asheville and Buncombe County, CREIA, and Council of Independent Business Owners for review and comment.

On August 6, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0, including two amendments. City staff recommends approval of the proposed code amendment as amended.

Upon inquiry of Councilman Dunn, Mr. Shuford explained the language "a use by right subject to special requirements."

At the request of Councilman Peterson, Mr. Shuford explained other restrictions that would apply if a group home were located in a single-family district.

Councilman Peterson was concerned that by not including the RS-2 and RS-4 districts in this amendment, it appears that this amendment is based more on the class and income of the zoning districts. Mr. Shuford explained that in terms of the RS-8, RM-6 and RM-8 districts, staff felt that those were more intense-type residential districts and should be subject to these more intense requirements. He said the RS-8 is a fairly intense zoning district that allows 8 residential units to the acre and that way it is very similar to the RM-8, which is a multi-family zone - in fact, it allows more density than the RM-6. We did select these districts based on their potential of allowable density and the fact that you would expect a greater concentration of human beings in those types of districts Mr. Shuford noted that under State law you can have a family care home which would allow up to six individuals to be cared for and that is regarded as a single-family use under our law. That could occur in our RS-2, RS-4 or any of our zoning districts. He said that he would be happy to study and evaluate the possibility of other residential zoning districts for this amendment.

Upon inquiry of Councilman Mumpower, Mr. Shuford explained the protest petition process and why it would not be applicable with this amendment.

Upon inquiry of Councilman Dunn, Mr. Shuford explained how group homes are regulated.

City Attorney Oast said an attorney for the Blue Ridge Mental Health has requested an amendment to clarify in the definition of group homes that family care homes are not included within that definition. He agreed with that amendment.

Ms. Laurie Tollman, Executive Director of Flynn Christian Fellowship Homes and Chair of the Asheville-Buncombe Homeless Coalition, spoke in support of this proposed amendment.

Mayor Worley closed the public hearing at 6:31 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson moved for the adoption of Ordinance No. 3052 including the addition of all residential districts and the amendment clarifying the definition as recommended by City Attorney Oast.

City Attorney Oast felt that to expand this ordinance to include more residential districts than what is presented before Council now would require re-advertisement.

Councilman Peterson withdrew his motion and then moved to adopt Ordinance No. 3052 including the addition of a sentence to the definition for group homes that reads, "this definition does not include family care homes as defined herein." This motion was seconded by Councilwoman Jones.

Councilman Mumpower was not concerned about group homes, but was concerned about intentionally setting up a process that supercedes the neighborhood's ability to use the protest petition process. That process is state statutory authority granted for a reason to help protect neighborhoods from our intrusions.

Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods, said that their main concern was the 600-foot separation. Regarding the protest petition, she sees a trend of cutting the public out of attending Council meetings and everything going to staff approval. They have worked hard over the past 20 years to get citizens involved. They recognize the need for group homes, but were concerned about the protest petition process being not available.

The motion made by Councilman Peterson and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

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IV. UNFINISHED BUSINESS:

A. RESOLUTION ADOPTING THE ASHEVILLE CITY PLAN 2025 AS THE OFFICIAL COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE

Councilman Dunn moved to postpone action on this matter until the first of 2004 to give City Council more time within which to study the large document. This motion was seconded by Councilman Ellis and carried unanimously.

V. NEW BUSINESS:

A. ORDINANCE NO. 3053 - ORDINANCE AMENDING SPEED LIMITS AND ESTABLISHING THROUGH TRUCK PROHIBITIONS

Summary: The consideration of an ordinance to enact or change speed limits and enact through truck prohibitions on specific city streets.

The streets listed below have been identified for speed concerns or truck concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, or other City staff. Transportation Services Division staff has conducted field reviews of street geometry and conditions and/or speed studies. Streets with requests for truck prohibitions have been reviewed for appropriateness. The Police Department supports these recommendations.

Through Truck Prohibitions

The following streets are residential streets on which it is recommended that through trucks be prohibited.

1. Catawba Street, in its entirety
2. Olney Road, in its entirety
3. Swannanoa Avenue, in its entirety
4. Vance Crescent, in its entirety
5. Vance Crescent Extension, in its entirety

15 Miles Per Hour

The following streets are narrow residential streets with extreme street geometry problems, including severe and frequent crests and curves, and heavily used on-street parking. These streets warrant a significantly lower speed limit than the typical 25 mph. The recommended safe operating speed on these streets is 15 mph:

1. Circle Street, in its entirety
2. Huntington Street, in its entirety
3. Knob Street, in its entirety
4. Pine Street, in its entirety
5. Tuskeegee Street, in its entirety

20 Miles Per Hour

Most of the following streets are narrow residential streets with street geometry problems, including frequent crests and curves, and heavily used on-street parking. These streets warrant a lower speed limit than the typical 25 mph. Brook Street and Oak Street are business district streets with a combination of operating characteristics and street geometry features that warrants a speed limit slower than the current 35 mph speed limits. Pedestrian crossings and on-street parking maneuvers are frequent, and the roadway width is constrained. As stated in Section 19-111 of the Asheville Code of Ordinances, business district streets are to be 20 mph. The recommended safe operating speed on these streets is 20 mph:

1. Brook Street (US 25A), between Biltmore Plaza and Fairview Road (NCDOT)
2. Clemmons Street, in its entirety
3. Dundee Street, in its entirety
4. Grail Street, in its entirety

5. Hilderbrand Street, in its entirety
6. Jordan Street, in its entirety
7. Lincoln Avenue, in its entirety
8. McTindle Circle, in its entirety
9. Mountain Street, between Martin Luther King, Jr. Boulevard and Hilderbrand Street
10. Peeler Drive, in its entirety
11. Ridge Street, in its entirety
12. South Beaumont Street, between Martin Luther King, Jr. Boulevard and Hazzard Street
13. South Jordan Street, in its entirety

25 Miles Per Hour

Most of the following streets are typical local residential streets without street geometry problems. The appropriate speed limit for typical local residential speeds is 25 mph. Eliada Home Road and Chestnut Street are residential collector streets which have a combination of street geometry features which warrant speed limits slower than the typical speed limit for residential collector streets of 30 mph. The recommended safe operating speed on these streets is 25 mph:

1. Eliada Home Road (SR 1318), between New Leicester Hwy and east corporate Limits (NCDOT)
2. Bevlyn Drive, in its entirety
3. Birch Court, in its entirety
4. Birch Lane, in its entirety
5. Broadview Drive, between Fairview Road and Onteora Boulevard
6. Carroll Avenue, in its entirety
7. Charlotte Street, between Edwin Place and Evelyn Place
8. Cherry Street (S. Asheville), between Royal Pines Drive and Birch Court
9. Chestnut Street, between Charlotte Street and Montford Avenue
10. Cumberland Avenue, in its entirety
11. Dover Street, in its entirety
12. Elkmont Drive, in its entirety
13. Farrwood Avenue, in its entirety
14. Hazzard Street, between Charlotte Street and Knob Street
15. Hazzard Street, between Pine Street and College Street
16. Highland Street, in its entirety
17. Linden Street, in its entirety
18. Max Street, in its entirety
19. Mimosa Drive, in its entirety
20. Mountain Street, between Martin Luther King, Jr. Boulevard and College Street
21. Mulberry Street, in its entirety
22. North Oak Forest Drive, in its entirety
23. Oak Forest Boulevard, in its entirety
24. Pheasant Drive, in its entirety
25. South Oak Forest Drive, in its entirety
26. Swannanoa Avenue, in its entirety

30 Miles Per Hour

The following streets are streets with features that warrant operating speeds less than the typical collector street speed limit of 35 mph. Charlotte Street is a transitional overlay district intended to promote street-oriented businesses and pedestrian use, and has significant pedestrian and bicyclist usage adjacent to the travel lanes. Fairview Road is a narrow winding collector street with limited sight distance in a number of locations and residential frontage in many areas. Both streets have frequent roadside hazards (i.e. utility poles) within the desired "clear zone", the space between the curb and hazards necessary for 35 mph. Moody Avenue is a primarily residential street that exhibits characteristics of a collector street and has adequate sight distance. Woodfin Street is located in the Central Business District but does not exhibit the characteristics that warrant the typical 20 mph business district speed limit. The recommended safe operating speed on these streets is 30 mph:

1. Charlotte Street, between Orchard Street and Edwin Place
2. Fairview Road, between Sweeten Creek Road and Fairview Street
3. Moody Avenue, between Monte Vista Road and Brookside Circle
4. Oak Street (Central Business District), in its entirety
5. Woodfin Street, between North Market Street and Oak Street

Mr. Butzek said that after reviewing Oak Street (Central Business District), he would recommend the speed limit be increased from 20 mph to 30 mph.

The Engineering Department requests that City Council approve the ordinance amending these speed limit and through truck prohibition changes.

At the request of Vice-Mayor Bellamy, Mr. Butzek said that he would do a field review of Dundee Street to see if should be reduced from 20 mph to 15 mph and include that in the next round of changes.

Councilman Mumpower understands the decisions made to change speed limits are not arbitrary, and not made on the basis of neighborhood pressure, political pressure or personal preferences, but are technical recommendations. However, he was concerned about the enforcement of these 58 changes to our speed limits as well as the enforcement of our existing laws. Again, he didn't feel we have adequate coverage for safety management in the City.

Discussion then surrounded whether we have other streets in Asheville that are out of compliance from a technical standpoint, e.g., Kimberly Avenue and Edgewood Road and Creighton Road.

After discussion, Councilman Mumpower and Councilman Dunn felt it would be good to ask staff to research streets in the City that may not be in compliance of the technical standards and report back to Council with suggested changes. Councilman Peterson disagreed in that he didn't think it was productive to have staff review changes made by a prior Council who spent the time to address the concern.

Mayor Worley was satisfied that since we have a traffic engineer, we should leave it up to him to report to Council with streets that are out of technical compliance.

Mr. Fred English requested City Council to prohibit the use of engine brakes in the City of Asheville.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3053. This motion was seconded by Councilwoman Bellamy and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. PLANNING & ZONING COMMISSION

It was the consensus of City Council to interview the following for vacancies on the Planning & Zoning Commission: Jane Mathews, Andy Brown, Robert Sweetser, Thomas Byers, Mike Vance, Derek Weekley, Harry Weiss and Steven Sizemore. Said interviews will be held prior to the September 2, 2003, worksession with appointments being made at the worksession.

VI. OTHER BUSINESS:

Day of Caring

Vice-Mayor Bellamy announced that the Day of Caring will be held on September 11, 2003, and encouraged anyone interested in participating to call the United Way.

Claims

The following claims were received by the City of Asheville during the period of August 8-21, 2003: Hugh Wiggins (Parking Services), Steve Ward (Transit Services), Julie Davis (Water), Kim Hunt (Water), Carolyn Hembree (Streets) and David McConville (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English spoke about the problem of people posting signs on poles.

Mr. Dennis Justice, Fletcher resident, suggested City Council meet with the local delegation at the Civic Center prior to the NBA Pre-Season game on October 8, 2003. He felt the Civic Center will be packed which is a good opportunity to show the pros and cons of a packed house. He also suggested a Town Hall Day to discuss the destiny of the Civic Center.

Mr. Mike Fryar passed out two letters from attorney Martin Reidinger regarding the City's recent annexation of his property. Mr. Fryar explained how City Council made a mistake in annexing his property. City Attorney Oast said that he has a meeting scheduled with Mr. Fryar and would report back to Council.

Closed Session

At 7:40 p.m., Councilwoman Jones moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Ridgefield Properties, L.C.C., et. Al.; Frances C. Briggs, et al.; Carolina Power & Light Company; and City of Asheville – statutory authority contained in N. C. Gen. Stat. sec. 318.11 (a) (3). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 8:10 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 2, 2003 - 4:00 p.m.
Council Chamber – 2nd Floor – City Hall

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

UPDATE ON THE DOWNTOWN SOCIAL ISSUES TASK FORCE

Mr. Pat Whalen, Chair of the Downtown Social Issues Task Force, updated City Council on the Task Force's progress to date.

In December 2002, City Council appointed a Downtown Social Issues Task Force to develop recommendations to Council about social problems in downtown, such as homelessness, graffiti and panhandling. The Task Force began meeting in March 2003. Since then the Task Force has educated each other about problems in downtown and the services currently available. At present, the Task Force is working on goals and recommendations.

Because many of these problems have deep causes, the Task Force realized that any solutions it proposed would have to be feasible and manageable. At the beginning of this process a set of principles was adopted to guide any recommendations put forth in the future. He reviewed the principles.

Additionally, the Task Force has split into two working committees to address both immediate problems and conditions leading to social problems. These committees are the Behaviors Working Committee and Conditions Working Committee. The Behaviors Committee is developing recommendations to deal with graffiti, panhandling, public drunkenness and loitering or blocking the sidewalk. Meanwhile the Conditions Working Committee is working on reasonable solutions for dealing with the chronically homeless, those who are at risk for being chronically homeless and homeless youth.

During the process of developing recommendations, the Task Force is researching what has been done in other communities, how well those strategies have worked, and what would be appropriate for Asheville. The Task Force is planning on submitting its report to City Council in December 2003 or January 2004.

No action is required by City Council at this time.

CONSENT AGENDA:

Councilwoman Jones moved to waive the rules and take formal action on the two Consent Agenda items. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION NO. 03-155 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT FROM THE FEDERAL AVIATION ADMINISTRATION IN AN AMOUNT NOT TO EXCEED $3,085,435

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $3,085,435.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $3,085,435, is for the project consisting of: rehabilitate service road (replace Southeast Aircraft Rescue Fire Fighting Road culvert); rehabilitate taxiways; acquire snow removal equipment; construct Runway 16/34 blast pads; and expand terminal building (baggage claim expansion and hold room addition) Phase II.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-28.

Councilman Ellis spoke in support of the grant.

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RESOLUTION NO. 03-156 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF CITY-OWNED PERSONAL PROPERTY BY PUBLIC AUCTION ON SATURDAY, OCTOBER 4, 2003, AT 10:00 A.M. IN THE WILLIAM F. WOLCOTT JR. PUBLIC WORKS COMPLEX AT 161 S. CHARLOTTE STREET, ASHEVILLE NC

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

The resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction to be held Saturday, October 4, 2003, at 10:00 a.m. in the William F. Wolcott Jr. Public Works Complex located at 161 S. Charlotte Street, Asheville, North Carolina.

Staff recommends Council adopt the resolution authorizing the Purchasing Director to hold a public auction on October 4, 2003 at 10:00 a.m. at the Public Works Complex, 161 S. Charlotte Street.

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

NEW OR UNFINISHED BUSINESS:

RESOLUTION NO. 03-157 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE CONCEPT OF THE JOINT EMERGENCY COMMUNICATIONS CENTER WITH INTERIM TRANSFER OF THE ASHEVILLE FIRE AND RESCUE DISPATCH OPERATIONS UNTIL A JOINT CENTER IS CONSTRUCTED AND OPERATIONAL

Fire Chief Greg Grayson said that this is the consideration of an agreement with Buncombe County for the concept of the joint emergency communications center with interim transfer of the Asheville fire and rescue dispatch operations until a joint center is constructed and operational.

During the 2003-04 Council Budget Retreat in January, 2003, city staff presented Council with concerns about the delays that were occurring with over 32,849 emergency 911 fire/rescue and police calls that are being transferred to the City of Asheville from Buncombe County. At that time, staff recommended to City Council that the City of Asheville create its own primary 911 Public Safety Answering Point (PSAP) in order to provide more rapid response to all emergencies occurring in the City of Asheville.

Council requested more information on the subject and most Council members toured the Buncombe County 911 emergency communications center, the City of Asheville emergency communications center and the Sheriff's communications center. In the past year, Council has had much discussion about the 911 dispatch situation. In addition, Buncombe County Commission Chairman Nathan Ramsey stepped forward with a written proposal on behalf of Buncombe County to construct a joint emergency communications center that should be built and operational in approximately 2.5 years.

The operational benefits of a joint emergency communications center are significant. Most importantly, all 911 callers will experience the most minimal delay possible in receiving emergency services. Council took action affirming support to participate in a joint emergency communications center when it is built by Buncombe County. Council's commitment to this joint venture will allow Buncombe County to properly design a joint center. In addition, city and county staff can begin working together in planning and facilitating the joint operation.

On June 3, 2003, City Council authorized the City Manager to execute a performance based contract with Buncombe County for dispatch of fire/rescue calls (approximately 11,389 calls annually) and continue dispatching police emergency calls as we are doing currently (approximately 21,460 calls annually) during this 2.5 interim period. This arrangement would be in effect until a joint consolidation communication center is constructed and operational.

City staff has been working closely with County staff over the past sixty days to develop an agreeable, performance based contract for fire and rescue dispatch during the interim period. The contract is based upon national standards for communications, accreditation and communications operations.

Some highlights of the contract are as follows:

- Buncombe County is to construct a facility for a joint emergency communications center at no cost to the City of Asheville.
- Buncombe County is to provide all of the fixed dispatch equipment necessary for the entire joint communications center and the maintenance for that equipment at no expense to the City of Asheville. All equipment purchased will have to meet the City's technical requirements.
- Buncombe County will also agree to provide the City new consoles on or before January 1, 2005, for the police dispatch function.
- In the interim period between January 1, 2004, and the time that the new joint emergency communications center is constructed and operational (approximately January 1, 2006), Buncombe County will provide emergency dispatch services for the Asheville Fire and Rescue Department. In order to accomplish this task, Buncombe County will add three full-time telecommunicators in the County dispatch center. This enhancement will be at no cost to the City of Asheville.
- Buncombe County has agreed to provide the City with a quarterly performance report to ensure that emergency fire and rescue dispatches are being handled according to national standards for emergency call processing.

- The City of Asheville agrees not to establish its own Public Safety Answering Point (PSAP) as long as Buncombe County meets their contractual agreements.

- There is specific termination language in the agreement in the event that either party determines that the agreement is not meeting the needs of the governmental unit.

City staff recommends City Council approve the agreement with Buncombe County for the concept of the joint emergency communications center with interim transfer of Asheville fire and rescue dispatch services until a joint center is constructed and operational.

Councilman Dunn was proud that the City and County worked together realizing this is the best system for our entire community.

Councilman Mumpower thanked Councilman Dunn for his hard work in this matter.

Councilman Mumpower moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Dunn moved for the adoption of Resolution No. 03-157. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 27 – PAGE 493

RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Mayor Worley said that since two candidates were unable to attend their interviews prior to this meeting, those interviews would be arranged on September 16, 2003, and City Council would take formal action on appointing members at the September 23, 2003, meeting.

CONTINUATION OF CONSIDERING ENTERING INTO AN OPTION TO CONVEY CERTAIN CITY-OWNED PROPERTY IN THE CENTRAL BUSINESS DISTRICT TO THE GROVE PARK INN FOR A MIXED USE DEVELOPMENT PROJECT

Mayor Worley said that this public hearing was opened on August 19, 2003, and continued to this date to receive additional information regarding proposed option with Grove Park Inn.

Planning & Development Director Scott Shuford said that at the August 19, 2003, meeting, several questions arose. He has since created a link on our website to answer those questions. Using pictures, he responded to the following questions: what is the Grove Park Inn proposing; how is the City considering this proposal; why didn't the City open the development of these two sites up for competitive bidding; is the Site A property park of the land bequeathed by George Willis Pack; what is the relationship between the Grove Park Inn proposal and the Pack Square Renaissance Plan; what design controls will be in place to govern the design of the buildings on Site A and Site B; how do these two projects fit into the City's plans for downtown; will the sale of these two properties, especially Site A, decrease the amount of open space in downtown Asheville; how will the development of Site A affect emergency vehicle traffic; how will this development affect Bele Chere and other festivals; will these big developments cut into the existing markets for downtown businesses and residential providers; and will there be traffic congestion after eliminating the angled extension of Patton Avenue.

City Attorney Oast said that based on Council comments at the public hearing on August 19, he has prepared some more specific language for the design issues to be incorporated into the City's proposed option with the Grove Park Inn for the purchase of property located in the area bounded by College, Market and Spruce Streets, and traversing Patton Avenue. Specific issues covered include building height and footprint, sidewalks, preservation of the view corridor, and location of parking and service facilities. In drafting this language, he had reference to Council's identified concerns, the Pack Square Conservancy's (PSC) guidelines (as currently proposed) and Grove Park Inn's (GPI) requirements.

City Council also requested clarification as to the non-monetary consideration involved in this transaction. That consists primarily of improvements to public infrastructure in the immediate vicinity of the building site, such as sidewalks, and restoration of any disturbed areas in accordance with the approved plan for the Pack Square/City County Plaza area. It is difficult at this time to be specific, or to quantify what those improvements might be.

He said the above-noted design changes only affect paragraph 4. While reviewing, in detail, the changes below, he also used drawings prepared by GPI showing a slight revision in the southern line of the Subject Property, based on Council's desire not to intrude on the Spruce Street sidewalk, and illustrating the horizontal dimensions of the above-ground building envelope.

4. Building Design; Other Matters. GPI and the City further agree to the following in connection with the conveyance of the Subject Property and the development thereof by GPI:

   a. GPI shall comply in all respects with the terms and provisions of the Downtown Development Agreement to the extent that said Agreement applies to the Subject Property.

   b. GPI shall comply with the terms and provisions of the PSC Agreement as to the development of the Subject Property to the same extent as the City would have to comply with said Agreement, and nothing in this Contract or the Development Agreement may be construed to abrogate or limit the applicability of the PSC Agreement to development of the Subject Property.

   c. Notwithstanding the terms and provisions of the Downtown Development Agreement or the PSC Agreement, the following provisions shall apply to the development of the Subject Property, and shall be incorporated in the deed from the City to GPI such that said provision shall run with the land, and be binding in perpetuity on GPI and any of its successors and assigns.

      (1) The height of the primary exterior shell of the building shall not exceed the height of the north facade of the Jackson Building as measured from the sidewalk to the lower edge of the tile roof of the penthouse structure on top of the Jackson Building; this dimension is 128.7 feet, but for the purposes of the application of this height limitation it shall be 130 feet, and shall be measured from the lowest point of the south facade of the building to be constructed by GPI. This height limitation may be exceeded by a penthouse structure; provided, said penthouse structure is set back from the primary exterior shell on all sides, does not exceed 24 feet in height, and does not cover more than 40% of the horizontal roof area of the building. There shall be no further height allowances or projections for any purpose, including mechanical equipment installation(s). The limitations on the size of the penthouse structure shall apply even if the height of the primary exterior shell of the building does not exceed 130 feet.

(2) Building footprint. The exterior dimensions of the primary exterior shell of the building shall not exceed 158.00 feet wide, measured in a westerly direction from the point of intersection of the southern line of the sidewalk on the south side of College Street, extended, with the western line of the sidewalk on the west side of Spruce Street, extended, parallel to College Street (approximately east-west), by 60 feet deep, measured in a southerly direction perpendicular from the southern line of the sidewalk on the south side of College Street (approximately north-south). These dimensions are based on the current configuration of the streets in the area. To the extent that implementation of the approved plans for the Pack Square / City-County Plaza area requires or permits alterations in these dimensions while remaining consistent with the other design limitations specified herein, including the PSC design guidelines, this agreement may be amended to require or permit different horizontal dimensions, provided that no such amendment may limit the horizontal area created by the primary exterior shell of the building, measured on the outside, to less than 9450 square feet without GPI's consent.

(3) Preservation of view corridor. No part of the primary exterior shell of the building may intrude into the Vance Monument view corridor, which is the northwest corner of the Buncombe County Courthouse and the southwest corner of the Asheville City Building, as seen from a point measured five feet above the base and two feet east of the eastern face of the Vance Monument.

(4) Sidewalks. The building shall provide for sidewalks along its north, east, and west sides. The north side or College Street sidewalk shall be preserved or replaced in its current location and width. The east or Spruce Street sidewalk and the west or Market Street sidewalk shall be preserved, replaced or constructed at their current widths or otherwise to City standards, and may be relocated in accordance with the PSC plan.

(5) Underground parking. The parking facility for the building, if located on the Subject Property, may extend outside the building footprint, but not beyond the lines of the Subject Property; provided, that any part of any parking facility that extends south beyond the southern face of the constructed building must be completely below ground level, and the area above said parking facility shall be developed in accordance with the approved plan for the Pack Square / City-County Plaza Area, as developed by PSC and approved by the City. If approved by PSC, mechanical appurtenances such as air vents and utility equipment serving the parking facility may project above ground.

(6) Other design issues. Service facilities, such as refuse dumpsters, electrical and other utility connections, shall be located within the building or placed underground.

d. To the extent feasible, the City and GPI will coordinate with each other as to the location, relocation, or reconstruction of any utilities, infrastructure, public amenity, or public area in the vicinity of the Subject Property to the end that the area of City-County Plaza and Pack Square that is disturbed by GPI's project will be restored in a manner consistent with the City's plans for the area, as developed and adopted pursuant to the PSC Agreement.

e. The City will cooperate with GPI and provide reasonable assistance in connection with the development of the Subject Property with respect to such matters as temporary and permanent road closings and other permits and approvals necessary or desired by GPI for the project, provided that nothing shall require the City to exercise any discretionary function in a particular way.

He said that based on further direction from Council, further changes to the agreement will be made and presented for Council's consideration on September 16, when Council is scheduled to vote on it.

Mr. Mike McCreary, Asheville resident, noted that there is no building on Site A of the Pack Square Conservancy's website. Asheville's website is the one that contains the building on Site A. He felt that accommodating the community's concern about the historic integrity of this space and assuring economic development and prosperity do not have to be mutually exclusive. Mr. Shuford explained the reasoning behind the Conservancy's drawings.

Mr. Walter Plaue, resident on Wilderness Road, basically supported the concept, however, he was concerned with the details, in particular the height elevation and building footprint.

Ms. Julie Brandt, property owner in Asheville, said that at the Conservancy's design guidelines input meeting, there was no discussion of the design guidelines. She was confused what roles the Pack Square Conservancy, Grove Park Inn, and City Council play in the design guidelines. She said that this property on Site A is public greens space and she wants it to remain that way.

Mr. Wally Bowen, resident on Caledonia Road, said the community is concerned about the process and asked for an explanation of what the law is regarding competitive bidding.

Mr. Barry Summers, resident on Ben Lippen Road, spoke against the City selling its limited public green space to private developers.

Mr. W. Louis Bissette, attorney representing the Grove Park Inn, said that he remembered in the 1980's when the City scoured the country to find any developer who would even consider to come to downtown Asheville and make an investment because we had rows and rows of vacant buildings. He spoke in support of this project in that the Grove Park Inn has been in Asheville for 100 years, employs 1,000 people, has been a tourism engine since 1913, and has the financial ability to construct a first class building – a $30 Million increase to our tax base. That will be $1 Million in new taxes each year to provide new City services and help with affordable housing. New jobs will be provided as well. This option allows the Grove Park Inn to take another step and look at the feasibility of the project. If Council continues to reduce the footprint and height of the building, it will come to a point that it's not economically feasibility for the Grove Park Inn to build it.

Mr. Frank Sagendorf, part-time resident of Asheville, spoke about why he preferred the building not be constructed.

Mr. Fred English felt the Asheville taxpayers should vote on whether the City should sell this property to the Grove Park Inn.

There was considerable discussion initiated by Councilman Peterson about the height of the building, primary exterior shell of the building and rooftop ornamentation.

Mr. Shuford responded to various questions and comments from Council, some being, but are not limited to: will the building blend in more with the City Hall, Courthouse and Jackson Building or the more modern Biltmore Building and BB&T Building; is there any limitation on what the Grove Park Inn could build on the front portion of their building; what limits are we placing on a multi-story secondary exterior shell on this building; and are awnings proposed on the building.

Councilwoman Jones was concerned that Council recently adopted the Pack Square design guidelines that had the depth of the structure from College Street at 51 feet. Now we are increasing it to 60 feet. Mr. Shuford explained that there was a clear concern of Council at the August 19 public hearing that there be some limit to the extent to which a variance could be granted by the Pack Square Conservancy if the Grove Park Inn came back with an architectural rationale for some deviation from that 51 feet. The intent of this is to take a standard architectural dimension of 60 feet and establish that as the maximum that the City would be willing to live with if the Pack Square Conservancy granted a variance.

At 6:30 p.m., Mayor Worley called a short recess.

City Attorney Oast and City Engineer Cathy Ball responded to various questions/comments from Council, some being but are not limited to: was the appraisal combined for two lots on Site A or was each lot appraised separately; how old was the appraisal for the properties the City purchased for the Haywood Street Parking Deck; how much did the City pay for each parcel to build the Haywood Street Parking Deck; what are the comparable sites used in the appraisal for Site A; when there is a scare resource in the City (like green space), is that factored into appraisals; how many acres does the City own in open space, including the watershed; do we have any ability within the option to make sure this development will remain with the Grove Park Inn in the future; does the option require the Grove Park Inn to rebuild the sidewalks around the building to City standards; what will happen to the energy loop and the clock located on Site A and will the Grove Park Inn be required to pay for those relocation costs; will the Grove Park Inn be required to pay for any traffic signalization upgrade that will result from the realignment of traffic in that area; and how much on-street parking will be lost with the closing of a portion of Patton Avenue.

Vice-Mayor Bellamy asked for information what kind of mechanisms we can put in place to ensure that we preserve the green space and open space that the Pack Square Conservancy design guidelines have control over.

Councilman Dunn felt that the City of Asheville has been very good stewards of public lands.

Councilman Peterson asked for additional information on whether or not balconies would be permitted on the building on Site A. He felt that even though balconies permit a great view for the people who live inside but are very unattractive for the people on the street.

Councilman Peterson asked for a definition of primary exterior shell.

City Attorney Oast said that under the law, the City is required to disclose the appraised value of the property at the public hearing. Council asked at the August 19 public hearing to get an update on the appraisal that we had, but the appraiser has been out of town and was not able to get us that information for this meeting. He said he would have that information at the September 16, 2003, meeting.

Vice-Mayor Bellamy moved to continue the public hearing until September 16, 2003, for the purpose of receiving the update of the appraisal; and, on that date, public comment will be limited to any new information received at the September 16 meeting. This motion was seconded by Councilman Peterson and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:23 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 16, 2003 - 3:00 p.m.
1st Floor North Conference Room – City Hall

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT AGENDA:

Contract for Glendale Avenue Stormwater Drainage Improvement Project

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Hobson Construction Company Inc. to install drainage located along Glendale Avenue in Asheville, North Carolina.

The City is in need of a contractor to provide stormwater installation services for a drain line along Glendale Avenue between Thompson Street and McAurthur Lane. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for stormwater installation services were solicited and two responses were received. The project was rebid and there were two responses received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Hobson Construction Co. Inc.	0	Yes	Yes	$75,300
Buckeye Construction Co. Inc.	0	Yes	Yes	$104,034

Funding for this project has already been allocated in the Public Works Department's Stormwater Materials budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Hobson Construction Company Inc. to install a drain line along Glendale Avenue.

Agreement with the N. C. Dept. of Transportation for Airport Grant

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the CAT II TDZ Lighting-Runway 34, Raise MITL, Perimeter Security Road-Phase II.

The grant, in the amount of $33,595, has been approved by DOT based on a total estimated cost of $671,899.

City staff recommends adoption of the resolution.

Amend City Council's 2003 Scheduled Meeting Dates as follows: (1) Cancel September 30, 2003, community meeting; (2) reschedule Tuesday, October 7, 2003, worksession to Wednesday, October 8, 2003; and (3) reschedule Tuesday, November 4, 2003, worksession to Wednesday, November 5, 2003

Amendment to Civil Penalties Schedule for Unpaid Parking Citations

Summary: The consideration of an ordinance restricting the number of late penalties for unpaid parking citations to a maximum of three.

A review of the collection of parking citations after the addition of three late penalties indicates a very low collection rate. In addition, collection agencies and the state income tax garnishment system requires a set amount due that is not changing on a monthly basis to use these collection methods. By adoption of this ordinance, the City of Asheville would be in a position to better use the services of collection agencies and/or the state income tax garnishment program to increase compliance of parking ordinances and collection of amounts due.

Staff requests that City Council approves the ordinance.

Transit Services Director Bruce Black responded to various questions from Council.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

STORMWATER UTILITY FEASIBILITY STUDY

Mayor Worley said that this item will be postponed until the October 8, 2003, worksession.

TELECOMMUNICATIONS ORDINANCE

Public Works Director Mark Combs said that that this is the consideration of a telecommunications ordinance establishing a framework for communications infrastructure franchises and permits in the City limits.

The City needed a uniform way to regulate use, spacing, safety, etc. For example, you can have water, sewer, telephone, power, cable television, fiber optic, and possibly others in the future, in the public rights-of-way. Telecommunication consists of (1) fiber optic cable and other communications infrastructure located in public rights-of-way; (2) overhead (on existing or new poles; (3) underground (new or existing conduits); and (4) all new infrastructure. A telecommunications committee of City staff was formed to address the increasing use of the City's rights-of-way for utilities. The three key tasks for the committee was to: 1) Draft an ordinance; 2) Construct 'universal' franchise agreement; and 3) Convene to review and negotiate proposals.

In many cases, providing broadband cable access along certain routes makes such a system proprietary to the company in that particular area, and as a result companies have been scrambling to install such infrastructure in hopes of monopolizing future customers and access.

In the recent past, several cable companies have approached the City seeking exclusive rights to install fiber optic cable. Without a framework (ordinance) from which to negotiate non-exclusive franchises and permits, staff has been unable to develop long-term, binding legal agreements to benefit the franchise, current and future customers, and the City.

The goal of a telecommunications ordinance is that it will provide framework for (1) non-exclusive franchises; and (2) revocable permits. The ordinance will establish standards for: (1) telecommunications companies and developers and City staff (to base franchise agreement on); and (2) promote orderly development of infrastructure to insure: orderly installation within existing rights-of-way; customer access and services; and City and other government access.

In response to this need, a telecommunications ordinance was drafted which specifies the following sub-parts:

1 Franchise required: No telecommunications system can use public rights-or-way in the City without a franchise.
2. Franchise fees: As set forth in the (negotiated) franchise.
3. Service: Must be installed and in service within 12-months and "...in accordance with the conditions of its certificate of public convenience and necessity."
4. Construction and technical standards: Grantee must install and maintain their system consistent with listed laws, ordinances, technical standards/specifications.
5. Service to the City: Terms of service to the City at favorable rates.
6. Transfer of ownership or control: The City must be notified of any intent to transfer ownership or control and the transferee is required to accept all terms, provisions and amendments.
7. Franchise renewal: The City may grant or deny a franchise and Grantee will have no property right in the public rights-of-way if not renewed.
8. Forfeiture or revocation: Sets forth seven (7) grounds for revocation (breach of franchise, disposition of system, restoration, abandonment and extended operation).
9. Terms of renewal: As negotiated with each Grantee.
10. Receivership and foreclosures: 120-day termination clause; termination by judicial action.
11. Performance Bond: Required with details of terms and conditions.
12. Insurance: Proof of insurance and maintenance of policy required.
13. Indemnification: Detailed conditions regarding release, indemnity, hold harmless, claims and broad construction (per N. C. Gen. Stat. sec. 22B-1).
14. Liquidated damages: Detailed conditions regarding liquidated damages, negotiated penalties, unavoidable delay and procedures.

In conclusion, the ordinance will establish standards for orderly use of rights-of-way as approved by Council. The franchise agreements will be based on an ordinance and staff will review all proposals, make recommendations to Council, and oversee ordinance compliance.

City staff recommends Council adopt a telecommunications ordinance, which will provide for non-exclusive franchises and revocable permits for telecommunications services established within the City of Asheville.

City Attorney Oast noted that he would add a provision in the ordinance that statewide utilities would not be regulated by this ordinance.

Upon inquiry of Councilman Mumpower, City Attorney Oast explained that this ordinance was crafted by using models from several different North Carolina cities.

Upon inquiry of Vice-Mayor Bellamy about making sure that companies adhere to the same rules as the City does in performing work on our streets, City Attorney Oast said that this ordinance establishes baseline standards for franchises and parameters can be included in the individual franchises.

City Attorney Oast answered various other questions from Council, some being, but are not limited to, is this ordinance over-excessive; do we have the authority to require lines be placed underground, and does the City has any leverage in asking companies to extend their lines in other areas.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PRE-TOWING NOTICE

City Attorney Oast said that this is the consideration of an ordinance to require posting of "pre-towing" notices on private lots before owners can tow unauthorized vehicles with a civil penalty imposed for violation.

The City has received numerous complaints from people, usually visitors to Asheville, whose cars have been towed from private parking lots. The problem arises primarily in downtown and in Biltmore Village, both high tourist traffic areas, when cars are parked in private parking lots after normal business hours. The lots are not conspicuously posted with signs restricting parking (if at all), and are not chained off or barricaded, and people mistakenly assume that the lots are available for after hours parking. When the owners of towed vehicles go to retrieve their cars, they have complained that they are gouged on the price, forced to pay in cash, and otherwise treated rudely. This is a practice known as predatory towing, and many victims have promised never to return to Asheville and to warn their friends away, too.

The City's ability to regulate towing is limited, but other cities with similar problems have obtained special legislation to allow them to enact certain regulations. In 2001, the cities of Greenville and Chapel Hill obtained legislation to allow them to adopt an ordinance to require private property owners who tow vehicles from their lots to post a "pre-towing notice" on their lots before towing, and to assess a penalty if the ordinance is violated. In 2003, with the help of our local delegation, the City of Asheville was added to this legislation.

The ordinance is drawn from ordinances in Greenville and Chapel Hill. It requires the owners of lots who tow unauthorized vehicles to post these lots, and prescribes the size, height, location and required content of the sign. The act made unlawful by the ordinance is the towing of a vehicle, not the failure to post the sign, and the civil penalty for violation is $100 for the first violation, $200 for a second violation within 12 months, and $300 for a third or subsequent violation within 12 months.

City Attorney Oast said that a suggestion received is that there be a registry of lots that have been posted.

City Attorney Oast responded to various questions from Council, some being, but are not limited to: how will the ordinance be enforced; can other areas of the City, other than downtown and Biltmore Village, be included in the ordinance as needed; what would be the next step in enforcement of these types of violations; if towing prices change, will the signs need to change and who would pay for those changes; is the type of the sign large enough for people to read; where will the signs be posted; and who will be enforcing the ordinance.

After discussion, City Attorney Oast said that he would amend the ordinance to include language on the sign that makes it clear the times the lot is subject to towing and also add the cost of the tow on the sign.

It was the consensus of City Council to have the ordinance be effective 60 days after adoption.

Councilwoman Jones suggested that in the future it might be appropriate to earmark any monies accumulated as a result of this ordinance towards the visitor's center or similar place. She explained that many times visitors are usually the ones who get towed and state they will not return to Asheville.

Upon inquiry of Vice-Bellamy, City Attorney Oast said that he would have to investigate whether the City could require the posting of these signs.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 4:15 p.m., Mayor Worley announced the remainder of this worksession will take place in the Council Chamber on the Second Floor of the City Hall Building.

RESOLUTION NO. 03-158 -RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN OPTION TO CONVEY CERTAIN CITY-OWNED PROPERTY IN THE CENTRAL BUSINESS DISTRICT PURSUANT TO A DOWNTOWN DEVELOPMENT AGREEMENT TO THE GROVE PARK INN FOR A MIXED USE DEVELOPMENT PROJECT

Mayor Worley said that the public hearing on this matter was held on August 19, 2003, and September 2, 2003, and then continued until this date.

Councilman Ellis moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Dunn and carried unanimously.

Planning & Development Director Scott Shuford said that at the meeting of September 2, 2003, City Council requested some additional information concerning the Grove Park Inn (GPI) project. He noted that he submitted information to Council on the following: comparable sales used in the appraisal, primary exterior shell/balconies, Haywood Street Parking Garage property costs and appraised values, perpetuity of park space; scarce resources/limited asset question; and 2001 traffic study costs.

Regarding the "loss" of open space, Mr. Shuford said that they have taken the new survey and calculated the open space for the existing situation at 10,160 square feet. For the proposed situation, the amount of open space is 9,225 square feet assuming the scenario in which the GPI project is built to the maximum footprint allowed in the option agreement. There is a "loss" of open space of less than 1,000 square feet, which is more than made up from a park design standpoint through its consolidation into a single open area, rather than in two areas, one of which is functionally a landscaped median between four streets.

Mr. Shuford said that we have received an updated appraisal indicating a fair market value of $702,000 that reflects the passage of time from the first survey and the slight increase in area from the previous survey. It represents an estimated value of $37.50/square foot. This new figure will be added to the option agreement.

He then reviewed the following timeline of public information/participation. He said this timeline lists key dates for public information and participation. It does not include worksession updates on the Renaissance project status.

- January 2000 – Council receives extensive briefing about Pack Square Renaissance project and approves $7,500 to be allocated for the study. Buncombe County later approves a similar amount.
- May 2000 – The Pack Square Conservancy (PSC) holds a three-day design charrette that results in the original design showing two building sites.

- Summer 2000 – The City and County reviewed and approved the original design for the Pack Square Renaissance project.
- February 2001 – Council approves informational signage to be erected in Pack Square and City County Plaza concerning the Renaissance project. This signage illustrates the two building sites.
- August 14, 2001 – Agreement for Renaissance project executed by City, County and PSC.
- October 2001 – Additional multi-day charrette held by PSC.
- March 2003 – Grove Park Inn (GPI) development agreement approved by City Council.
- July 2003 – PSC holds day-long series of focus groups and public involvement/presentation on the design guidelines for the Renaissance project.
- August 19, 2003 – City Council discusses GPI option agreement; approves Pack Square design guidelines.
- September 2, 2003 – City Council discusses GPI option agreement.
- September 16, 2003 – City Council to discuss and vote on GPI option agreement.
- Summer 2004 – City Council to decide whether to sell the site to the GPI (assuming the option agreement is executed).

Mr. Shuford said that the proposed building will be the fifth tallest structure on the square, trailing the Buncombe County Courthouse, City Hall, BB&T Building and the Jackson Building.

City Attorney Bob Oast said that based on Council comments at the September 2, 2003, continuation of the public hearing on this matter, he has incorporated some revisions into the proposed Option with the Grove Park Inn (GPI) for the sale and development of the property located in the area bounded and traversed by College Street, Market Street, and Patton Avenue.

The revisions clarify or otherwise address issues raised by Council and others as to the specificity of the dimensional limitations on the proposed development. They also further clarify the Pack Square Conservancy's (PSC) role in reviewing the design of the building, and more clearly provide that the conditions to be incorporated into the deed specify maximum dimensions that may be reduced, but not exceeded, by PSC or any agency having control over the development of the Subject Property.

He has also noted in Paragraph 6 of the proposed Option the existence of the PSC Agreement, as well as the issues raised with respect to the Redevelopment Plan and the possibility of a partial interest by Buncombe County in a portion of the Subject Property. These issues will be more fully investigated during the option period, and addressed as necessary.

He then reviewed the applicable changes to paragraphs 4 and 6 below:

4. Building Design; Other Matters. GPI and the City further agree to the following in connection with the conveyance of the Subject Property and the development thereof by GPI:

   a. GPI shall comply in all respects with the terms and provisions of the Downtown Development Agreement with respect to the development of the Subject Property, and the terms and provisions of said Agreement are incorporated herein.

   b. GPI shall comply with the terms and provisions of the PSC Agreement as to the development of the Subject Property, and nothing in this Contract or the Development Agreement may be construed to abrogate or limit the applicability of the PSC Agreement to development of the Subject Property.

c. The following provisions shall apply to the development of the Subject Property, and shall be incorporated into the deed from the City to GPI such that they shall run with the land and be binding in perpetuity on GPI and any of its successors or assigns, and shall survive the termination of the PSC Agreement or any other arrangement that governs the development of the Subject Property. Said provisions shall be absolute limitations on the development of the Subject Property, such that no design approved for the development of the Subject Property, nor any design guidelines applicable to the Subject Property, nor any amendment or variance thereof, may permit the height, building footprint, or view corridor limitations established herein to be exceeded; provided, however, that any design approved for the development of the Subject Property may require a reduction in any of the height or building footprint limitations specified herein. As used herein, "primary exterior façade" means the exterior of the building, and includes any permanently attached features and appurtenances, such as balconies and stairs, but does not include any temporary attachments, such as awnings and flagpoles.

(1) Height

(a) The height of the primary exterior facade of the building shall not exceed the height of the north facade of the Jackson Building, as measured from the sidewalk to the lower edge of the tile roof of the penthouse structure on top of the Jackson Building, which dimension is 130 feet.

(b) The height of the building to be constructed by GPI shall be measured from the lowest point of its south facade, or 2215 feet above mean sea level, whichever is lowest.

(c) No part of the primary exterior facade of any side of the building may exceed the height of the south facade.

(d) A penthouse structure may project above the primary exterior facade of the building, provided said structure is set back from the primary exterior facade on all sides, does not exceed 24 feet in height, and does not cover more than 40% of the horizontal roof structure on which it is situated.

(e) In no case may any part of the building structure exceed 154 feet in height, or 2369 feet above mean sea level, nor may any projections, such as antennae or mechanical equipment, exceed this limitation.

(f) The limitations on the height and size of the penthouse structure shall apply even if the height of the primary exterior facade of the building does not exceed 130 feet.

(g) The limitations prescribed herein may not be exceeded for any reason.

(2) Building footprint. The exterior dimensions of the primary exterior shell of the building shall not exceed 158.00 feet wide, measured in a westerly direction from the point of intersection of the southern line of the sidewalk on the south side of College Street, extended, with the western line of

the sidewalk on the west side of Spruce Street, extended, parallel to College Street (approximately east-west), by 60 feet deep, measured in a southerly direction perpendicular from the southern line of the sidewalk on the south side of College Street (approximately north-south). These dimensions are based on the current configuration of the streets in the area. To the extent that implementation of the approved plans for the Pack Square / City-County Plaza area requires or permits alterations in these dimensions while remaining consistent with the other design limitations specified herein, including the PSC design guidelines, this agreement may be amended to require or permit different horizontal dimensions, provided that no such amendment may limit the horizontal area created by the primary exterior shell of the building, measured on the outside, to less than 9450 square feet without GPI's consent.

(3) Preservation of view corridor. No part of the primary exterior shell of the building may intrude into the Vance Monument view corridor, which is the northwest corner of the Buncombe County Courthouse and the southwest corner of the Asheville City Building, as seen from a point measured five feet above the base and two feet east of the eastern face of the Vance Monument.

(4) Sidewalks. The building shall provide for sidewalks along its north, east, and west sides. The north side or College Street sidewalk shall be preserved or replaced in its current location and width. The east or Spruce Street sidewalk and the west or Market Street sidewalk shall be preserved, replaced or constructed at their current widths or otherwise to City standards, and may be relocated in accordance with the PSC plan.

(5) Underground parking. The parking facility for the building, if located on the Subject Property, may extend outside the building footprint, but not beyond the lines of the Subject Property; provided, that any part of any parking facility that extends south beyond the southern face of the constructed building must be completely below ground level, and the area above said parking facility shall be developed in accordance with the approved plan for the Pack Square / City-County Plaza Area, as developed by PSC and approved by the City. If approved by PSC, mechanical appurtenances such as air vents and utility equipment serving the parking facility may project above ground.

(6) Other design issues. Service facilities, such as refuse dumpsters, electrical and other utility connections, shall be located within the building or placed underground.

d. To the extent feasible, the City and GPI will coordinate with each other and with PSC as to the location, relocation, or reconstruction of any utilities, infrastructure, public amenity, or public area in the vicinity of the Subject Property to the end that the area of City-County Plaza and Pack Square that is disturbed by GPI's project will be restored in a manner consistent with the City's plans for the area, as developed and adopted pursuant to the PSC Agreement.

e. The City will cooperate with GPI and provide reasonable assistance in connection with the development of the Subject Property with respect to such matters as temporary and permanent road closings and other permits and approvals necessary or desired by GPI for the project, provided that nothing shall require the City to exercise any discretionary function in a particular way.

f. The City shall retain appropriate easements to ensure that the part of the Subject Property south of the southern exterior facade of the building is used for public park purposes, and may assign or transfer said easements to a third party whose purposes include conservation of park land or green space.

6. Title to the Property.

a. At the Closing, the City shall deliver to GPI, or its successor or assign, a special warranty deed which shall be in a form acceptable to GPI, conveying to GPI a good, indefeasible, fee simple, marketable title to the Subject Property, its appurtenances and improvements (as set out in Schedule B), and any personal property agreed to be conveyed (as set out in Schedule C), said title to be insurable both as to fee and marketability at regular rates, without exception except as to those matters specifically enumerated in this subparagraph, or such as GPI may waive. Said policy shall provide full coverage against mechanics' or materialmens' liens, have full survey coverage, and shall contain such other special endorsements as GPI may reasonably require.

The Subject Property, its appurtenances, improvements and personalty, shall be conveyed by the City to GPI free and clear of all liens, encumbrances, claims, rights-of-way, easements, leases, restrictions and restrictive covenants except only:

(i) public utility easements, of record in customary form to serve the Subject Property; and

(ii) zoning ordinances of the City of Asheville; and

(iii) the PSC Agreement and design guidelines developed and adopted pursuant to said Agreement.

(iv) such other restrictions and/or easements as set forth in this option.

If in the opinion of GPI's counsel, the City's title fails to meet the requirements of this subparagraph, then any such deficiency shall be specified in particularity in writing to the City and the City shall have until Closing, or at GPI's option a reasonable time thereafter, to cure such deficiency at its sole cost and expense. If the City fails to cure such defect(s) within the permitted time, in addition to GPI's remedies as set forth in paragraph 16 below, GPI shall have the option of taking title "as is" and consummating the Closing or, in the alternative, of terminating this Contract and receiving an immediate refund of its earnest money and any interest accrued thereon.

b. The following specific matters have been identified as potential impediments to the City's ability to convey the Subject Property:

(i) restrictions, covenants or conditions contained in or arising through the deed for the Subject Property from the Housing Authority of the City of Asheville to the City, recorded in Deed Book 1118 at Page 239 of the Buncombe County Registry, the Contract for Sale of Land for Redevelopment by a Public Body, recorded in Deed Book 1117 at Page

463 of the Buncombe County Registry, and the Urban Renewal Plan approved by the City of Asheville by resolution adopted on August 2, 1962, and any amendments or revisions thereto, to the extent that any of said restrictions, covenants or conditions survive the dates set forth in said documents (December 1, 1987 and December 31, 1987) for the termination thereof.

(ii) the possibility that Buncombe County may have a partial interest in a portion of the Subject Property.

During the option period specified herein, the parties will investigate these matters and, if the same are found to be deficiencies in the City's title or impediments to the City's ability to convey clear title, then as to (i) above, GPI shall have the option of taking title "as is" and consummating the closing or, in the alternative, terminating this Option and receiving an immediate refund of earnest money and any interest accrued thereon; as to (ii) above, GPI shall have the option of taking title to so much of the Subject Property with respect to which the City can convey clear title together with the City's interest in any remainder not wholly owned by the City, or taking title to so much of the Subject Property with respect to which the City can convey clear title, or terminating this Option and receiving an immediate refund of its earnest money and any interest accrued thereon.

Mr. W. Louis Bissette Jr., attorney representing the Grove Park Inn, said that the changes outlined by City Attorney Oast are satisfactory to the Grove Park Inn.

The following individuals spoke in support of the City entering into an option with the GPI for various reasons, some being, but are not limited to: project will provide jobs for area residents, provide more green space, and boost to area economy; project will provide a significant tax base for the City thus lessening the tax burden on City residents and taxpayers; project will spotlight to the world the vibrant City of Asheville that wishes to nurture development, not stifle it; project is the best interests of the entire City of Asheville; you have to have business to create jobs; the Grove Park Inn will pay it's own way; GPI has been a first class citizen and they are no strangers to our community; this will be a positive project for the Eagle Street area; and building will bring in revenues to address shortage of jobs, affordable housing, and even perhaps the renovations needed at the Civic Center:

Mr. Albert Sneed, representing the Council of Independent Business Owners
(submitted Resolution in Support)
Mr. Eugene Ellison, Asheville resident
Mr. Walter Plaue, Buncombe County resident

The following individuals spoke in opposition of the City entering into an option with the GPI for various reasons, some being, but are not limited to: the building will block the view of the mountains; the City should have a vote of all residents on whether to sell the property or not; too much confusion over the height of the building, street reconfigurations, and actual acreage being discussed to be sold; are condominiums the best use on that property; if variances are granted on the project, the public should be given an opportunity to comment on them; poorly communicated facts, misinformation or lack of information on project; need to preserve existing green space; there is no public support of this project; no appropriate reconciliation of property lines and ownership; Pack Square Conservancy is a self-appointed body being given control over public space; project should fit into the Pack Square Conservancy's guidelines rather than adjusting the guidelines for the project; trees on property should be preserved; proposed building is out of proportion and does not fit in with the character of Pack Square; space is not adequate for scale of project; GPI should do a feasibility study first; Downtown Development agreement approved without public comment; downtown Asheville is already revitalized and does not need this project; there will be a loss of parking for people who have business at the Courthouse and City Hall; decision to proceed should be postponed and an inexpensive model should be prepared for the public to view; in the long-run this project may actually harm the beauty of Asheville and what makes Asheville unique; we need to preserve our City central core; there is space outside the City to build tall structures; project height will clog up the energy flow of openness of downtown area; we should ask the Preservation Society to be in charge of protecting Pack Square, not the Conservancy; need to keep our existing park land; there should have been a competitive bidding process; the building will take businesses out of existing office space and leave empty buildings; condominiums with children will require more school buses; condominiums will need more police to patrol area; what is the current vacancy rate on office, condominiums and retail buildings downtown; legal notifications of City Council meetings vs. worksessions lacked due process; and the height of building should be the entire streetscape, not the Jackson Building:

Mr. Fred English, Haw Creek resident
Mr. Brad Burns, Asheville resident
Mr. Bill Hussey Jr., Weaverville resident
Mr. Mike McCreary, Asheville resident
Mr. Barry Summers, Asheville resident (submitted copies of a referendum petition)
Ms. Nelda Holder, President of the League of Women Voters of Asheville-
    Buncombe County (submitted statement)
Ms. Nan Davis, Asheville resident
Ms. Leah Karpen, Asheville resident
Ms. Michelle Dorf, Weaverville resident
Two Asheville residents
Ms. Mary Jo Brezny, Asheville resident
Mr. Brokaw, Asheville resident
Ms. Julie Brandt, Asheville resident
Mr. Wally Bowen, Asheville resident
Mr. Robert Simon, Asheville resident
Ms. Hazel Robinson, Asheville resident
Mr. Bill Wescott, President of the Preservation Society of Asheville & Buncombe Co. Inc.
Mr. Brady Price, Asheville resident

Mr. Bissette addressed many of the comments raised by those who spoke in opposition of the project, stating that there has been a lot of confusion, but most of it has been put out by the opponents of the project. He reiterated that the GPI wants to build a wonderful building downtown, which will make Asheville proud.

At 6:33 p.m., Mayor Worley closed the public hearing and announced a short break.

Councilman Dunn moved adopt a resolution to authorize the City to enter into an option to convey property pursuant to a downtown development agreement. City Attorney Oast read the following resolution: "Whereas, the City of Asheville in May of 2003 entered into a Downtown Development Agreement with the Grove Park Inn Resort, Inc. (herein "GPI") under N. C. Gen. Stat. sec. 160A-458.3, pursuant to which the City and GPI agreed to negotiate the terms of an option for the sale of certain property in the downtown area to GPI for development of a mixed use building; and, Whereas, a public hearing was held beginning on August 12, 2003, wherein the terms of the proposed conveyance have been disclosed, discussed and revised, and are contained in an option agreement attached hereto as Exhibit "A"; and Whereas, the proposed sale price for the subject property is $702,000, or $37.50 per square foot, which is the appraised value based on an appraisal completed in November of 2002, and updated in September, 2003. Now, therefore, be it resolved by the City Council of the City of Asheville that the City enter into an option agreement for the sale by the City of certain property, or a portion thereof, identified in the attached option and pursuant to the terms and provisions set out therein, and that the Mayor be, and he is hereby authorized to execute said agreement, subject to the approval of the City Attorney. This motion was seconded by Councilman Mumpower.

Councilwoman Jones asked if it was possible to briefly explore some type of continuation of a public input process, but not necessarily in this forum, since a motion is on the floor. When Councilman Peterson suggested a motion to table, City Attorney Oast said that it is proper to have a motion introduced and on the floor which sets the table for debate. He said that Council can make a motion to postpone the matter for a certain period of time or indefinitely which would be to table a pending motion.

Councilman Dunn felt that there has been adequate public comment and would not be inclined to support a motion to table.

Mayor Worley addressed some of the confusion and misconceptions of the project. City Council and City staff only have control over what we disseminate, all of which is available to the public. We can't force other people or the media to print or disseminate information in any certain way. He said this has not been a hasty process. We've heard discussion that this all began with the Pack Square Conservancy (PSI) coming together and having a design charette in May of 2000 where two building sites, including this one, were identified. That resulted in an agreement between City Council and the PSC and the approval by City Council of the Master Plan for the Pack Square area, which included the building sites. We can't control what PSC may have changed on their website, but what was approved was a Master Plan with the building sites on it. The GPI proposal surfaced in the early part of this year and the agreement was put on Council's agenda and made available to the public. When Council discussed and approved the agreement, there was public comment. The public process has been pretty thorough. That agreement called for us to do exactly what we are doing now and that is to move forward to converting that agreement into an option. We have held public hearings for that process. Since the August 12 meeting had a crowded agenda, we continued the public hearing to August 19, then to September 2 and again to now. Our public process has been very thorough. Another misconception is that somehow we are missing the boat by not bidding this project. Instead we are doing it under a downtown development act, which allows us to do a negotiated agreement so long as the purchase price is not less than the appraised value. The reality is that the Downtown Development Act was specifically designed to address projects like this. Projects that have a significant impact on a downtown and gives a city council the opportunity to have extra control over what that project looks like. So, if we decided to do this, that agreement was the way to go. It's true that we did a Request for Proposals (RFP) for the development around the Battery Park Parking Garage, but we only received one response. The reality is that when we do an RFP or a bid process like this where a major project is specifically tailored, you get very few, if any, responses. He said that this is the very type project design this statute was designed for. There is another misconception about the finality of what we are doing if we go forward with the option agreement. It is only an option. The first step was the initial agreement, which allowed the GPI to perform some basic feasibility-type studies. The second step is an option, which gives them a higher level of comfort in terms of going forward with significant expenditures to come up with a design. A design we haven't seen yet. Anything in the paper has been conjecture. The GPI hasn't even hired an architect, to his knowledge. The option agreement gives them until summer of 2004 to complete the design process and then come back to Council. At that time Council will decide whether that design is sufficient and will fit in this area. If that is determined, then we will go forward with the sale of the property. There are misconceptions about George Pack and what he donated to the City of Asheville and the restrictions placed on it. He donated Pack Square. Pack Square stops about the time you get to Market Street. This area we are talking about is not part of Pack Square and is not part of what George Pack donated to the City of Asheville and is not subject to any restrictions that George Pack might have put on it. The PSC hired a consultant with donated money and held three days of charettes where they listened to the public and that is what came out of it. Regarding our need to preserve our history and our heritage, we did not do that with respect to this site. This site was occupied by buildings up to late 1960's or early 1970's. Buildings came all the way down almost to the County Courthouse. We tore those buildings down a number of years ago. Those are some misconceptions he wanted to take the opportunity to set the record straight. He felt that throughout this, this Council and City staff has tried to be very open and presented accurate and complete information.

Councilman Peterson said that he has talked with Mr. Bissette regarding his concerns regarding the height of the structure. The following three items have been discussed and agreed to by Mr. Bissette: (1) the lower edge of the gargoyles be the top of the main structure; (2) the penthouse structure not exceed the penthouse structure of the Jackson Building in height, and not cover more than 80% of the horizontal roof structure on which it is situated; and (3) any sort of decorative feature can be added to the top of the building with the maximum height of the height of the bell tower on the Jackson Building.

Mr. Bissette said that this is another way the GPI is trying to meet the concerns of the City Council noting that the GPI does agree to the changes to the height outlined by Councilman Peterson. The GPI does prefer a higher building because there is an economic reality in a building like this, particularly where we are restricted to a footprint. The footprint of the building would give the GPI a floor space of about 9,000 square feet, if the PSC guidelines variances can be increased to a 60-foot wide building, compared to the footprint of the Biltmore Building which is 12,500 square feet.

Mr. Troy Hunnicutt, Director of Development for the GPI, said that with the changes outlined by Councilman Peterson, they will lose approximately 9,500 square feet, which is one floor level completely. He said that he would make a good faith effort to make the changes work, which would result in nine stores plus a penthouse, above ground.

Councilman Peterson expressed concern about the front yard space of the building because it would be an intrusion into the view shed and/or feel of the park. He said he has spoken with Mr. Bissette and Mr. Bissette said the GPI does not have plans to build any permanent buildings on that space or use it for commercial space. Councilman Peterson said that although the option does have some language about easements, he would like to be specific that there will not be structures built, other than a 10-15 feet awning and sidewalk café space, and that it will be more like the park structure that the PSC envisions. He feels that this should be part of deed restrictions if we sell the property, just in case the PSC changes its mind in the future.

Mr. Bissette said that the GPI will have landscaping at the entrance to the building and probably some outside tables for maybe a restaurant on the first floor. There are no plans for the construction of any kind of structure in the front yard space of the building. The parking garage will go under that property and the surface will be returned to the state that the PSC wants when it completes its park in the City/County Plaza.

City Attorney Oast said that he would prepare language amending the option by adding a clause to one of the provisions, which basically states that there would be no projections south of the southernmost limit of the building, except canopy projections not to exceed 15 feet, with no other permanent commercial uses beyond that 15 feet. He said that if City Council wants this language in a deed restriction, he would be happy to do that.

Vice-Mayor Bellamy asked how would that language coincide with her request for a conservation easement for not only the front yard part, but the entire corridor to remain green space. City Attorney Oast said that the easement we are retaining would allow for the kind of structure Councilman Peterson is comfortable with and that easement could cover the remaining portion and could be conveyed to a conservation organization.

When Councilman Mumpower asked why the GPI expressed interest in building on this property and not near the Civic Center or on Coxe Avenue, Mr. Bissette said that when they saw the plans for the PSC they saw this as a win/win situation. This could be an investment for the GPI and spur along the development of the park process. People who invest in this type of residence will want a beautiful park.

Upon inquiry of Councilman Mumpower about competitive bidding, City Attorney Oast said that the City wouldn't lose all design control if we entered into a competitive process, but with the downtown development agreement, we retain a higher degree of design control than we would have with the competitive process. In the competitive process we could specify interest in receiving proposals that meet certain requirements. However, he felt that this gives us more front-end flexibility on what that proposal would look like.

Councilman Mumpower pointed out that the valuable piece of property across from the Civic Center for the St. Lawrence Square Parking Garage was handled by the competitive qualification process and only one response was received. City Engineer Cathy Ball stressed that what the City requested was a proposal for qualifications, not a proposal for cost; and the City did not receive anything back on the requests sent out of state. In that project too, we also hope to use the Downtown Development Act in order to finalize the option for the property.

Councilwoman Jones pointed out that we did use a competitive process first and then will use the Downtown Development Act tool.

Vice-Mayor Bellamy felt that as this project progresses, there should be a requirement for the GPI (like any other developer) to meet with the "neighborhood" in order to show them their plans and try to respond to any of their concerns. That meeting could occur in the Stephens-Lee Community Center or the Civic Center.

Mr. Shuford responded to questions from Vice-Mayor Bellamy about how the residential amenities of the building will be met. He summed up by saying anyone interested in a downtown residential environment is going to be drawn by the vitality and activity of the space.

In response to Vice-Mayor Bellamy, Mr. Craig Madison, President and Chief Executive Officer of the Grove Park Inn Resort and Spa, said that the investment in Site A is $25-30 Million. The available jobs on Site A will be probably less than 50 with the majority of jobs coming from the building on Site B. In response to livable wages, he said the GPI will be the developer and won't necessarily own the businesses in the building, but the GPI currently employs 567 residents of the City of Asheville which is a good precedence.

Upon inquiry of Vice-Mayor Bellamy regarding the vacancy rate, Mr. Madison said the GPI is on their fifth feasibility study. The first study has been reconfirmed that states from pre-sell to construction base we are in a position to sell 62 units within 24-months (this is from an earlier model without the recent restrictions). We have high confidence on the retail space because of the desirable location and we will re-test the market based on the office/condo space just to confirm that there is a true market for that. That will be easy to convert once the shell is being built.

In response to Vice-Mayor Bellamy, Mr. Shuford that this property is part of the National Register of Historic Districts, but not part of any local historic district. The Historic Resources Commission of Asheville and Buncombe County (HRC) would not be directly involved by policy in

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any review of this area. He did point out that the City has received a letter from Chairman of the HRC offering their services for any design questions that City Council or the developer might have.

Councilman Dunn would have been happy with a competitive bid process on this site but felt confident that a developer wouldn't come to Asheville and invest $30 Million to build condominiums in downtown Asheville. We are lucky that the GPI wants to invest this money in Asheville,

Upon inquiry of Councilwoman Jones, City Manager Westbrook said that there will be approximately $150,000 in property taxes from Site A.

Councilman Peterson moved to amend the motion as follows: (1) The height of the primary exterior facade of the building shall not exceed the height of the north facade of the Jackson Building, as measured from the sidewalk to the lower edge of the gargoyles top of the Jackson Building; (2) A penthouse structure may project above the primary exterior facade of the building, provided said structure is set back from the primary exterior facade on all sides, does not exceed the height of the roof of the penthouse structure on the Jackson Building, and does not cover more than 80% of the horizontal roof structure on which it is situated; (3) A decorative fixture would be permitted on top of the new building but it could not exceed the height of the top of the bell tower on the Jackson Building; and (3) Service facilities, such as refuse dumpsters, electrical and other utility connections, shall be located within the building or placed underground; provided that the ground level south façade of the building may include a canopy projection that extends not more than 15 feet from the building and may not be more than 15 feet high with no permanent commercial structure beyond the canopy. This motion was seconded by Vice-Mayor Bellamy.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast didn't think the required meeting with the "neighborhood" would be appropriate for inclusion in the option. To the extent that it is one of the next steps in the process, City Council would insist on that being done in some way.

Councilman Dunn asked what the steps would be if the GPI couldn't make this project economically feasible, with the restrictions, but they still want to build a structure. City Attorney Oast said that the GPI wouldn't exercise the option but they could request to renegotiate the option with City Council. That would require another public process.

Mr. Bissette wanted to sure that the 15 foot canopy projection restriction is not talking about landscaping features because there must be an entranceway into the building. He said they will not have any other commercial structures, but there could be a retaining wall or a driveway drop-off. Councilman Peterson said that he was speaking more at either permanent restaurant facility out there or some sort of building that would actually be blocking the view in that 60-feet in front of the building.

Upon inquiry of Councilwoman Jones, Mr. Bissette said that construction period would be about 1.5 years. He said the effect on the economy of a $30 Million construction project also needs to take into account wages for the people who supply the building materials, plumbers, electricians, etc. There are lot more jobs involved here than what will be here ultimately.

When Councilman Mumpower said he didn't think he could support amending the height of the building by one story if it would have a significant probability of derailing this effort. Mr. Bissette said that Mr. Hunnicutt said that he would try to make this work.

Mr. Shuford reminded Council that the height of the building, even with what is proposed as an alternative, still exceeds the height of the Pack Square Design Guidelines of the PSC, so they will still need to go through the variance process to get the extent of height that is being proposed.

The amendment to the motion made by Councilman Peterson and seconded by Vice-Mayor Bellamy carried on a 6-1 vote, with Councilman Dunn voting "no."

Councilman Peterson stated that City staff is doing City Council a disservice when they fail to report the downsides to a project. For instance on this project, downsides could include the traffic will be worse, we will lose parking, there may be a conflict with residential development in the park, maybe we could get more money than the appraised value, and we will lose some plaza space. T here is a lot of public confusion about exactly what is going on, and he didn't think the process was open and inclusive. If staff would tell Council all the upsides and all the downsides of a project, then the elected officials could weigh those out. He felt it would be a better city government. Looking at both the upsides and downsides of this project, he does think it will help develop this part of downtown. He thinks we can make downtown better by having more activity on this side of the downtown. He thinks this will help get something built in the parking lot behind the Renaissance Hotel and will help get something better done in the Eagle-Market Street area. He would rather have new residents buy that great downtown condominium, than have them build on the tops of our mountains or further out in the County. In the final analysis, he thinks this project is smart growth because we are putting people downtown where we have the infrastructure. He did feel that if staff did a better job, then the public would have done a better job of not being so one-sided.

Councilman Ellis recalled when there was a building on that site and it was torn down and he felt that putting another structure on the property is important. He remembered in 1974 when the Civic Center opened, two new hotels were built in Asheville, and the Asheville Mall opened. Downtown Asheville was basically dead then with most buildings being vacant. The transformation in downtown Asheville has been amazing and he attributed that to the hundreds of small retailers that have taken a chance in Asheville. He believes that the people living in downtown Asheville is what has made the difference. He felt Asheville is unique because there are many eyes on the park and that is what this project will be doing.

Councilman Dunn said that a common thread heard was from people who do not want Asheville to change. That is not the way life is. Change, by it's sheer nature, scares people. He couldn't understand when people said there was erosion of public trust because they listened to everyone, even people who don't pay City taxes. He felt the process was a little quick, but it was a good opportunity presented to the City. He does want to preserve Asheville's history but we need to think of the future also. This is a giant step for the future of Asheville and he thinks it's a good step.

Councilman Mumpower felt the cloud of misinformation about this project is largely manmade and regrettably by some of the organized bodies represented here. Contrary to much of the testimony, this has been an open process and there has been plenty of opportunity for public input. This is a city, not a forest. The City is created by entrepreneurial initiatives and this project helps sustain that trend. Major human endeavors and activities are rarely smooth and error-free. We have a representative form of government and we have the honor of listening, researching and deciding on these matters. As he weighs out the pros and cons, he believes this project is clearly in the best interests of the citizens of Asheville.

Councilwoman Jones said a few years back the Asheville City Council was put in an awkward place of receiving a gift of land, which was the Asheville Speedway. While she was somewhat sympathetic to Council's predicament, she was primarily very discouraged that so many Asheville residents felt it was a backroom deal. While many of the individuals differ in name at this point, the same feeling is pervading Asheville. She believes they have good reasons to question the process and how business is being done. Her different perception is not a misperception. She does think the process has been hasty and the public involvement has been less than adequate. She has questions about the development agreement. She does not blame the GPI for the problems in this process and in fact, Craig Madison was the most open person to her questions. She sees the problems in the process falling squarely on City Council. In March when we talked about the opportunity for discussion about the development agreement, the public did not have a copy of the agreement. They could have called City Hall and requested a copy, but even this Council got a copy of it at the last minute. To hold that date up as an ideal time for public involvement is really not right. To mention all the dates that the PSC talked about a park does not have anything to do with our public process is not adequate for what we are talking about. The first public hearing we scheduled had people who sat for hours and then the hearing got rescheduled. We don't know whether those people were able to come back to the rescheduled hearing or not. True public process has been lacking. She thinks we have done a bit better near the end. She thanked City staff for the Frequently Asked Questions on the City's website. She felt it was excellent and it began a process. And she thinks we have done better with public comment. When she first heard about the proposal in February she listened with great enthusiasm and felt it was right to begin an exploratory phase. She assumed it would be a dialogue and a dialogue with the public. As the GPI was testing the soil, she assumed we would also be hearing from the people. When a slide was shown early in the development agreement stage, it showed the time for the GPI to do their due diligence, time for the PSC to look at the design guidelines, and time for City staff to do their part. The public had no time period on that slide. She feels we continue to dismiss the public's concern by labeling people as misinformed or resistant to chance. She sees it differently. Here is the ultimately inconsistency for me. If we, as a Council, have so much authority in the fact that these buildings have been in the plan all along, then who would have dreamed that a developer would not have come through. The City has a vision for development, as it did with the St. Lawrence Square. We saw those buildings, we want them to be there and we go out with a RFP. Why we didn't consider, as a body, that alternative for this project. She thinks we should have. Her concerns continue to be heightened, but she feels a little bit better after tonight, about the variances. The ink wasn't even dry on the design guidelines when we started a discussion about variances. Why didn't we put out stakes showing the public where the property being discussed would be? Why wasn't a very simple, non-expensive public model to inform the public about the scale and the height of the building shown? Her preference would have been to have another 45-60 days to inform the public and give the developer some time to think about this reduction of one floor and to clear up some of this confusion. Finally, she believes that this juncture is really more important than the sale because at this point we are giving a developer a clear signal to spend $25 Million. Now is the time we need to ask all the questions and consider the public's concerns. She would not be supporting the option.

Mayor Worley supported moving forward with the option. He felt this will bring more residential units downtown; allow more eyes on the park; bring more density downtown; prevent sprawl; and promote more walkability, less driving and less pollution. It will bring pedestrian traffic east of Pack Square and east of the City Hall. The street reconfiguration will be different in that it will be pedestrian friendly and create an invitation to College Street. It will facilitate further development, like the Performing Arts Facility that has been proposed for the grounds of the Renaissance Hotel, and other economic development along College Street. It creates more opportunities as you pull more people in that direction. The building itself will attract more development. He is not unmindful of the property tax revenue that this will generate and that the second phase may generate. In terms of the design, he thinks the guidelines are in place to make certain that whatever design comes out will be compatible with Asheville's history and it will spur the development of the rest of the park. Councils have few opportunities to make monumental decisions and he thinks this is a monumental decision that will have a lasting impact on Asheville. It's easy for us to look back and recognize those wonderful monumental decisions of the past, like the Battery Park Hotel, the Grove Arcade, City Hall the Buncombe County

Courthouse and others. Probably none of those decisions took place without some controversy of their own and yet we look backwards and appreciate them. We don't think about the controversy that accompanied them when they took place. It's much harder for us to look forward and recognize what will be those monumental decisions in the future that we make today. It is wonderful that we have a local developer and the GPI has been a tremendous economic impact to this entire community.

The amended motion carried on a 6-1 vote, with Councilwoman Jones voting "no."

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ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:43 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 23, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

U.S. Air Force Staff Sergeant Michelle Moses led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING WEDNESDAY, OCTOBER 8, 2003, AS "WALK TO SCHOOL DAY" IN THE CITY OF ASHEVILLE

Mayor Worley read the proclamation proclaiming Wednesday, October 8, 2003, as "Walk to School Day" in the City of Asheville. He presented the proclamation to Ms. Terri Zimmerman March, Healthy Buncombe Coalition Coordinator, who briefed City Council on some activities taking place during the day and who invited City Council to participate in the walk.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON AUGUST 26, 2003, AND THE WORKSESSIONS HELD ON SEPTEMBER 2, 2003, AND SEPTEMBER 16, 2003

B. RESOLUTION NO. 03-159 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY DISPOSAL PARCELS 162 AND 163 ON BAXTER STREET TO DAVID FRECK

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcels 162 and 163 located on Baxter Street to David Freck in the amount of $1,800.

The subject parcels, zoned RS-8 Residential Single-Family High Density District and comprising 0.03 acres each are located on the south side of Baxter Street (PIN Nos. 9649.19-60-6613 and 6681). The current tax value for the parcels are $900 each for a total value of $1,800. The proposed land use for the subject property in the East End/Valley Street Community Improvement Program is for assemblage with adjoining residential property.

David Freck, who owns the improved property adjoining and in between the subject parcels, has submitted a bid to purchase both parcels for the sum of $1,800. Mr. Freck desires to assemble the parcels with the property he owns to provide yard space and off-street parking for his tenants.

On August 26, 2003, City Council directed the City Clerk to advertise for upset bids on Disposal Parcels 162 and 163. The advertisement ran in the Asheville Citizen-Times on August 29, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from David Freck in the amount of $1,800 was not upset and the sale to David Freck should be approved.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey Disposal Parcels 162 and 163 on Baxter Street to David Freck in the amount of $1,800.

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C. RESOLUTION NO. 03-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH HOBSON CONSTRUCTION CO. INC. TO INSTALL DRAINAGE ALONG GLENDALE AVENUE

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Hobson Construction Company Inc. to install drainage located along Glendale Avenue in Asheville, North Carolina.

The City is in need of a contractor to provide stormwater installation services for a drain line along Glendale Avenue between Thompson Street and McAurthur Lane. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for stormwater installation services were solicited and two responses were received. The project was rebid and there were two responses received. The bidders are listed below:

Company	MB Part	Drug Free	Bond	Bid
Hobson Construction Co. Inc.	0	Yes	Yes	$75,300
Buckeye Construction Co. Inc.	0	Yes	Yes	$104,034

Funding for this project has already been allocated in the Public Works Department's Stormwater Materials budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Hobson Construction Company Inc. to install a drain line along Glendale Avenue.

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D. RESOLUTION NO. 03-161 - RESOLUTION AUTHORIZING THE CHAIRMAN OF THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO EXECUTE A GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS TO THE ASHEVILLE REGIONAL AIRPORT

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the CAT II TDZ Lighting-Runway 34, Raise MITL, Perimeter Security Road-Phase II.

The grant, in the amount of $33,595, has been approved by DOT based on a total estimated cost of $671,899.

City staff recommends adoption of the resolution.

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E. **RESOLUTION NO. 03-162 - RESOLUTION MODIFYING THE 2003 CITY COUNCIL MEETING SCHEDULE TO (1) DELETE THE SEPTEMBER 30, 2003, COMMUNITY MEETING; (2) RESCHEDULE THE TUESDAY, OCTOBER 7, 2003, WORKSESSION TO WEDNESDAY, OCTOBER 8, 2003; AND (3) RESCHEDULE THE TUESDAY, NOVEMBER 4, 2003, WORKSESSION TO WEDNESDAY, NOVEMBER 5, 2003**

RESOLUTION BOOK NO. 28 – PAGE 21

F. **ORDINANCE NO. 3054 - ORDINANCE AMENDING APPENDIX B TO RESTRICT THE NUMBER OF LATE PENALTIES FOR UNPAID PARKING CITATIONS**

Summary: The consideration of an ordinance restricting the number of late penalties for unpaid parking citations to a maximum of three.

A review of the collection of parking citations after the addition of three late penalties indicates a very low collection rate. In addition, collection agencies and the state income tax garnishment system requires a set amount due that is not changing on a monthly basis to use these collection methods. By adoption of this ordinance, the City of Asheville would be in a position to better use the services of collection agencies and/or the state income tax garnishment program to increase compliance of parking ordinances and collection of amounts due.

Staff requests that City Council approves the ordinance.

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G. **RESOLUTION NO. 03-163 - RESOLUTION SUPPORTING MAYOR OF ASHEVILLE'S NOMINATION FOR SECOND VICE-PRESIDENT OF THE BOARD OF DIRECTORS OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES**

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Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. **CONTINUATION OF A PUBLIC HEARING TO CONSIDER EDITORIAL AND TECHNICAL AMENDMENTS TO THE MINIMUM HOUSING CODE, AND AMENDMENTS TO THE FEES AND CHARGES MANUAL**

ORDINANCE NO. 3055 - ORDINANCE AMENDING THE MINIMUM HOUSING CODE

RESOLUTION NO. 03-164 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Worley opened the public hearing to consider editorial and technical amendments to the Minimum Housing Code at 5:15 p.m.

Director of Building Safety Terry Summey said that City Council gave direction to City staff at its August 1, 2003, meeting related to enforcement of the Housing Code. The public hearing at that meeting was continued to September 23, 2003, in order to receive additional citizen input on the technical standards, penalties and fees. Consistent with Council's directive, staff has prepared a new Housing Code providing for changes in enforcement, technical standards and penalties. Additionally, a resolution is proposed for amending the Fees and Charges Manual.

On August 12, 2003, City Council directed staff to amend the enforcement section of the current Housing Code as follows: (1) that all residential rental buildings receive a Housing Certificate under the standards of the Housing Code; (2) that all owner-occupied residential properties receive a one time inspection upon change of occupancy for life safety issues only; and (3) that upon each residential rental building receiving a Housing Certificate and each owner-occupied residential property receiving a Life Safety Inspection Report; thereafter, both such properties be enforced under the complaint based program of the Housing Code. The new code recognizes the following as compliant with the Housing Certificate requirement: (1) all residential buildings that currently have Housing Certificates; and (2) all new structures built since July 1, 1994, with a Certificate of Occupancy. Additionally, the new Housing Code includes technical, editorial, and penalty changes. The minimum standards that will not be included on the Life Safety Report for owner-occupied properties will not prevent the new owners from occupying the property, even if there is a failure to meet these standards.

Consistent with Council's directive, the Code has been revised to require a one time inspection for owner occupied properties at the time of transfer of ownership for Life Safety issues only. The following minimum standards of the Code are not included on the Life Safety Report: exterior painting, missing shingles, attic ventilated, insulation, screens, space requirements, sanitation and extermination

The new Code received comprehensive review at three public meetings held on September 2 and 3, 2003, with the Director and his staff. Fifteen citizens attended the meetings with written suggestions obtained from one group and 2 individuals. Some changes were made as a result of the feedback. The technical, editorial, and penalty changes, as well as fee changes, are based upon input received from members of the Citizens Task Force, staff, as well as other members of the public.

It is expected that the new Code will be effective in minimizing the burden and expense of those who continuously comply with the Code. Staff efforts will be focused upon improving housing conditions with the following emphasis: (1) rental properties not in compliance with the Code; (2) Life Safety issues of owner occupied properties at the time of change of occupancy; (3) dwellings that physically impact neighborhoods; and (4) a complaint based system that rental and owner occupied properties continue to maintain compliance with the standards of the Code.

City staff recommends that (1) the new Housing Code be adopted and made effective as of September 24, 2003, with the effective date of the increased penalties delayed until January 1, 2004; and (2) the resolution setting forth changes to the Fees and Charges Manual also be effective as of September 24, 2003.

Mr. Summey then proceeded to review in detail the technical standards, consisting of definitions, agents, agencies, life safety standards and minimum standards.

With regard to administrative changes, he explained that the Housing Code Division consists of a Housing Code Coordinator, research assistant, two inspectors and one secretary.

Vice-Mayor Bellamy felt that since there was bound to be many questions regarding the technical changes and since Council had just received the lengthy document on Friday, she moved to table the matter until a worksession. This motion was seconded by Councilwoman Jones. Discussion occurred on the motion and said motion failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

Councilwoman Jones requested that Council discussion occur prior to any motions being made.

There was considerable discussion concerning the life safety/unsafe conditions along with the other technical changes. Mr. Summey responded explaining staff's reasoning behind each Council concern or comment expressed and why they, and the Task Force, felt they were taking the subjectivity out of the Code.

With regard to the heating system, Mr. Summey said that staff has worked on trying to find some compromise from the current system. The current system is maintaining a room temperature of 68 degrees in every room of the house, which is the same standards that you would have in a new house that is built today. It is difficult to make the older houses we have today be heated up to 68 degrees, particularly when you are talking about heating all the rooms. Staff recommended 65 degrees by using the International Property Maintenance Code (they used 65 degrees as the minimum). In addition, State law requires (only for jurisdictions over 200,000) that rental properties have a heating system that only heats one room (not the kitchen) up to 68 degrees. We tried to find something between the minimum state law and what is required for new construction. We recommend maintaining a room temperature of 65 degrees in every habitable room. We are not trying to have older houses meet current day standards. The problem most frequently found by inspections is not reaching 65 or 68 degrees, but that the system does not work at all.

With regard to the street address not visible from the public street, Mr. Summey said that the street address number cannot be less than 2 inches in height on one or two family residences and 4 inches in height on all other multi-family residences. Any new numbers to be installed shall be 4 inches in height. He explained that the Housing Code is being cross-referenced to the Fire Code, which requires 4 inches, and in certain instances 6 inches. Multi-family complexes have asked if they have to change their 3.5 inch numbers to 4 inches. Mr. Summey said that if fire equipment does not get to an emergency on time and they find that signage was part of the problem, a possible lawsuit could be filed. Since Fire Inspectors will mostly enforce this standard, he would assume if the sign were measured to 3.5 inches, the Fire Inspector would expect them to bring it into compliance to 4 inches.

With regard to clarifying fixtures and outlets, Mr. Summey explained that new construction would be required to have an arc-fault interrupter for extensions of bedroom circuits. But because of the complexity of putting arc-fault interrupters in, we are only recommending it for existing structures. However, if you are renovating the entire house, rewiring the house or even renovating one room by stripping the sheetrock off the walls, then the arc-fault interrupter would be required to be installed. He also mentioned that part of the reason this is in the Code as recommended is because as they go out to train electricians and inspectors we want to discuss arc-fault interrupters so it will be familiar to them.

With regard to deleting the requirement for a 3 x 3 foot landing, Mr. Summey explained this deletion would have an impact on cost for an affordable home, because mostly only mobile homes have this landing. On new mobile homes this will be a requirement (because it's best to have the structure built comply with the Code it was built under), but not a requirement for existing mobile homes. He felt that the landing is not a true life safety issue and in fact, having the landing could be a detriment because if you have a heavy snowstorm, you can't open the door. Another factor is that if the City annexes any mobile home parks, Buncombe County does not have that requirement.

Regarding the deletion of inspections by a third party federal agency, Mr. Summey said that they are not inspecting to the City's standards because they are looking at different issues. For example, the Housing Authority is inspected under the third party federal agency; however, the Housing Authority must be in compliance with the City's Housing Code. We have trained the Housing Authority staff of our Code requirements and their units are handled just like any other rental complex. If someone complains from one of the Housing Authority's units, we investigate that just like any other complaint. He said that the City's Housing Code Coordinator will be making visits to the Housing Authority to make sure that their units are up to Code. First they will look at units from the outside and if necessary, they will ask for their inspection report.

With owner occupied structures, the Code has been revised to require a one-time inspection for owner occupied properties at the time of transfer of ownership for Life Safety issues only. The report will clarify the life safety issues not being inspected (because these are issues they don't think should keep a person from moving in), but chances are the owner is aware that the house that needs to be painted or there are some shingles missing. The following issues are not on the Life Safety Report because the owners are trying to move in and often times they want to do these things after they move in: exterior painting, missing shingles, attic ventilated, insulation, screens, space requirements, sanitation and extermination. If, however, complaints are received from the neighborhood, we will investigate those complaints and the owner could be required to fix the problems.

Regarding enforcement, are trying to make the Code more flexible to say certain things have to be fixed immediately. In the existing Code, after the owner is informed from the Housing Inspector of any deficiencies, the landlord has up to five days to notify the tenants of any unsafe conditions. Staff felt that if it's a life safety issue, the tenant should be notified immediately. The landlord should immediately start trying to reach his tenants.

Regarding communication of changes, Mr. Summey said that he and his staff would be educating the public with regard to the changes. There will be advertising in CityWorks, television, radio, and newspaper; presentations to the Board of Realtors, Carolina Real Estate Investor, and various community meetings; public educational sessions for tenants and landlords; educational brochures; and information on the City's Web page.

Councilwoman Jones requested language in the department's standards regarding handling of complaints. When she suggested that all complaints be followed up within 24 hours after received, Mr. Summey said that if there is one inspector or one inspector is on vacation, that standard cannot be met. He did explain that complaints are currently worked into the other schedule. For example, we have inspections scheduled as much as a week in advance for people who are wanting to sell their property. Then if a complaint is received, they investigate the complaint in between their schedule. Currently every complaint gets followed through. Because of the changes, staff should have more time to investigate complaints. One of the inspectors' priorities is to respond to complaints. When a complaint is filed, staff does ask the tenant if they have talked to the landlord. Regardless of whether they have talked to the landlord or not, staff is going to have to talk to the landlord and follow-up on the complaint. All complaints are followed-up on within 3 days.

Assistant City Attorney Martha McGlohon responded about the ways a complaint can be issued. She stressed that even though the ordinance allows a petition or complaint to be filed with the Code Enforcement Officer by at least five residents of the City, the Code Enforcement Officer can, on his own motion, It gives the Officer the discretion to not investigate the complaint until five residents of the City complain, however, the Officer's discretion is limited by his statutory responsibility and his job responsibilities. As a trained Code Enforcement Officer, when a complaint is called in, his job requires him to ask certain questions of that complainant, e.g., have you spoken with your landlord, have you been evicted, is there a dispute between you and the landlord, etc. Once the Officer asks those questions, then the Officer has a statutory responsibility, because they have information in their possession at that point that there may be violation of the Code, to investigate to determine whether or not the complaint is meritorious. When the Officer investigates a complaint on the outside, they cannot go inside unless the tenant invites them in. However, the officer does keep his eyes open and if he observes other situations that clearly show to him that there is another violation of the Housing Code, the officer will take note of that and will require that those violations be corrected. Under this Code, if we find four or more violations, then it can bring about the requirement for a full complete inspection report. There is no provision in the law that would prohibit Council making our Code stricter than the state law. Council does have discretion to add language to the Code to require that the officer inspect every single complaint within 24 hours. Mr. Summey said that they would be putting more emphasis on tracking complaints. They will track when a complaint is first received and the date when it is investigated.

At 7:25 p.m., Mayor Worley announced a short recess.

The following individuals voiced concerns over the technical changes to the Code, some being, but are not limited to: reducing the heating temperature to 65 degrees may encourage supplemental heating that will be unsafe; need for insulation for energy conservation; how will you identify inside problems from the outside; need to prepare a brochure about the Housing Code that includes information on how to make a complaint, who to contact and what kinds of complaints would be considered; include information in brochure a list of the life safety issues; prepare an attachment for leases with the complaint procedure for prospective tenants; place brochures in rental offices, real estate offices, libraries and other public places; who is responsible for violations missed by third party inspectors; there is no strong enforcement measures for these Code standards; tenants may fear of being evicted if they complaint; how will the City prevent people from purchasing a home as an owner and turning it around in a short time to be rental property; will there be a requirement that the units inspected by fired third party inspectors receive new inspections; when inspectors investigate a complaint received, will the owner have to pay for the inspection if they don't find a violation; and there will be a major cost to change street address numbers from 3.5 to 4 inches:

Ms. Lottie Meyerson
Ms. Minnie Jones
Ms. Pauline Council
Mr. Fred English
Ms. Sarah Uminski, representing the Affordable Housing Coalition
A former member of the Board of the Affordable Housing Coalition
Ms. Beth Maczka
Ms. Bonnie Bailey, representing the Asheville Apartment Association

The following individuals voiced support of the technical changes to the Code with some suggested amendments, some being, but are not limited to: if you make standards too stringent, people will not invest in the City; there has been ample time and opportunity for people to review the proposed Code; the increase of fees and penalties will help put "teeth" into the Code; and once a house is inspected and the owner is given a list of things that need to be fixed, it drives people crazy when it is reinspected and the inspector finds other violations:

Mr. Scott Osborne
Mr. Tom Garden

Mr. Walter Plaue, representing the Carolina Real Estate Investors Association, voiced support of the Code, however, he suggested the following modifications to the issuance of compliance section: (1) clarifying language that any person, including any employee of the City, may complain ...; (2) requiring the complainant to affirm that notice and reasonable time to repair have been given to the property owner, unless the condition is immediately life-threatening; (3) distinguishing between the original complaint by a citizen and the "official complaint" issued by the Code Enforcement Officer after the "violation notice" stage; (4) omitting the City's authority to file a notice of lis pendens before a hearing and finding of violation, and (5) the violation notice should give the owner a reasonable date by which the violation must be corrected. All agencies working in the low cost housing arena must look to creative and proactive approaches. We have already taken steps to work with Pisgah Legal Services for the purpose of identifying the City's most flagrant violators of the Code. We will expand this to include the County Health Department, the City Fire Marshal as well as the City's Inspection Department. We will look for ways to find, identify and penalize the slumlords. In conjunction with the Building Code staff, we hope to develop a form which will be included with each lease agreement which emphases the joint and mutual interest of tenants and landlords which will, among other things, ask that complaints be brought to the attention of the landlord as soon as detective. If the landlord is not responsive, the tenants will send a written and certified complaint to the landlord. In the event the tenant still does not receive satisfaction, the phone number of the Code Inspection Department will be provided on the form.

Upon inquiry of Ms. Maczka, City Attorney Oast said that the fact that some or even all of Council members are owners of rental property within the City creates a conflict that would disqualify them from voting, nor would the fact that any Council member is an attorney that deals in real estate.

Mayor Worley closed the public hearing at 8:34 p.m.

Mr. Summey responded to the concerns expressed during the public hearing and also to Council's concerns, some being, but are not limited to: the reasoning behind 65 degrees vs. 68 degrees and will it increase the need for supplemental hearing; is there a loophole or a high risk factor of people not feeling safe in making complaints; how can we encourage tenants to make complaints; why are we requiring 4 inch letters for street addresses and will 3.5 inches suffice; how will we address the fired third party inspector's inspections; who pays if a complaint is registered and no violation is found; how will we address people buying houses and then converting them to rental units; will the City be looking into attaching educational information about the Code and how to complain to leases; do we have enough enforcement mechanisms in place; how will we be addressing additional violations found during reinspection; how was this new Code information circulated and how did they get it; what are the implications of this new Code to the Building Safety budget; and what is the definition of the word "reasonable" and why do we use it in some places and not others.

It was the consensus of City Council to have City staff come back to Council in six months for a thorough reassessment of the changes and if they are not working, perhaps make another recommendation.

Councilman Dunn felt that until we get rid of some of these regulations we are going to decrease affordable housing.

Councilwoman Jones initiated discussion about requesting language in the Building Safety Department's operating policy regarding responding to every complaint in a reasonable timeframe, but a maximum of 72 hours. City Manager Westbrook recommended some qualifier like "reasonable amount of time" because there are some cases we will want to respond within 3 hours, but sometimes a complaint can wait longer. So that we don't cripple that ability to act quicker on those type complaints, he recommended that we use a word that allows us that latitude. Staff does understand Council's urgency on responding to complaints. City Attorney Oast felt that language like "reasonable" was appropriate, but to establish a particular number of hours or days doesn't allow for prioritization of complaints based on their seriousness, and the work ebbs and flows. He suggested the following language "The City Manager shall maintain statistics and monitor response times to ensure that complaints are responded to within a reasonable amount of time." He felt it was essential to leave some of these experienced based judgment calls to the inspectors. Not to cheapen any complaint, but he thinks that a certain amount of discretion has to reside with the professional experience of our staff who have to do the inspection to make that determination.

In response to Councilwoman Jones, Mr. Summey said that the City doesn't inspect for air conditioning, but he didn't see any problem in inserting the word "functioning", before central air conditioning systems, in the first sentence in Section 4-210 (l). They may have to look at having a standard for what is a functioning central air conditioning system.

Councilwoman Jones was concerned about the deletion of the 3 x 3 landing. On one hand she heard it exists for safety reasons and that is important for the disabled and elderly. On the other hand she heard that if we annex mobile homes in then that would be problematic because Buncombe County doesn't require it. She felt the City needs to be doing what is best to keep people safe and not worry about somebody else's standards. Mayor Worley explained that it is being deleted because this would require retrofitting to those buildings that were constructed under a Code that allowed that at the time they were constructed. We are requiring it for new mobile homes, but not for existing mobile homes.

Councilwoman Jones said that in terms of educating people about a complaint-based system and how they can complain, we need put in large letters and bold print, that anyone can contact a City Council member or other public official to complain on their behalf. Then City Council will follow-up on that. City Attorney Oast said that City Council members are not required to pass a complaint on, however, the Building Inspection staff would expect those complaints to be turned over to them.

Upon inquiry of Councilman Mumpower about requiring some educational material be attached to leases, Councilman Ellis felt that was understood because staff has indicated that they have plans to do that and others have indicated that they are going to work on this as well.

Councilman Ellis moved to repeal the current Housing Code and adopt a new Housing Code, with the effective date of the new Code being effective the day after final adoption and the effective date of the increased penalties be delayed until January 1, 2004. This motion was seconded by Councilman Dunn.

After discussion, Councilwoman Jones moved to amend the motion to read "Every dwelling shall have heating facilities … and capable of maintaining a room temperature of 68 degrees in all habitable rooms." This motion was seconded by Vice-Mayor Bellamy and failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no," and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

After discussion, Councilwoman Jones moved to amend the motion to include "The City Manager shall maintain statistics and monitor response times to ensure that complaints are responded to within a reasonable amount of time" as a new Section 4-217-(l). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Mumpower said that we have a responsibility to govern fairly and realistically as representatives of our community and he thinks we have done that tonight.

Councilwoman Jones felt Council has made a terrible mistake. She felt there was a lot of opportunity for a genuine compromise and we missed an opportunity that perhaps could have taken us to a better place as a community. More importantly, she feels like the people who have brought up concerns for the people that will be most impacted by this, in terms of tenants and neighborhood residents, they are doing a service to bring those to our attention. She feels this Council has a double standard about timing. We have looked at the 2025 Plan extensively and that is fair because we want a lot of community buy-in, but we also needed more time on the Minimum Housing Code. It was great that the Task Force had it prior to this, but for something this important it would have been better to circulate it to a broader audience and it probably would have been reasonable to have a little more time. We do need to be fair about that. Since she chooses to live in mixed housing, it gives her the opportunity to hear concerns and take them more seriously than she has heard others take them. We do our citizens a disservice when we discount when they share with us and she feels we did some of that.

Vice-Mayor Bellamy thanked the Task Force who worked on this ordinance for 1.5 years and wished they could have come to a more middle ground. She will look forward to seeing the 6-month report. She felt we will see an increase in complaints because of the attention this has drawn. She agreed that our community is better when it can come together and hoped we can work on that in the future.

Councilman Dunn felt that the existing Code has hurt affordable housing. An inspector cannot guarantee the safety of a house. He felt our existing Code is a penalty for good landlords.

Mayor Worley believes this is the best interest of the City of Asheville.

The amended motion carried on a 4-3 vote with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

City Attorney Oast said that because of the vote on this ordinance, it will require a second reading on October 14, 2003.

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Councilman Mumpower moved to adopt the resolution setting forth changes to the Fees and Charges Manual to be effective the day after adoption of the new Housing Code. This motion was seconded by Councilman Dunn and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

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B. PUBLIC HEARING RELATIVE TO CONSIDER THE CLOSING OF A PORTION OF THE RIGHT-OF-WAY KNOWN AS GREENBRIAR ROAD WEST FROM BENT STREET TO PARKWOOD ROAD

RESOLUTION NO. 03-165 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF THE RIGHT-OF-WAY KNOWN AS GREENBRIAR ROAD WEST FROM BENT STREET TO PARKWOOD ROAD

Mayor Worley opened the public hearing at 10:05 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close a portion of the right-of-way known as Greenbriar Road West from Bent Street to Parkwood Road. This public hearing was advertised on August 29, September 5, September 12 and September 19, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Public Works Department staff have researched and determined that Greenbriar Road West from Bent Street to Parkwood Road is a City maintained right-of-way. The only lot abutting the affected portion of Greenbriar Road West is identified by the PIN No. 9628.12-86-6464.

PT Business Park, LLC intends to upgrade Bent Street from Greenbriar Road West to Patton Avenue to a paved width of twenty feet. Additionally, PT Business Park will grant the City a vehicle access easement and a pedestrian access easement across their property connecting Parkwood Road and the portion of Greenbriar Road that will remain open.

City staff recommends that City Council adopt the resolution to permanently close Greenbriar Road West from Bent Street to Parkwood Road.

Upon inquiry of Vice-Mayor Bellamy, Mr. Cole said that the developer is working with the City Engineer for improvements, including sidewalks, on Parkwood Road.

In response to Councilman Ellis, Mr. Cole said that the developer had a meeting with area businesses and he was able to satisfy any concerns they had.

Mayor Worley closed the public hearing at 10:09 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-165. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 - PAGE 25

C. PUBLIC HEARING RELATIVE TO CONSIDER THE CLOSING OF BELLVIEW ROAD FROM BELVEDERE ROAD TO LONDON ROAD

RESOLUTION NO. 03-166 - RESOLUTION TO PERMANENTLY CLOSE BELLVIEW ROAD FROM BELVEDERE ROAD TO LONDON ROAD

Mayor Worley opened the public hearing at 10:10 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close Bellview Road from Belvedere Road to London Road. This public hearing was advertised on August 29, September 5, September 12 and September 19, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Scott Buchanan, on behalf of Thoms Community Care Foundation, has requested the City of Asheville close the right-of-way known as Bellview Road from Belvedere Road to London Road.

Public Works Department staff have researched and determined that Bellview Road from Belvedere Road to London Road is a City maintained right-of-way. The only lot abutting the affected portion of Bellview Road is identified by PIN No. 9647.08-98-5093.

Thoms Community Care Foundation intends to construct and dedicate a new public right-of-way to the City to be known as "New Bellview Road," prior to closing Bellview Road.

City staff recommends that City Council adopt the resolution to permanently close Bellview Road from Belvedere Road to London Road.

Vice-Mayor Bellamy was concerned that the new road will be located closer to the residential homes on London Road.

Mr. Scott Buchanan, Executive Director of Thoms Community Care Foundation, said that they sent a petition to residents along London Road, Belvedere Road and Crestland. Then he sent a letter to everyone who lives all the way up to I-40 asking them to call or contact him with any questions. No one has contacted him. He said a person who lives in California owns the house closest to the new road and she has offered to sell it. He feels the new road will create a better intersection on London Road. He said they will be a stop sign at the intersection of the new road and London Road, sidewalks on the new portion and on London Road, lighting along the new portion of Bellview Road, and they are trying to move the bus stop closer. He said they would ask their suppliers to use Sweeten Creek Road. There will also be a plan for extensive planting.

Mayor Worley closed the public hearing at 10:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 03-166. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 28 - PAGE 27 nb

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3056 - ORDINANCE TO PROVIDE FOR NONEXCLUSIVE FRANCHISES AND REVOCABLE PERMITS FOR TELECOMMUNICATION SERVICES IN THE CITY LIMITS

Public Works Director Mark Combs said that this is the consideration of a telecommunications ordinance establishing a framework for communications infrastructure franchises and permits in the City limits.

The City needed a uniform way to regulate use, spacing, safety, etc. For example, you can have water, sewer, telephone, power, cable television, fiber optic, and possibly others in the future, in the public rights-of-way. Telecommunication consists of (1) fiber optic cable and other communications infrastructure located in public rights-of-way; (2) overhead (on existing or new poles; (3) underground (new or existing conduits); and (4) all new infrastructure. A telecommunications committee of City staff was formed to address the increasing use of the City's rights-of-way for utilities. The three key tasks for the committee was to: 1) Draft an ordinance; 2) Construct 'universal' franchise agreement; and 3) Convene to review and negotiate proposals.

In many cases, providing broadband cable access along certain routes makes such a system proprietary to the company in that particular area, and as a result companies have been scrambling to install such infrastructure in hopes of monopolizing future customers and access.

In the recent past, several cable companies have approached the City seeking exclusive rights to install fiber optic cable. Without a framework (ordinance) from which to negotiate non-exclusive franchises and permits, staff has been unable to develop long-term, binding legal agreements to benefit the franchise, current and future customers, and the City.

The goal of a telecommunications ordinance is that it will provide framework for (1) non-exclusive franchises; and (2) revocable permits. The ordinance will establish standards for: (1) telecommunications companies and developers and City staff (to base franchise agreement on); and (2) promote orderly development of infrastructure to insure: orderly installation within existing rights-of-way; customer access and services; and City and other government access.

In response to this need, a telecommunications ordinance was drafter which specifies the following sub-parts:

1. Franchise required: No telecommunications system can use public rights-or-way in the City without a franchise.
2. Franchise fees: As set forth in the (negotiated) franchise.
3. Service: Must be installed and in service within 12-months and "...in accordance with the conditions of its certificate of public convenience and necessity."
4. Construction and technical standards: Grantee must install and maintain their system consistent with listed laws, ordinances, technical standards/specifications.
5. Service to the City: Terms of service to the City at favorable rates.
6. Transfer of ownership or control: The City must be notified of any intent to transfer ownership or control and the transferee is required to accept all terms, provisions and amendments.
7. Franchise renewal: The City may grant or deny a franchise and Grantee will have no property right in the public rights-of-way if not renewed.
8. Forfeiture or revocation: Sets forth seven (7) grounds for revocation (breach of franchise, disposition of system, restoration, abandonment and extended operation).
9. Terms of renewal: As negotiated with each Grantee.
10. Receivership and foreclosures: 120-day termination clause; termination by judicial action.
11. Performance Bond: Required with details of terms and conditions.
12. Insurance: Proof of insurance and maintenance of policy required.
13. Indemnification: Detailed conditions regarding release, indemnity, hold harmless, claims and broad construction (per N. C. Gen. Stat. sec. 22B-1).
14. Liquidated damages: Detailed conditions regarding liquidated damages, negotiated penalties, unavoidable delay and procedures.

In conclusion, the ordinance will establish standards for orderly use of rights-of-way as approved by Council. The franchise agreements will be based on an ordinance and staff will review all proposals, make recommendations to Council, and oversee ordinance compliance.

City Attorney Oast reviewed some revisions which resulted from the September 16, 2003, worksession and comments from citizens. Additionally, after further legal review of the law and conversations with lawyers and officials from companies who have experience in other communities, he included further suggestions for revisions and clarifications to the proposed ordinance.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that a provision has been included is in the ordinance that exempts from the application of the ordinance public utilities that are in operation pursuant to a statewide franchise issued by the N.C. Utilities Commission, to the extent that such franchise covers that utility's operations within the City.

City staff recommends Council adopt a telecommunications ordinance, which will provide for non-exclusive franchises and revocable permits for telecommunications services established within the City of Asheville.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3056, with the ordinance revisions prepared by City Attorney Oast. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 451

B. ORDINANCE NO. 3057 - ORDINANCE REQUIRING A PRE-TOWING NOTICE PRIOR TO TOWING ILLEGALLY PARKED VEHICLES FROM PRIVATE PARKING LOTS, GARAGES AND OTHER PARKING FACILITIES

City Attorney Oast said that this is the consideration of an ordinance to require posting of "pre-towing" notices on private lots before owners can tow unauthorized vehicles with a civil penalty imposed for violation.

The City has received numerous complaints from people, usually visitors to Asheville, whose cars have been towed from private parking lots. The problem arises primarily in downtown and in Biltmore Village, both high tourist traffic areas, when cars are parked in private parking lots after normal business hours. The lots are not conspicuously posted with signs restricting parking (if at all), and are not chained off or barricaded, and people mistakenly assume that the lots are available for after hours parking. When the owners of towed vehicles go to retrieve their cars, they have complained that they are gouged on the price, forced to pay in cash, and otherwise treated rudely. This is a practice known as predatory towing, and many victims have promised never to return to Asheville and to warn their friends away, too.

The City's ability to regulate towing is limited, but other cities with similar problems have obtained special legislation to allow them to enact certain regulations. In 2001, the cities of Greenville and Chapel Hill obtained legislation to allow them to adopt an ordinance to require private property owners who tow vehicles from their lots to post a "pre-towing notice" on their lots before towing, and to assess a penalty if the ordinance is violated. In 2003, with the help of our local delegation, the City of Asheville was added to this legislation.

The ordinance is drawn from ordinances in Greenville and Chapel Hill. It requires the owners of lots who tow unauthorized vehicles to post these lots, and prescribes the size, height, location and required content of the sign. The act made unlawful by the ordinance is the towing of a vehicle, not the failure to post the sign, and the civil penalty for violation is $100 for the first violation, $200 for a second violation within 12 months, and $300 for a third or subsequent violation within 12 months.

As a result of Council comments at the September 16, 2003, City Attorney Oast included the 24-hour prohibition and the cost of the tow on the sign face.

Staff recommends adoption of the ordinance.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3057. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 470

C. RESOLUTION NO. 03-167 - RESOLUTION APPROVING THE METROPOLITAN PLANNING ORGANIZATION MEMORANDUM OF UNDERSTANDING

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the execution the Memorandum of Understanding for the French Broad River Metropolitan Planning Organization.

The Metropolitan Planning Organization (MPO) is in the process of expanding to include all of the local governments in Buncombe, Haywood, and Henderson Counties. The Transportation Advisory Committee approved the final version on August 21, 2003. All of the local governments must sign the agreement in order to participate in the MPO process.

The agreement establishes the membership and voting policies for the Transportation Advisory Committee (TAC) and Technical Coordinating Committee (TCC). City Council reviewed a draft of this agreement at the work session on August 5, 2003. Since the time of that review there has been one minor change to the agreement. The change involves representation on the TCC (staff level technical committee). In the previous draft, the Land of Sky Regional Council and Region A Council were voting members of the TCC. In the final version, those two organizations are non-voting members. This change was made in consultation with these organizations.

The Memorandum of Understanding (MOU) also establishes the membership of the TAC (policy board of elected officials). The TAC will be comprised of two representatives from Asheville, two from Buncombe County, two from Haywood County, two from Henderson County, and one from each of the other jurisdictions. The North Carolina Board of Transportation will have two representatives, for a total of 24 members.

The MPO staff has asked all eighteen jurisdictions to approve this agreement. To date, five jurisdictions have approved the agreement. Most of the other jurisdictions are scheduled to approve the agreement in September or October. A few jurisdictions still have some remaining questions and concerns about the document. Henderson County, Flat Rock and Mills River plan continued discussions about the MOU.

The new MPO organization will hold its initial meeting on October 23, 2003.

City staff recommends City Council approve the resolution authorizing the execution of the Memorandum of Understanding for the French Broad River Metropolitan Planning Organization.

City Engineer Ball responded to various questions from Councilman Peterson.

Upon inquiry of Councilman Peterson, City Engineer Cathy Ball said that Vice-Mayor Bellamy is City Council's Alternate, but the proxies will still have to be voted on as a part of the by-laws because the by-laws still state that any TAC member can authorize someone to be their proxy. It doesn't state they have to be another elected official.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Peterson moved for the adoption of Resolution No. 03-167. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 - PAGE 29

D. RESOLUTION NO. 03-168 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Bellamy said that the terms of Jan Davis and Billie Buie, as members on the Planning and Zoning Commission, expired on August 14, 2003.

Both Mr. Davis and Ms. Buie have served two full successive terms and are not eligible for reappointment.

On September 2, 2003, City Council interviewed Andy Brown, Jane Mathews, Robert Sweetser, Tom Byers, Harry Weiss and Derek Weekley.

On September 16, 2003, prior to this meeting, City Council interviewed Mike Vance and Steven Sizemore.

Andy Brown received 0 votes; Jane Mathews received 1 vote, Robert Sweetser received 0 votes, Tom Byers received 4 votes, Harry Weiss received 2 votes, Derek Weekly received 0 votes, Mike Vance received 3 votes and Steven Sizemore received 4 votes. Therefore, Tom Byers and Steven Sizemore are appointed as members to the Planning & Zoning Commission to each serve a three year term respectively. Both terms will begin effective September 4, 2003, and expire August 14, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 - PAGE 30

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of August 22 – 28, 2003: Kim MacQueen (Streets), Luis & Kathy Olivo (Water), Barvara Moutos (Water), BellSouth (Water).

The following claims were received during the period of August 29-September 4, 2003: Bernard Thoma (Streets), Elizabeth Kendall (Sanitation), Marjorie Barnes (Water), Elizabeth Tate (Police), and Elizabeth Ros (Water).

The following claims were received during the period of September 5-11, 2003: Tyrone Simpson (Parks & Recreation), BellSouth (Water), Terry Kirkpatrick (Sanitation), Irene Wright (Streets) and Karen Bradshaw (Streets).

The following claims were received during the period of September 12-18, 2003: Addie Mae Luna (Fire), BellSouth (Streets), Lottie Robinson Pierce (Police) and Bobby Searcy (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

On August 28, 2003, the City received a complaint from Carroll Moore. The nature of the proceedings is challenging constitutionality of City's noise and picketing ordinances, and a 1983 claim for violation of plaintiff's civil rights. This matter will be handled by outside counsel.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Bellamy thanked Biltmore Baptist Church for holding the City/County Appreciation Luncheon on September 16, 2003.

Mayor Worley was proud to announce that that at the September 21, 2003, Kids Voting Benefit Volleyball Game of Asheville City Council vs. Buncombe County Commissioners, the Asheville City Council won.

Mr. Mike Fryar showed Council various maps alleging that the description annexing his property is illegal. City Attorney Oast said that at this point after a preliminary review he didn't see anything that would cause him to say that Mr. Fryar's property did not quality for annexation. He said that he would look into this matter again as soon as possible.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:49 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Wednesday – October 8, 2003 - 3:00 p.m.

Worksession

Present:	Vice-Mayor Terry M. Bellamy, Presiding; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	Mayor Charles R. Worley and Councilman Brian L. Peterson

Vice-Mayor Bellamy asked for a moment of silence for Councilman Ellis' niece who recently died.

CONSENT AGENDA:

Agreement with the N. C. Dept. of Transportation for TEA 21 Enhancement Grants for New Haw Creek Road/Avon Road Sidewalks, Pack Square Pedestrian Improvements and West End/Clingman Pedestrian Improvements

Summary: The consideration of a resolution authorizing the City Manager to sign three municipal agreements with the N. C. Dept. of Transportation (NCDOT) for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

In June 2002, the City of Asheville made application to NCDOT for TEA-21 Enhancement Grant for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements. Each of these projects was awarded a grant from NCDOT in varying amounts. The City of Asheville partnered with various organizations to receive these grants. The grants can only be awarded to a local government. The following is a description of each of the projects:

(1) New Haw Creek Road/Avon Road Sidewalk – City staff worked with the Haw Creek Community Association to develop a plan to add sidewalk to New Haw Creek Road from Arco Road to Beverly Road and on Avon Road from Beverly Road to Tunnel Road. The project number is E-4814. The total amount of the grant is $172,132. The match for the project is being made but a Small Urban Fund Grant from the State in the amount of $150,000, Fee-In –Lieu of sidewalk money from the City in the amount of $40,000 and $5,000 from the Haw Creek Community Associates.

(2) Pack Square Pedestrian Improvements – These improvements include Pack Square Renaissance streetscape on College Street, Patton Avenue and US 25 (Biltmore Avenue) providing a better balance between pedestrians and vehicles. The amount of the grant is $140,000. Pack Square Conservancy will provide the match for the project.

(3) West End/Clingman Pedestrian Improvements – These improvements include enhancements on Clingman Avenue and the development of a parallel greenway through Clingman Forest. The amount of the grant is $172,131. The match for the project will be made by Mountain Housing Opportunities

Staff recommends that City Council authorize the City Manager to execute three municipal agreements with NCDOT for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

Upon inquiry of Councilman Dunn, City Engineer Cathy Ball explained the criteria for sidewalks.

Agreement with the N. C. Dept. of Transportation for Bridge Reinspection Program

Summary: *The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation (NC DOT) on a bi-annual basis for the reinspection of bridges on the Municipal Street System.*

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 17 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges be inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements. One is to do the inspection with City forces; two is for the City to hire a consultant to do the inspections; or three is for the City to allow the NC DOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute agreements with NC DOT to accomplish the required inspections. This process allows a large number of bridges to be inspected under one contract or operation, resulting in a minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be approximately $2,600 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year, which will yield an estimated total cost of $65,000. The City's share in this cost will be $13,000 (20% of the total cost). Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a Municipal Agreement with the NC DOT for inspection of bridges on the Municipal Street System.

Setting Public Hearing to Close Unnamed Alley off Collier Avenue

Summary: The consideration of a resolution of intent to close an unnamed alley off Collier Avenue and setting a public hearing on November 11, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Collier Avenue, the entry of which is located approximately 200 feet north of the intersection of Collier and Banks Streets.

Public Works Department staff has researched and determined that this alleyway is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are eight lots that abut this alley identified by PIN Nos. 9648.06-38-4514; 9648.06-38-3540; 9648.06-38-3620; 9648.06-38-4526; 9648.06-38-4684; 9648.06-38-5757; 9648.06-38-3750; 9648.06-38-3895; 9648.06-38-4514.

City staff recommends that City Council adopt the resolution setting a public hearing for November 11, 2003, to close an unnamed alley off Collier Avenue.

Quitclaim Deed to Buncombe County for Property on Griffing Circle

Summary: The consideration of a resolution authorizing the Mayor to execute a non-warranty deed to Buncombe County for property located on Griffing Circle.

The land on Griffing Circle identified as PIN Nos. 9640.20-81-0970 and 1983 was tendered to the City of Asheville and Buncombe County as the taxing entities by non-warranty deed recorded in Deed Book 1717 at Page 2223. The County offered the property for upset bid and a final offer of $36,800 was received. The City desires to convey its interest, if any, in the property to the County so that the property may be conveyed to the highest bidder. In return, the City will receive a pro rata share (approximately $12,267) of the sales price as the City's taxable interest appears.

The entire parcel is zoned residential and has an area of 0.63 acres.

Approval of the resolution will authorize the Mayor to execute the quitclaim deed to Buncombe County.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed to Buncombe County for property located on Griffing Circle.

Acceptance of N.C. Community Development Initiative Energy Efficiency Grant

Summary: The consideration of a resolution authorizing the City of Asheville to accept an energy efficiency grant from N.C. Community Development Initiative (NCCDI), and approval of the associated budget amendment, in the amount of $30,000.

NCCDI has developed the Star Home Program to provide grants to not-for-profit agencies, including local municipalities, to assist with the cost of incorporating energy-efficient construction methods in new housing development. The City has recently been accepted for participation in the Star Home Program in respect of projects in which the City has a financial stake. The City's Community Development Division has submitted a specific application for funding for 18 homes at "Moser's Place" subdivision currently under construction on Maple Avenue, with assistance from the Housing Trust Fund and the Fee Rebate program.

The City will pass on grant funds estimated at $1,375 per unit to developer Ron Moser, Inc. A budget amendment in the amount of $30,000 is recommended to cover the estimated amount plus contingencies.

NCCDI contracts with Advanced Energy, Inc., to monitor projects and ensure adherence to "Energy Star" standards.

If this Star Home Program grant is successful, there will be opportunity to apply for additional grant funds for other projects.

Staff recommends City Council accept an energy efficiency grant from N.C. Community Development Initiative (NCCDI) and approve of the associated budget amendment, in the amount of $30,000.

Possession and Consumption of Beer and/or Wine at the 2003 Harvest Festival

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2003 Harvest Festival produced by the Grove Arcade Foundation on October 18, 2003.

The 2003 Harvest Festival produced by the Grove Arcade Foundation has requested through the Asheville Parks and Recreation Department that City Council permit them to serve and consume beer and/or unfortified wine at their event on Saturday, October 18, 2003. The 2003 Harvest Festival is a celebration of fall in the mountains produced to attract people to the Grove Arcade and downtown.

City staff recommends City Council approve the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2003 Harvest Festival produced by the Grove Arcade Foundation on October 18, 2003.

Bid for Voice over IP Telephone System

Summary: The consideration of a resolution authorizing the City Manager to award Bid No. 574-04 to 4 Front Systems, Inc. and execute any related contractual documents for the installation of a new telephone system at several remote offices of the City of Asheville.

The telephone systems at several remote offices of the City of Asheville are in need of replacement. Through a combination of technology called Voice over IP and the use of fiber optic cable from those locations to the City Hall building, a new telephone system can be installed that will provide additional capabilities. These locations include the Transit Administration Office, seven Fire stations, three Police substations and five Parks & Recreation offices. The new system has a three-year recovery of funding.

The City of Asheville sent out a request for proposal to acquire the new telephone system and received seven bid responses. These bid responses were reviewed and rated as to the best solution for the City based on the twelve evaluation criteria included in the bid request documentation. The results of the bid evaluation indicate that 4 Front is the lowest responsive bidder.

The total cost of the bid award is $116,000. The source of this funding comes from technology grant funding of the Transit Department and from the General Fund.

City staff recommends City Council adopt the resolution authorizing the City Manager to award Bid No. 574-04 to 4 Front Systems, Inc. and execute any related contractual documents for the installation of a new telephone system at several remote offices of the City of Asheville.

Vice-Mayor Bellamy asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on October 14, 2003. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Neighborhood/Developer Meeting Concept

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to provide for neighborhood/developer meetings as an optional, alternative step in the review process for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments.

This code amendment would allow a specific type of neighborhood/ developer meeting to substitute for the Planning and Zoning Commission review for certain types of development proposals. Specifically, the amendment provides for the substitution of neighborhood/developer meetings for the required public hearing before the Planning and Zoning Commission (at the option of the applicant) for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments. Planned Unit Developments and those conditional use permits that do not require Planning and Zoning Commission review would not be included in this new procedure.

Mr. Shuford said that based on City Council's considerable interest in improving developer and neighborhood communication early in the development review and approval process, City staff undertook a focus group process to identify issues and potential solutions in enhancing the existing "neighborhood meeting" approach. Three separate focus groups were convened. One group represented developer interests; one group represented neighborhood interests; and the third group consisted of the Planning and Zoning Commission. After each group had met and a list of critical issues was determined, selected members from each group then met together on two occasions to identify areas of agreement and to prepare recommendations for action. An independent facilitator was used to direct meeting discussion and provide minutes.

He reported that the focus group process has resulted in a recommended procedure for improved Neighborhood/Developer Meetings. The procedure includes an incentive for developers to choose the Neighborhood/Developer Meeting process over the standard review process. It includes an opportunity for expanded notification of property owners in the vicinity of the proposed development. Finally, it includes an organized approach for the conduct of Neighborhood/Developer Meetings that should result in the meetings to be conducted in an effective fashion. The goal of this procedure change is an early, friendly, helpful official partnership between the neighbors, developers and the City.

In summary, the proposal would apply to all rezoning, conditional use rezoning, and conditional use permit requests that involve Planning and Zoning Commission review. The proposed procedure offers developers the option of selecting an enhanced Neighborhood/Developer Meeting process in exchange for skipping the Planning and Zoning Commission step in our current requirements. This results in no additional time being taken in the development review process but creates significantly improved communication between developers and neighborhoods. City Council would continue to hold a public hearing and take final action on all development proposals, just as is done under the current requirements. Even when developers opt to follow the existing procedures, staff will continue to recommend developer contact with affected neighborhoods.

This recommendation would not have been possible without the dedication of time, creative ideas, and enthusiasm on the part of a large number of volunteers. I would like to thank the following persons for their assistance in creating this recommendation:

FOCUS GROUP PARTICIPANTS

Neighborhood Participants	Developer Participants	Planning & Zoning Commission
*Barber Melton	*George Morosani	*Billie Buie
*Headlee Howard	*Tom Gallaher/David Hill	*Tom Cathey
*Greg Gregory	*John Spake	*Selina Sullivan
*Mike Lewis	Chris Eller	Jan Davis
John Quigley	Harry Weiss	Hedy Fischer
Norma Baynes	Jerry Grant	Nate Cannady
Stephen Hudzik	Ron Butler	Rod Hudgins
	Ron Moser	

* Indicates that the participant served on the final joint focus group.

Additionally, Paul Godfrey provided invaluable assistance by serving as the facilitator for these focus group meetings.

The following headings provide a summary of the work of these focus groups, including the clarification of key issues, identification of expected results (i.e., what the process should look like), and the specific meeting procedures themselves. These headings illustrate the organized way the groups conducted their business and the level of detail that went into their discussions.

Clarifying Issues and Interests

The following items were listed as major issues relating to Neighborhood/Developer Meetings:

- Misinformation
- Full plan details made available to all parties early in the process
- Lack of trust
- Early and accurate complete information sharing
- Clearly definition of neighborhood stakeholders
- Marketing of development process – common understanding of issues and procedures
- Lack of an on-going dialogue as the development process continues (even after development approval has been given and construction is underway)
- Neighbors don't understand technical aspects of the development process
- Need for a better Neighborhood/Developer Meeting process – ground rules; expectations; facilitation
- Need for citizens to be better educated about the development process
- Lack of understanding about the big picture – how does the project help the City meet its broader goals?
- Need for staff participation in Neighborhood/Developer Meetings
- No existing way to alert and document all impacted stakeholders
- Lack of willingness to compromise on each "side"

The following were identified as the key interests of the stakeholder groups:

- Neighbor concerns: Safety; property values; traffic; change in neighborhood character

- Developer concerns: Profit; property rights; desire to impact community in a positive way; need for clearly defined neighborhood meeting process that is reasonable in terms of time and money; staff involvement in neighborhood meetings for informational purposes and to indicate that the process is officially "condoned" by the City.
- Staff concerns: Time involved in meetings; need to be perceived as neutral in the process.

Criteria for Guiding Process Decisions

Participants were asked to develop a set of criteria for use in evaluating any potential process ideas. The following criteria were developed:

- The process must have teeth.
- The process should be viewed as legitimate in eyes of all participants.
- The process should not be burdensome on any one party or on all parties.
- The process should clarify upfront what is and what is not negotiable.
- The process should be reasonable in terms of time and costs.

Improved Neighborhood/Developer Meeting Procedures

Participants identified the following procedures for improved Neighborhood/Developer Meetings:

- Developer registers project application a minimum of 45 days before the City Council meeting at which the public hearing is scheduled to occur.
  - Plans are placed on record and made available to the public at a central location (City Planning and Development Department).
  - Plans will provide as much information as available at time of posting.
  - Plans will be made available on City website if possible.
  - Staff contact person is clearly identified.
- Notification procedures:
  - Property owners within 400 feet of the property proposed for development would receive notice of the Neighborhood/Developer Meeting from the City of Asheville. This is a minimum notification area and developers are advised to determine if additional property owners should be notified (e.g., if the project is located on a dead-end road 600 feet long, perhaps it would be good practice for the developer to notify all property owners fronting the road); developers would be responsible for any additional mailing costs associated with a larger notice area.
  - Any affected neighborhood association registered with the City and located within 400 feet of the property proposed for development would also receive notice of the Neighborhood/Developer Meeting. It is expected that the designated person(s) receiving this notice will identify key participants outside the general notice area and arrange for them to attend the Neighborhood/Developer Meeting. However, this should not be construed as an open invitation for all neighborhood association members outside the notice area to attend. The intent is to have representation from affected neighborhood associations while ensuring that most neighborhood participants are from the notice area.
  - Timing: The City shall mail Neighborhood/Developer Meeting notices 45 days before the City Council meeting at which the public hearing is scheduled to occur. The initial Neighborhood/Developer Meeting shall occur no less than 10 days prior to the City Council meeting at which the public hearing is scheduled to occur.

    - The City of Asheville will provide notice of the public hearing to adjacent and nearby property owners as provided for under state law or City Code requirements, whichever is more restrictive.
    - Meeting location: Neutral site of sufficient size for meeting.
- ○ Meeting Facilitation - The meeting must be managed by someone who knows the rules (mediator/facilitator) and is able to effectively run a meeting. The developer will pay for the cost of the mediator/facilitator. City staff will attend the meeting as technical advisor(s) only and will not facilitate the meeting.
- ○ Meeting Ground Rules - The following set of ground rules were adopted to promote effective communication during Neighborhood/Developer Meetings. These ground rules would be reviewed by the meeting facilitator at the outset of each meeting and "enforced" during the meeting by the facilitator.
    - Listen to one another (really listen before responding)
    - Ask for feedback from one another
    - Accept the need for compromise by each of us
    - No stereotyping (let's keep a level of objectivity in our discussions)
    - Be open minded
    - Let's clearly define our statements to insure that all parties clearly understand their meaning
- ○ Conduct of Meeting – Meetings will have a structured agenda to include: Ground rules for the meeting; Areas of allowable discussion clarified; Clarification of any zoning rule(s) that applies to the situation; Plan presentation (including how plan addresses the big picture); Identification of areas of agreement and disagreement; Negotiation of issues of concern; and Identification of next steps, if any.
    - City staff must attend the meeting to provide technical advice and information and to indicate official "condoning" of the process.
    - Meeting is intended to result in a signed document of supported and non-supported issues that will be generated by the facilitator (who will also identify the necessary signees).

The Planning and Zoning Commission unanimously (6-0) recommended approval of this code amendment on September 3, 2003. Staff also recommends approval.

Mr. Shuford responded to various questions from Council, some being, but are not limited to, who will be the facilitators and how will they be paid; what is the timeline that the developer must meet with the neighborhood; what happens if concerns are not addressed at the neighborhood/developer meeting; how are the property owners notified; does Council have the option of referring the matter to the Planning & Zoning Commission for their recommendation; will outstanding issues be covered in the staff's report; after the facilitator minutes are written, will they be approved by the neighborhood and the developer for inconsistencies; and can advertise the meetings in CityWorks and on the City's Webpage.

At the suggestion of Councilwoman Jones, Mr. Shuford said that he would develop some basic training for City Council on how the neighborhood/developer meetings will work.

Councilman Mumpower spoke in support of this process and hoped it will have a positive effect for both the neighborhood and the developer.

At the request of Vice-Mayor Bellamy, it was the consensus of Council to have City staff report back to Council in a year to see if the process is effectively working.

More Flexible Setbacks for Handicapped Accessibility and Life Safety Features on Residential Lots

Mr. Joe Heard, Director of Development Services, said that this is the consideration of an amendment to the Unified Development Ordinance to provide greater flexibility in applying setback requirements in situations where handicapped accessibility and life safety features are required on residential lots.

Presently, the City of Asheville Unified Development Ordinance allows handicapped accessible ramps and fire escapes to encroach as close as three feet (3') to side and rear property lines. This proposed ordinance amendment is intended to offer even greater flexibility in situations where these safety and accessibility features are required on residential lots by the North Carolina State Building Code. Presently, these structures in such situations have to be constructed in an awkward configuration or obtain a variance from the Board of Adjustment. The City of Asheville Building Safety and Fire Departments have been consulted and support this proposed amendment. If approved, this amendment will allow the Planning Director to deal with these issues in a fair and timely manner.

On September 3, 2003, the Planning & Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0, including an amendment to limit the application of this change to residential properties. City staff recommends approval of the proposed code amendment as amended.

After discussion by Council, it was the consensus to place these public hearings on the October 14, 2003, formal City Council agenda.

OTHER BUSINESS

Councilman Dunn said that he has met with the Planning & Development Director and Councilman Mumpower on his concerns regarding the Asheville City Plan 2025. He is now requesting that City Council consider the Asheville City Plan 2025 with the seated Council. City Attorney Oast briefly explained the necessary steps to bring this matter back to Council earlier than January 2004 and would have that information for Council at their October 14, 2003, meeting.

CLOSED SESSION

At 3:47 p.m., Councilman Mumpower moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Carroll Moore; City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously.

At 4:00 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Vice-Mayor Bellamy adjourned the meeting at 4:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 14, 2003 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

PLEDGE OF ALLEGIANCE

Veteran of the U.S. Air Force Ray Green led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

ANNOUNCEMENT

Councilman Mumpower announced that Mayor Worley has been appointed as the Second Vice-President of the N. C. League of Municipalities.

I. PROCLAMATIONS:

A. DOMESTIC VIOLENCE TASK TEAM REPORT

Sergeant Daryl Fisher updated City Council on the Domestic Violence Task Team. Sgt. Fisher introduced the team members. The objective and scope of the Team is (1) to evaluate and redesign the police response to calls of domestic violence, and (2) emphasis on reporting; tracking; proper handling and follow-up; and timely referral to outside agencies. Some domestic violence concerns were (1) nationally, 40% of police calls for service are for domestic violence; (2) from 1992-1996, 21% of violence against women resulted from an intimate partner compared to 2% for men; (3) in 1998, between 3-4 women daily were murdered by a spouse or boyfriend; (4) locally in 2001-02, HelpMate sheltered 223 women and children; and (5) HelpMate further provided 1,664 nights of emergency shelter, made 1,625 crisis contacts, and assisted 1,629 persons through court advocacy.

MPO Dawn Dowdle, Team member, said that during this process, the team met with and gathered information from various external and internal agencies, including HelpMate, Asheville Police Department (APD) Victim Services, District Attorney's Office, Clerk of Court's Office, etc. They found out that that the APD and the other agencies are basically on the "same sheet of music" as it relates to domestic violence issues.

As a result of the Team's research, enhanced reporting and tracking of domestic violence cases has been implemented. Updated training sessions have been implemented for all personnel, including supervisors. Training began September 30, 2003. They will continue with pro-arrest philosophy concentrating on protecting the victim(s) from harm. This includes mandatory arrest for violation of the "trespass" and "harass" provision of a Domestic Violence Protective Order.

Proposed changes to domestic violence policy include: (1) for all calls involving a domestic dispute, an Incident Report must be completed if there is evidence of a physical injury and/or an arrest is made; and (2) arrest if mandatory when there is probable cause to believe there is a violation of the "trespass" or "harass" provisions of a domestic violence protective order.

In addition to our enhanced reporting, tracking and handling of these cases, further follow-up is recommended. APD Victim Services will forward reports of domestic violence to HelpMate daily. The APD Victim Services Coordinator and HelpMate have agreed to follow-up with domestic violence victims, which will reduce the possibility of victim's falling through the cracks.

Sgt. Fisher said the Team's proposals include (1) minor changes to report form; (2) minor changes to Domestic Violence Policy; (3) implementation of current training with updates as needed so domestic violence calls are handled properly; (4) making domestic violence training mandatory for all newly hired officers; (5) utilization of crime analysis, mandatory reports and clearance codes for tracking; (6) utilization of information card for timely referrals to outside agencies; and (7) follow-up with victims by the APD Victim Services Coordinator and HelpMate.

Sgt. Fisher said that by utilizing the Team's recommended enhancements, the APD will continue to improve police services by serving our citizens and improving the City's quality of life through fair and respectful proactive policing.

Councilwoman Jones pointed out that October is Domestic Violence Awareness Month and hoped that we can be part of the solutions. She hoped we can find ways to assist HelpMate, which will end up helping our entire community.

Vice-Mayor Bellamy commended the Task Team for their work and thanked various people for their support and leadership.

On behalf of City Council, Mayor Worley thanked Sgt. Fisher and the Task Team for their efforts in handling domestic violence.

II. CONSENT AGENDA:

Vice-Mayor Bellamy asked that Consent Agenda Items "C" and "K" be removed from the Consent Agenda for individual discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 23, 2003, AND THE WORKSESSION HELD ON OCTOBER 8, 2003

B. ORDINANCE NO. 3058 - ORDINANCE TO INCREASE LENGTH OF TERM FOR COUNCIL APPOINTEES TO ASHEVILLE TRANSIT COMMISSION

Summary: The consideration of an ordinance increasing length of term for members of the Asheville Transit Authority from 2 years to 3 years

In connection with its appointment of new citizen members to the Asheville Transit Commission, Council requested amendment to the transit commission ordinance, increasing the length of the term from two years to three years. This three-year term length is consistent with most other boards and commissions in the City. The ordinance will be effective for the terms of Council's appointments made on and after December 31, 2003.

If Council approves of the ordinance, its adoption is recommended.

ORDINANCE BOOK NO. 20 – PAGE 473

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS

This item was pulled from the Consent Agenda for individual discussion.

D. RESOLUTION NO. 03-169 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REINSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM

Summary: The consideration of a resolution authorizing the Mayor to enter into a municipal agreement with the N.C. Dept. of Transportation (NC DOT) on a bi-annual basis for the reinspection of bridges on the Municipal Street System.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. Since the establishment of the program, the City has replaced 17 bridges through the program. The program is funded 80% through federal funds and 20% through City funds and administered by the NC DOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges be inspected every two years. The NC DOT offers three options for meeting the bi-annual inspection requirements. One is to do the inspection with City forces; two is for the City to hire a consultant to do the inspections; or three is for the City to allow the NC DOT to do the inspections through a qualified private engineering firm.

Since 1983, the City has elected to execute agreements with NC DOT to accomplish the required inspections. This process allows a large number of bridges to be inspected under one contract or operation, resulting in a minimum inspection cost per bridge. NC DOT representatives anticipate the inspection costs to be approximately $2,600 per bridge for the upcoming inspection. The City has 25 bridges in need of inspection this year, which will yield an estimated total cost of $65,00. The City's share in this cost will be $13,000 (20% of the total cost). Funds for the City's share are budgeted in the Public Work's Bridge Maintenance line item.

The Public Works Department staff recommends adoption of the resolution authorizing the Mayor to execute a Municipal Agreement with the NC DOT for inspection of bridges on the Municipal Street System.

RESOLUTION BOOK NO. 28 – PAGE 31

E. RESOLUTION NO. 03-170 - RESOLUTION OF INTENT TO CLOSE AN UNNAMED ALLEY OFF COLLIER AVENUE AND SETTING A PUBLIC HEARING ON NOVEMBER 11, 2003

Summary: The consideration of a resolution of intent to close an unnamed alley off Collier Avenue and setting a public hearing on November 11, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Collier Avenue, the entry of which is located approximately 200 feet north of the intersection of Collier and Banks Streets.

Public Works Department staff has researched and determined that this alleyway is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are eight lots that abut this alley identified by PIN Nos. 9648.06-38-4514; 9648.06-38-3540; 9648.06-38-3620; 9648.06-38-4526; 9648.06-38-4684; 9648.06-38-5757; 9648.06-38-3750; 9648.06-38-3895; 9648.06-38-4514.

City staff recommends that City Council adopt the resolution setting a public hearing for November 11, 2003, to close an unnamed alley off Collier Avenue.

RESOLUTION BOOK NO. 28 – PAGE 32

F. RESOLUTION NO. 03-171 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-WARRANTY DEED TO BUNCOMBE COUNTY FOR PROPERTY ON GRIFFING CIRCLE

Summary: The consideration of a resolution authorizing the Mayor to execute a non-warranty deed to Buncombe County for property located on Griffing Circle.

The land on Griffing Circle identified as PIN Nos. 9640.20-81-0970 and 1983 was tendered to the City of Asheville and Buncombe County as the taxing entities by non-warranty deed recorded in Deed Book 1717 at Page 2223. The County offered the property for upset bid and a final offer of $36,800 was received. The City desires to convey its interest, if any, in the property to the County so that the property may be conveyed to the highest bidder. In return, the City will receive a pro rata share (approximately $12,267) of the sales price as the City's taxable interest appears.

The entire parcel is zoned residential and has an area of 0.63 acres.

Approval of the resolution will authorize the Mayor to execute the quitclaim deed to Buncombe County.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed to Buncombe County for property located on Griffing Circle.

RESOLUTION BOOK NO. 28 – PAGE 33

G. RESOLUTION NO. 03-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A N.C. COMMUNITY DEVELOPMENT INITIATIVE ENERGY EFFICIENCY GRANT

Summary: The consideration of a resolution authorizing the City of Asheville to accept an energy efficiency grant from N.C. Community Development Initiative (NCCDI), and approval of the associated budget amendment, in the amount of $30,000.

NCCDI has developed the Star Home Program to provide grants to not-for-profit agencies, including local municipalities, to assist with the cost of incorporating energy-efficient construction methods in new housing development. The City has recently been accepted for participation in the Star Home Program in respect of projects in which the City has a financial stake. The City's Community Development Division has submitted a specific application for funding for 18 homes at "Moser's Place" subdivision currently under construction on Maple Avenue, with assistance from the Housing Trust Fund and the Fee Rebate program.

The City will pass on grant funds estimated at $1,375 per unit to developer Ron Moser, Inc. A budget amendment in the amount of $30,000 is recommended to cover the estimated amount plus contingencies.

NCCDI contracts with Advanced Energy, Inc., to monitor projects and ensure adherence to "Energy Star" standards.

If this Star Home Program grant is successful, there will be opportunity to apply for additional grant funds for other projects.

Staff recommends City Council accept an energy efficiency grant from N.C. Community Development Initiative (NCCDI) and approve of the associated budget amendment, in the amount of $30,000.

RESOLUTION BOOK NO. 28 – PAGE 34

H. ORDINANCE NO. 3059 - BUDGET AMENDMENT TO ACCEPT A N.C. COMMUNITY DEVELOPMENT INITIATIVE ENERGY EFFICIENCY GRANT

Summary: See Consent Agenda "G" above.

ORDINANCE BOOK NO. 20 – PAGE 474

I. RESOLUTION NO. 03-173 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD BID NO. 574-04 TO 4 FRONT SYSTEMS INC. FOR THE INSTALLATION OF A NEW TELEPHONE SYSTEM AT SEVERAL REMOTE OFFICES OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to award Bid No. 574-04 to 4 Front Systems, Inc. and execute any related contractual documents for the installation of a new telephone system at several remote offices of the City of Asheville.

The telephone systems at several remote offices of the City of Asheville are in need of replacement. Through a combination of technology called Voice over IP and the use of fiber optic cable from those locations to the City Hall building, a new telephone system can be installed that will provide additional capabilities. These locations include the Transit Administration Office, seven Fire stations, three Police substations and five Parks & Recreation offices. The new system has a three-year recovery of funding.

The City of Asheville sent out a request for proposal to acquire the new telephone system and received seven bid responses. These bid responses were reviewed and rated as to the best solution for the City based on the twelve evaluation criteria included in the bid request documentation. The results of the bid evaluation indicate that 4 Front is the lowest responsive bidder.

The total cost of the bid award is $116,000. The source of this funding comes from technology grant funding of the Transit Department and from the General Fund.

City staff recommends City Council adopt the resolution authorizing the City Manager to award Bid No. 574-04 to 4 Front Systems, Inc. and execute any related contractual documents for the installation of a new telephone system at several remote offices of the City of Asheville.

RESOLUTION BOOK NO. 28 – PAGE 35

J. ORDINANCE NO. 3060 - ORDINANCE REPEALING ORDINANCE REGARDING USE OF STREETS AND SIDEWALKS

Summary: The consideration of an ordinance repealing City Code Sec. 16-4, Use of Streets, Sidewalks.

Recent references to Chapter 16 of the City Code have brought to our attention the existence of City Code Sec. 16-4. This ordinance requires written permission for the use of City sidewalks for lectures, sermons, and similar activities, and further provides that permission may be revoked if the "good morals and order of the city so demand."

Despite the fact that this ordinance has been part of the City's Code since at least 1922, and has survived several comprehensive revisions, its obsolescence is self-evident and it has not been enforced for a long time. Subsequently adopted ordinances and policies regarding the use of City streets and public places have superseded Sec. 16-4, if not repealed it.

As we continue to notice outdated City Code provisions, we will bring them to Council's attention.

Adoption of the ordinance repealing Sec. 16-4 is recommended.

ORDINANCE BOOK NO. 20 – PAGE 476

K. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2003 HARVEST FESTIVAL PRODUCED BY THE GROVE ARCADE FOUNDATION ON OCTOBER 18, 2003

This item was pulled from the Consent Agenda for individual discussion.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL DISCUSSION

RESOLUTION NO. 03-174 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS

Due to a conflict of interest, Councilwoman Jones moved to excuse Vice-Mayor Bellamy from participating in this matter. This motion was seconded by Councilman Dunn and carried unanimously.

Summary: The consideration of a resolution authorizing the City Manager to sign three municipal agreements with the N. C. Dept. of Transportation (NCDOT) for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

In June 2002, the City of Asheville made application to NCDOT for TEA-21 Enhancement Grant for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements. Each of these projects was awarded a grant from NCDOT in varying amounts. The City of Asheville partnered with various organizations to receive these grants. The grants can only be awarded to a local government. The following is a description of each of the projects:

(1) New Haw Creek Road/Avon Road Sidewalk – City staff worked with the Haw Creek Community Association to develop a plan to add sidewalk to New Haw Creek Road from Arco Road to Beverly Road and on Avon Road from Beverly Road to Tunnel Road. The project number is E-4814. The total amount of the grant is $172,132. The match for the project is being made but a Small Urban Fund Grant from the State in the amount of $150,000, Fee-In –Lieu of sidewalk money from the City in the amount of $40,000 and $5,000 from the Haw Creek Community Associates.

(2) Pack Square Pedestrian Improvements – These improvements include Pack Square Renaissance streetscape on College Street, Patton Avenue and US 25 (Biltmore Avenue) providing a better balance between pedestrians and vehicles. The amount of the grant is $140,000. Pack Square Conservancy will provide the match for the project.

(3) West End/Clingman Pedestrian Improvements – These improvements include enhancements on Clingman Avenue and the development of a parallel greenway through Clingman Forest. The amount of the grant is $172,131. The match for the project will be made by Mountain Housing Opportunities.

Staff recommends that City Council authorize the City Manager to execute three municipal agreements with NCDOT for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

Councilman Ellis moved to approve Resolution No. 03-174. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 36

RESOLUTION NO. 03-175 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2003 HARVEST FESTIVAL PRODUCED BY THE GROVE ARCADE FOUNDATION ON OCTOBER 18, 2003

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2003 Harvest Festival produced by the Grove Arcade Foundation on October 18, 2003.

The 2003 Harvest Festival produced by the Grove Arcade Foundation has requested through the Asheville Parks and Recreation Department that City Council permit them to serve and consume beer and/or unfortified wine at their event on Saturday, October 18, 2003. The 2003 Harvest Festival is a celebration of fall in the mountains produced to attract people to the Grove Arcade and downtown.

City staff recommends City Council approve the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2003 Harvest Festival produced by the Grove Arcade Foundation on October 18, 2003.

Councilman Dunn moved for the adoption of Resolution No. 03-175. This motion was seconded by Councilman Ellis and carried on a 6-1 vote, with Vice-Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 37

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 902 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I/CONDITIONAL USE; AND ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR THE OPERATION OF AN ANTIQUE BUSINESS IN THE EXISTING DETACHED GARAGE

ORDINANCE NO. 3061 - ORDINANCE REZONING PROPERTY LOCATED AT 902 SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS I/CONDITIONAL USE

ORDINANCE NO. 3062 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 902 SAND HILL ROAD TO ALLOW FOR THE OPERATION OF AN ANTIQUE BUSINESS IN THE EXISTING DETACHED GARAGE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. if Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:28 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Joe Heard, Director of Development Services, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Heard said that this is the consideration of a request to rezone property located at 902 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Community Business I/ Conditional Use and a request to issue a conditional use permit to allow for the operation of an antique business in the existing detached garage.

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On July 22, 2003, Ms. Janet Forbes submitted a request to conditionally rezone her small residential parcel from its current RM-6 designation to Community Business I District, in the southwest area of the City.

The applicant has requested a rezoning of .98 acres of RM-6 property, located off of Sand Hill Road (PIN No. 9627.09-05-3407 split from 9627.09-05-2310), to Community Business 1 District (City Exhibit 3 – Location Map). The site is a single family residence with a detached garage and the request is to allow for the operation of a small independently owned and operated antique business to be located in the home's detached garage. The conditional use component of this project will be a site Master Plan showing the existing structures with existing and proposed parking. Operation of the antique business will not alter the structure or size of the garage in any way and the residence is to remain occupied by the applicant. The proposed site plan calls for the existing vegetation to be preserved and maintained with additional plant material to be supplied as needed for the required landscape buffer.

The project site is located within the City's extra-territorial jurisdiction on the southwest corner of a busy five-way intersection between Sand Hill Road, Sand Hill School Road, W. Oakview Road and Grandview Road. The subject property is surrounded primarily by single family uses zoned RS-4 and RM-6 with the notable exceptions of a convenience store market and gasoline sales (zoned CB-I) and the Oak Forest Presbyterian Church (zoned RS-4) (City Exhibit 4 – Aerial Map). The project will provide four (4) parking spaces (3 existing and 1 proposed) and a 20' wide Type 'B' buffer as required by the Unified Development Ordinance (UDO) (City Exhibit 3 – Site Plan).

The proposed zoning (CB-1) is to provide areas for medium-density business and service uses serving several residential neighborhoods.

The existing zoning (RM-6) establishes a low density multi-family district to permit a limited range of low density multi-family housing types along with single-family detached residences. The strategic placement of this zoning district can also help provide a transitional area between single family and multi-family uses. The CB-I zoning district is to provide areas for medium-density business and service uses serving several residential neighborhoods.

The Technical Review Committee (TRC) met on August 18, 2003, at which time they made a positive recommendation that the project be forwarded to the Planning and Zoning Commission.

The Planning and Zoning Commission reviewed this project at their September 3, 2003, meeting where the Commission unanimously (6-0) recommended approval of the project with the following conditions carried over from the TRC meeting:

1. Residence is to remain owner occupied.
2. Operation of business is to be limited to the garage only, any expansion of use will require re-application.
3. Operation of the business is restricted to the sale of antiques, any change of use will require re-application.
4. Parking is limited to the four (4) spaces shown (3 existing plus 1 handicap accessible added per Buncombe County Building Inspections request).
5. Existing buffer vegetation is to be supplemented as required by the UDO.
6. Signage will have to conform to CB-I standards.
7. That a revised plan be submitted showing the addition of the following information:
    - Existing right-of-way for Sand Hill Road and W. Oakview Road.

- Location, species, and size of existing street trees.
- Proposed handicap accessible parking space.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The proposed project will utilize existing structures on the site and will not require any grading or other land disturbing activities.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The project site will continue to support the existing single family home with an extremely limited change in appearance and activity. The proposed business use, with limited business hours, has been determined to generate very low traffic counts which will be accommodated by off-street parking where additional plant material may be installed to help buffer the higher use area of the property from adjacent single family homes. In addition, the subject property has, and will continue, to functionally buffer other single family homes from the existing higher use retail market/gasoline sales and Church activities.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The surrounding properties are primarily low density residential. The subject property will continue to function as the applicant's primary residence, which is also classified as low density residential. In addition, the subject property has, and will continue, to functionally buffer other single family homes from the existing higher use retail market/gasoline sales and Church activities.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

Historically, the Asheville area has played a predominant role as the major trade center for Western North Carolina. It is a City goal described in the Asheville 2010 Plan to promote, "A healthy, vibrant, expanding economy capable of sustaining a growing population and providing a diversity of high-paying jobs." This request does encourage diversity in the job and retail markets while maintaining and preserving a high quality of life for the individual. In addition, this request supports the Asheville City Council adopted Smart Growth Policies through the efficient use of our limited land that allows for the creation of a small scale mixed-use, infill development where individuals are able to live and work in the same area.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is within reasonable distance to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers. Preliminary review by other utility providers has not revealed any problems for serving the development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed business use, with limited business hours and space, has been determined to generate very low traffic counts. It is anticipated that all business activity will be easily accommodated by the existing and proposed off-street parking and will not cause undue traffic congestion or hazards.

The Planning and Zoning Commission and City staff recommend approval of the zoning change from RM-6 to CB-1 and approval of the associated conditional use permit, as proposed by the applicant, subject to all TRC conditions being met.

Vice-Mayor Bellamy felt that since this is a commercial development in a residential neighborhood we need to be consistent with safeguards and limit the hours of operation to 9:00 p.m. Mr. Heard said that there is no limitation on business hours in the conditions because the neighbors have not expressed any concern about that.

Upon inquiry of Councilman Dunn, Mr. Heard explained that the City does try to be flexible with the requirements for landscaping.

Mr. Fred English felt that businesses in residential areas should not be allowed.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:35 p.m.

Regarding limiting the hours of operation, Councilman Mumpower said that his vote on that type of condition would be based on the actual use of the property, and he didn't see how the hours of operation of an antique business would put anyone in jeopardy

Councilman Ellis felt that limiting the hours of operation would place an unnecessary restriction on this business due to it's location.

Councilman Mumpower moved to adopt Ordinance No. 3061 to rezone property located at 902 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to Community Business I/ Conditional Use. This motion was seconded by Councilman Ellis and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 477

Vice-Mayor Bellamy moved to adopt Ordinance No. 3062, to issue a conditional use permit to allow for the operation of an antique business in the existing detached garage, subject to the following conditions: (1) Residence is to remain owner occupied; (2) Operation of business is to be limited to the garage only, any expansion of use will require re-application; (3) Operation of the business is restricted to the sale of antiques, any change of use will require re-application; (4) Parking is limited to the four (4) spaces shown (3 existing plus 1 handicap accessible added per Buncombe County Building Inspections request); (5) Existing buffer vegetation is to be supplemented as required by the UDO; (6) Signage will have to conform to CB-I standards; (7) That a revised plan be submitted showing the addition of the following information: (a) Existing right-of-way for Sand Hill Road and W. Oakview Road; (b) Location, species, and size of existing street trees; and (c) Proposed handicap accessible parking space; and (8) Hours of operation each day will be from 7:00 a.m. to 9:00 p.m. This was seconded by Councilwoman Jones.

Councilman Mumpower moved to amend the original motion to delete the hours of operation as one of the conditions for issuance of the conditional use permit. This motion was seconded by Councilman Ellis and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

The amended motion to approve the conditional use permit to allow for the operation of an antique business in the existing detached garage, subject to the following conditions: (1) Residence is to remain owner occupied; (2) Operation of business is to be limited to the garage only, any expansion of use will require re-application; (3) Operation of the business is restricted to the sale of antiques, any change of use will require re-application; (4) Parking is limited to the four (4) spaces shown (3 existing plus 1 handicap accessible added per Buncombe County Building Inspections request); (5) Existing buffer vegetation is to be supplemented as required by the UDO; (6) Signage will have to conform to CB-I standards; and (7) That a revised plan be submitted showing the addition of the following information: (a) Existing right-of-way for Sand Hill Road and W. Oakview Road; (b) Location, species, and size of existing street trees; and (c) Proposed handicap accessible parking space, carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 479

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR NEIGHBORHOOD/DEVELOPER MEETINGS AS AN OPTIONAL, ALTERNATIVE STEP IN THE REVIEW PROCESS FOR REZONINGS, CERTAIN CONDITIONAL USE PERMITS, CONDITIONAL USE REZONINGS, AND LEVEL III DEVELOPMENTS

Mayor Worley opened the public hearing at 5:46 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to provide for neighborhood/developer meetings as an optional, alternative step in the review process for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments. This public hearing was advertised on October 3 and 10, 2003.

This code amendment would allow a specific type of neighborhood/ developer meeting to substitute for the Planning and Zoning Commission review for certain types of development proposals. Specifically, the amendment provides for the substitution of neighborhood/developer meetings for the required public hearing before the Planning and Zoning Commission (at the option of the applicant) for rezonings, certain conditional use permits, conditional use rezonings, and Level III developments. Planned Unit Developments and those conditional use permits that do not require Planning and Zoning Commission review would not be included in this new procedure.

Mr. Shuford said that based on City Council's considerable interest in improving developer and neighborhood communication early in the development review and approval process, City staff undertook a focus group process to identify issues and potential solutions in enhancing the existing "neighborhood meeting" approach. Three separate focus groups were convened. One group represented developer interests; one group represented neighborhood interests; and the third group consisted of the Planning and Zoning Commission. After each group had met and a list of critical issues was determined, selected members from each group then met together on two occasions to identify areas of agreement and to prepare recommendations for action. An independent facilitator was used to direct meeting discussion and provide minutes.

He reported that the focus group process has resulted in a recommended procedure for improved Neighborhood/Developer Meetings. The procedure includes an incentive for developers to choose the Neighborhood/Developer Meeting process over the standard review process. It includes an opportunity for expanded notification of property owners in the vicinity of the proposed development. Finally, it includes an organized approach for the conduct of Neighborhood/Developer Meetings that should result in the meetings to be conducted in an effective fashion. The goal of this procedure change is an early, friendly, helpful official partnership between the neighbors, developers and the City.

In summary, the proposal would apply to all rezoning, conditional use rezoning, and conditional use permit requests that involve Planning and Zoning Commission review. The proposed procedure offers developers the option of selecting an enhanced Neighborhood/Developer Meeting process in exchange for skipping the Planning and Zoning Commission step in our current requirements. This results in no additional time being taken in the development review process but creates significantly improved communication between developers and neighborhoods. City Council would continue to hold a public hearing and take final action on all development proposals, just as is done under the current requirements. Even when developers opt to follow the existing procedures, staff will continue to recommend developer contact with affected neighborhoods.

This recommendation would not have been possible without the dedication of time, creative ideas, and enthusiasm on the part of a large number of volunteers. I would like to thank the following persons for their assistance in creating this recommendation:

FOCUS GROUP PARTICIPANTS

Neighborhood Participants	Developer Participants	Planning & Zoning Commission
*Barber Melton	*George Morosani	*Billie Buie
*Headlee Howard	*Tom Gallaher/David Hill	*Tom Cathey
*Greg Gregory	*John Spake	*Selina Sullivan
*Mike Lewis	Chris Eller	Jan Davis
John Quigley	Harry Weiss	Hedy Fischer
Norma Baynes	Jerry Grant	Nate Cannady
Stephen Hudzik	Ron Butler	Rod Hudgins
	Ron Moser	

* indicates that the participant served on the final joint focus group.

Additionally, Paul Godfrey provided invaluable assistance by serving as the facilitator for these focus group meetings.

The following headings provide a summary of the work of these focus groups, including the clarification of key issues, identification of expected results (i.e., what the process should look like), and the specific meeting procedures themselves. These headings illustrate the organized way the groups conducted their business and the level of detail that went into their discussions.

Clarifying Issues and Interests

The following items were listed as major issues relating to Neighborhood/Developer Meetings:

- Misinformation
- Full plan details made available to all parties early in the process
- Lack of trust
- Early and accurate complete information sharing
- Clearly definition of neighborhood stakeholders
- Marketing of development process – common understanding of issues and procedures
- Lack of an on-going dialogue as the development process continues (even after development approval has been given and construction is underway)
- Neighbors don't understand technical aspects of the development process
- Need for a better Neighborhood/Developer Meeting process – ground rules; expectations; facilitation
- Need for citizens to be better educated about the development process
- Lack of understanding about the big picture – how does the project help the City meet its broader goals?
- Need for staff participation in Neighborhood/Developer Meetings
- No existing way to alert and document all impacted stakeholders
- Lack of willingness to compromise on each "side"

The following were identified as the key interests of the stakeholder groups:

- Neighbor concerns: Safety; property values; traffic; change in neighborhood character

- Developer concerns: Profit; property rights; desire to impact community in a positive way; need for clearly defined neighborhood meeting process that is reasonable in terms of time and money; staff involvement in neighborhood meetings for informational purposes and to indicate that the process is officially "condoned" by the City

- Staff concerns: Time involved in meetings; need to be perceived as neutral in the process.

Criteria for Guiding Process Decisions

Participants were asked to develop a set of criteria for use in evaluating any potential process ideas. The following criteria were developed:

- The process must have teeth.
- The process should be viewed as legitimate in eyes of all participants.
- The process should not be burdensome on any one party or on all parties.
- The process should clarify upfront what is and what is not negotiable.
- The process should be reasonable in terms of time and costs.

Improved Neighborhood/Developer Meeting Procedures

Participants identified the following procedures for improved Neighborhood/ Developer Meetings:

- Developer registers project application a minimum of 45 days before the City Council meeting at which the public hearing is scheduled to occur.
  - Plans are placed on record and made available to the public at a central location (City Planning and Development Department).
  - Plans will provide as much information as available at time of posting.
  - Plans will be made available on City website if possible.
  - Staff contact person is clearly identified.
- Notification procedures:
  - Property owners within 400 feet of the property proposed for development would receive notice of the Neighborhood/Developer Meeting from the City of Asheville. This is a minimum notification area and developers are advised to determine if additional property owners should be notified (e.g., if the project is located on a dead-end road 600 feet long, perhaps it would be good practice for the developer to notify all property owners fronting the road); developers would be responsible for any additional mailing costs associated with a larger notice area.
  - Any affected neighborhood association registered with the City and located within 400 feet of the property proposed for development would also receive notice of the Neighborhood/Developer Meeting. It is expected that the designated person(s) receiving this notice will identify key participants outside the general notice area and arrange for them to attend the Neighborhood/Developer Meeting. However, this should not be construed as an open invitation for all neighborhood association members outside the notice area to attend. The intent is to have representation from affected neighborhood associations while ensuring that most neighborhood participants are from the notice area.
  - Timing: The City shall mail Neighborhood/Developer Meeting notices 45 days before the City Council meeting at which the public hearing is scheduled to occur. The initial Neighborhood/Developer Meeting shall occur no less than 10 days prior to the City Council meeting at which the public hearing is scheduled to occur.
  - The City of Asheville will provide notice of the public hearing to adjacent and nearby property owners as provided for under state law or City Code requirements, whichever is more restrictive.
  - Meeting location: Neutral site of sufficient size for meeting.
- Meeting Facilitation - The meeting must be managed by someone who knows the rules (mediator/facilitator) and is able to effectively run a meeting. The developer will pay for the cost of the mediator/facilitator. City staff will attend the meeting as technical advisor(s) only and will not facilitate the meeting.
- Meeting Ground Rules - The following set of ground rules were adopted to promote effective communication during Neighborhood/Developer Meetings. These ground rules would be reviewed by the meeting facilitator at the outset of each meeting and "enforced" during the meeting by the facilitator.
  - Listen to one another (really listen before responding)

    - Ask for feedback from one another
    - Accept the need for compromise by each of us
    - No stereotyping (let's keep a level of objectivity in our discussions)
    - Be open minded
    - Let's clearly define our statements to insure that all parties clearly understand their meaning
- Conduct of Meeting – Meetings will have a structured agenda to include: Ground rules for the meeting; Areas of allowable discussion clarified; Clarification of any zoning rule(s) that applies to the situation; Plan presentation (including how plan addresses the big picture); Identification of areas of agreement and disagreement; Negotiation of issues of concern; and Identification of next steps, if any.
    - City staff must attend the meeting to provide technical advice and information and to indicate official "condoning" of the process.
    - Meeting is intended to result in a signed document of supported and non-supported issues that will be generated by the facilitator (who will also identify the necessary signees).

The Planning and Zoning Commission unanimously (6-0) recommended approval of this code amendment on September 3, 2003. Staff also recommends approval.

Upon inquiry of Vice-Mayor Bellamy, Mr. Shuford reviewed how the process would work.

Discussion surrounded the timing of the neighborhood/developer meeting in that it did not give enough time for neighborhood review if changes to be made were agreed upon and/or not enough time for the initiation of the protest petition process. Mr. Shuford suggested that if Council would like to establish a longer period of time, he recommended this matter be postponed until he has an opportunity to review changes with the entire focus group.

In response to Vice-Mayor Bellamy, Mr. Shuford said that if this amendment is adopted, City staff will put the process into a form that will be followed with notice of meetings in CityWorks.

Mr. Shuford responded to various questions and comments from Council, some being, but are not limited to: will the protest petition process be affected; what will be the procedure for multi-sites with multiple property owners; who selects the facilitator and what if there are objections by the neighborhood association; can the City Council remand the matter to the Planning & Zoning Commission; who selects the time and place of the meetings; who will be invited to the meetings and will the media and general public be invited; is there a way we can notify renters in addition to property owners within the notice area; will the property be posted for the meeting; and how will City Council know a good faith presentation has been made.

When City Attorney Oast said that posting the site for the neighborhood/developer meeting is not a state law requirement, Councilman Peterson felt it would be appropriate to have that provision included in the ordinance.

Councilman Mumpower felt that this amendment seems to be fair and even-handed and expressed appreciation to the focus group for their efforts. He felt this was a good effort to try something different, noting that the ordinance can be amended if concerns arise.

Mr. James Judd, resident in Chunns Cove, explained his reasons why he felt this amendment would be disastrous. He felt the ordinance was vague and was concerned that the Planning & Zoning Commission is cut out of the process. He was concerned about the community notification, the facilitator and timing.

Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods, felt this was a good first step, but had a problem with the timing of the neighborhood/developer meeting, especially in terms of initiating a protest petition. She explained how the Raleigh, N.C., ordinance is mandatory and how their process works.

Ms. Norma Baynes, Shiloh Neighborhood Association Member, agreed with Ms. Melton and did not support the ordinance.

Mr. Mike Lewis, Grace Neighborhood Association member, felt this ordinance was a good step too, but was concerned about the timing as well.

Mr. Alan Ditmore, Leicester resident, felt that this change will drive up housing costs.

At 6:40 p.m., Mayor Worley closed the public hearings.

Councilman Ellis moved to continue this matter to the November 25, 2003, City Council meeting in order to give Mr. Shuford time to meet with the focus group regarding the timing issue. This motion was seconded by Councilman Mumpower and carried unanimously.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE OR ELIMINATE SETBACK REQUIREMENTS IN SITUATIONS WHERE HANDICAPPED ACCESSIBILITY AND LIFE SAFETY FEATURES ARE REQUIRED ON RESIDENTIAL LOTS

ORDINANCE NO. 3063 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REDUCE OR ELIMINATE SETBACK REQUIREMENTS IN SITUATIONS WHERE HANDICAPPED ACCESSIBILITY AND LIFE SAFETY FEATURES ARE REQUIRED ON RESIDENTIAL LOTS

Mayor Worley opened the public hearing at 6:48 p.m.

Mr. Joe Heard, Director of Development Services, said that this is the consideration of an amendment to the Unified Development Ordinance to provide greater flexibility in applying setback requirements in situations where handicapped accessibility and life safety features are required on residential lots. This public hearing was advertised on October 3 and 10, 2003.

Presently, the City of Asheville Unified Development Ordinance allows handicapped accessible ramps and fire escapes to encroach as close as three feet (3') to side and rear property lines. This proposed ordinance amendment is intended to offer even greater flexibility in situations where these safety and accessibility features are required on residential lots by the North Carolina State Building Code. Presently, these structures in such situations have to be constructed in an awkward configuration or obtain a variance from the Board of Adjustment. The City of Asheville Building Safety and Fire Departments have been consulted and support this proposed amendment. If approved, this amendment will allow the Planning Director to deal with these issues in a fair and timely manner.

On September 3, 2003, the Planning & Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0, including an amendment to limit the application of this change to residential properties. City staff recommends approval of the proposed code amendment as amended.

Mayor Worley closed the public hearing at 6:51 p.m.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3063. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 485

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3055 – SECOND READING OF THE REVISED MINIMUM HOUSING CODE

Mayor Worley said that the first reading of this ordinance was held on September 23, 2003.

Councilman Dunn moved for the second and final reading of Ordinance No. 3055. This motion was seconded by Councilman Mumpower and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE 423

B. ORDINANCE NO. 3064 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE DEVELOPMENT STANDARD BONUSES IN RESIDENTIAL DISTRICTS

Mayor Worley said that this public hearing was held on August 19, 2003. City Council then continued this matter due to concerns that the developments approved using the development standards bonus conditional use permit process would not be properly maintained if the Minimum Housing Code was modified.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to provide for more flexible application of development standards, including density requirements, in all residential zoning districts.

This code amendment provides for more flexible application of development requirements in all residential zoning districts. Affected districts include: RS-2, RS-4, RS-8, RM-6, RM-8 and RM-16. Under certain circumstances, a conditional use permit process can be used to modify development standards, including increasing density above the maximum permitted in each of these zoning districts, if the applicant successfully demonstrates that the project would exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood, and would also achieve one or more of the following goals:

- Promote the City of Asheville's affordable housing programs by providing housing that is affordable for purchase by people with household income below the area median or for rental by people with household income less than 80% of the area median, and particularly housing that meets the needs of people who have special needs or household income less than 60% of median income.
- Implement an officially adopted development plan for the area.
- Exhibit exceptional site design that preserves critical environmental features on the site.

- Assist the City of Asheville in meeting critical infrastructure needs, including but not limited to the preservation of open space, the creation of regional stormwater retention facilities, and achieving greater interconnectivity of the street network.
- Effectively incorporate public ansit as a primary mode of transportation to and from the development.

On June 19, 2003, the Planning and Zoning Commission unanimously recommended approval of the proposed code amendment by a vote of 4-0. City staff recommends approval of the proposed code amendment as well.

At the public hearing on August 19, 2003, two amendments were suggested to the proposed ordinance by deleting the word "city" when referring to goals and the ordinance before Council reflects those changes.

Upon inquiry of Councilman Mumpower, Mr. Shuford named the organizations that have received copies of the proposed ordinance and their comments.

Councilman Peterson expressed concern that the proposed amendment would not provide for the use of protest petitions by residents opposed to developments.

Councilwoman Jones said that her concern is that the developments approved using the development standards bonus conditional use permit process would not be properly maintained in the long run due to the recently adopted changes to the Minimum Housing Code.

Vice-Mayor Bellamy felt this should be an item that is brought back for review by Council to see how it is working.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Ellis moved for the adoption of Ordinance No. 3064. This motion was seconded by Vice-Mayor Bellamy and carried on a 6-1 vote with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 20 – PAGE 987

V. NEW BUSINESS:

A. ASHEVILLE CITY PLAN 2025

City Attorney Oast said that on August 26, 2003, following the public hearing, Council voted to postpone consideration of adoption of the 2025 Plan to January of 2004. Recently, Council has indicated an interest in acting on the Plan before the end of the year.

Council's rules and Roberts' Rules of Order provide that reconsideration of an action (vote) previously taken can only occur at the same meeting where the previous action was taken. While the motion postponing consideration of the 2025 Plan could be considered more procedural than substantive, and not necessarily subject to processes governing substantive issues, Roberts suggests that a motion to postpone can have substantive effects. Moreover, the rules do not differentiate between procedural and substantive motions for purposes of reconsideration. Accordingly, he recommended the following procedure for changing the date for Council's consideration of the 2025 Plan.

1. Motion to suspend the rules to permit consideration of a motion to reconsider a previous action (must pass by 2/3 vote).

2. Motion to reconsider August 26 action postponing consideration of 2025 Plan (must be made by someone who voted for the motion to postpone; must pass by 2/3 vote). This motion may be combined with the motion to suspend the rules.

3. Motion to amend motion to postpone consideration of 2025 Plan so that date for consideration is the new date (to be determined) instead of January 2004 (majority vote).

4. Vote on amended motion (majority vote).

While Council may receive some comments about this action being unusual, it may be noted in response that the public hearing has already occurred and there was not much comment. Moreover, the public will have been notified, through the published agenda, of this action, and will be notified through our usual processes, of the new date.

If Council wishes to reschedule its consideration of the 2025 Plan, follow the procedure set out above.

Councilman Dunn explained that it was his original request that the matter be postponed, which was approved unanimously by Council. Since that time he has had an opportunity to discuss his concerns with the Planning & Development Director and feels that it would be appropriate to consider adoption sooner than January, 2004. Therefore, Councilman Dunn moved to suspend the rules to permit reconsideration of previous action and to reconsider the August 26, 2003, action postponing consideration of the adoption of the Asheville City Plan 2025 until the first of January 2004. This motion was seconded by Councilman Ellis and carried unanimously.

Councilman Dunn moved to amend the motion to postpone consideration of the adoption of the Asheville City Plan 2025 until October 28, 2003. This motion was seconded by Councilman Mumpower and carried unanimously.

The original motion, as amended, carried unanimously.

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of September 19-October 2, 2003: Katie Lewis (Sanitation), Gordon Pirie (Sanitation) and Harriette G. Winner (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English asked companies to buy minutes for a satellite phone so that our troops overseas can call home. He also questioned how much money our lobbyist has been able to secure for Asheville.

Mr. Dennis Justice, Fletcher resident, urged Council to update the Civic Center's scoreboards. He spoke about the renovations that could benefit from the project development bonds on the November ballot.

Ms. Beth Maczka apologized to Councilman Dunn for some incorrect information she received regarding his rental property and suggested all City properties be maintained at 65 degrees over the winter months.

Mr. Mike Fryar explained to Council, using maps, why he felt the recent annexation of his property on Smoky Park Highway contained an illegal description. City Attorney Oast responded that the written description is accurate and there is no question of what is being annexed. He felt that if this were to be legally challenged in court, the City would be successful.

CLOSED SESSION

At 7:42 p.m., Councilwoman Jones moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: City of Asheville for the Regional Water Authority of Asheville Buncombe and Henderson; and J. C. Clark - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Dunn and carried unanimously.

At 7:58 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:58 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 21, 2003 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Minority Business Commission Annual Report

Summary: Presentation of the Minority Business Program Annual Report for Fiscal Year 2002 - 2003.

In May of 1998, City Council adopted the Asheville-Buncombe Minority Business Plan. The Plan was subsequently amended in November 1998, December 1999, December 2001 and October 2002, to clarify provisions of the Plan and to reduce the Minority Business Commission from thirteen members to eleven.

The Plan requires the Office of Minority Affairs to present to the City Council and County Commissioners an Annual Report on the effectiveness of implementation of the Plan. The Report shall include, but not be limited to: the number of minority businesses; percentage of minority businesses contracting with the County and City either as a prime contractor or as a subcontractor; percentage of overall reported contracts awarded to minority businesses; percentage of contractors complying with good faith efforts; and percentage of goals achieved and goals waived.

The Annual Report for Fiscal Year 2002 – 2003 has been reviewed by the Minority Business Commission and approved at its meeting on August 14, 2003.

City Council to receive the Annual Report.

Vice-Mayor Bellamy recognized the good efforts being made to implement the plan and asked the Office of Minority Affairs to suggest ways in which elected officials can help to improve the numbers.

Annual Motorola Maintenance Agreement

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at a cost of $11,161.39 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2003, through August 31, 2004, has increased by three percent. This is the first increase in the maintenance cost per unit in ten years.

This renewal agreement reflects a monthly increase of $1,366.29. The agreement covers additional equipment purchased by the City that has come out of warranty during the past year. The agreement also covers radio equipment for the Asheville Transit Authority this year. The monthly cost of this service is $11,161.39.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance to the City's radio communication system.

Acceptance of Streets – Portion of Pine Acre Boulevard and Oxford Court

Summary: The consideration of a resolution to accept Oxford Court and the remainder of Pine Acre Boulevard as City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Oxford Court and a portion of Pine Acre Boulevard were constructed approximately ten years ago with the understanding that they were to become publicly maintained streets. Engineering Department Staff inspected the streets at the time of construction and found them to be constructed in accordance with the standards at that time.

The streets were never officially accepted by City Council for maintenance. Oxford Court is approximately 490 feet long and has an average width of 20 feet. The length of Pine Acre Boulevard that staff is requesting acceptance of is approximately 930 feet long and has an average width of 20 feet. Staff is only requesting a portion of Pine Acre Boulevard be accepted by the City for maintenance because the remainder of the street is currently maintained by the City.

Following City Council's approval of this resolution, Oxford Court and the remainder of Pine Acre Boulevard will be added to the official Powell Bill list.

City staff requests City Council accept Oxford Court and the remainder of Pine Acre Boulevard as City maintained streets.

City Engineer Cathy Ball responded to street maintenance questions from Councilman Dunn.

Great American Main Street Award

Summary: The consideration of a resolution of support for an entry into the Great American Main Street Award competition.

The Asheville Downtown Association, Public Interest Projects, Inc. and the City of Asheville are putting together an application for the Great American Main Street Award. If selected, the award will be given to the community of Asheville as a whole. The award recognizes the accomplishments in the revitalization of traditional downtowns and neighborhood commercial districts and is given to five towns or cities each year from across the country. As part of the application, there is a required resolution of support from the applicant's city or town council.

The application package will include the following: a history of downtown's revitalization; the key participants; major achievements; business development; a summary of the economic impact of revitalization; slides depicting our success including before and after shots of renovated buildings; and other letters of support.

City staff recommends approval of the resolution of support for an entry into the Great American Main Street Award competition.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place these items on the next formal City Council agenda.

JOINT PLANNING AREA

Planning & Development Director Scott Shuford said that City and Buncombe County staff have been working on development standards and procedures for the proposed Joint Planning Area (JPA) for approximately one year. There was some initial assistance from a land planning consultant but much of the work has been by City and County staffs.

He described the JPA as an area of shared jurisdiction between Buncombe County and the City of Asheville wherein the County and City have agreed to the development standards and enforcement procedures. The JPA completely replaces the City of Asheville's extraterritorial jurisdiction (ETJ).

Benefits of the JPA for the City include: (1) shared growth management over larger area; (2) automatic JPA expansion; and (3) cooperation with county on key issues. Benefits for the County include: (1) less restrictive than the Unified Development Ordinance (UDO); (2) day-to-day County administration; and (3) cooperation with City on key issues.

Mr. Shuford then reviewed the roles of the elected and appointed bodies. The Commissioners and Council will (1) establish the initial zoning map for the JPA; (2) adopt the initial zoning and development regulations for the JPA; (3) consider and approve changes to the map and regulations; and (4) both bodies must agree to zoning map and development regulations. The County Planning Board and the City's Planning & Zoning Commission will make recommendations on the initial zoning map for the JPA and the initial zoning and development regulations for the JPA; and make recommendations on changes to the map and regulations. The County Board of Adjustment will consider and approve subdivisions, variances, conditional use permits, larger development proposals (25,000 sf+) and Code interpretations; votes will require a 4/5's vote to approve; and "apolitical" consideration of development proposals. The new County Board of Adjustment make-up will be five members – 3 members appointed by the County and 2 members appointed by the City.

City staff will review and comment on Board of Adjustment cases. County staff will handle the application intake and processing; will be the staff liaison to the County Board of Adjustment; will distribute applications to City staff; and will enforce zoning and development regulations.

The initial area of the JPA includes all existing City ETJ and other unzoned incorporated areas roughly one mile from Asheville's corporate limits. The initial area of the JPA does not include other incorporated areas or their ETJ's or Beaverdam and Limestone zoned areas.

Mr. Shuford then reviewed the initial area of the JPA. The initial area of the JPA will expand as the City of Asheville annexes. Expansions will occur on an annual basis unless there are no annexations during the preceding year. All ETJ is replaced by JPA (to reduce staff and customer confusion). The Interlocal agreement will allow the County to appoint 2 members to the City's Planning & Zoning Commission and one member to the City's Board of Adjustment (plus an alternate).

The JPA zoning districts will comprise of three residential districts (R-1, R-2 and R-3), three business districts (Neighborhood Business, Community Business and Highway Business), and two other districts (Office Institutional and Industrial). He then reviewed the setbacks and height restrictions; and special provisions of the JPA zoning districts.

Mr. Shuford then reviewed the JPA development regulations outlining each proposal, which included stormwater, streets, sidewalks, signs, traffic impact analyses, and cell towers. He said that the County is still reviewing the sidewalks proposal.

City staff recommends City Council receive the staff presentation and provide direction as to the next steps for proceeding with the JPA. At this point the City is waiting to hear back from the County on key issues and then it will be necessary to finalize the development issues in line of what was presented today. We will then bring that forward to the City's Planning & Zoning Commission, the County's Planning Board, City Council and County Commissioners. City Attorney Oast is working on an Interlocal Agreement with Buncombe County on the JPA.

Mr. Shuford responded to various questions and comments from Council, some being, but are not limited to: what process will be used to determine land designations if areas are annexed; in terms of stormwater and traffic impact analyses, why do they need to be reviewed by the County or consultant when the City has the expertise in-house; what is the rationale behind the County appointments to the Planning & Zoning Commission and the City's Board of Adjustment; is there any research that shows having more concrete sidewalks will result in more stormwater runoff; what will be the process if someone wants to change their zoning designation in the JPA; and have other groups reviewed this information.

Councilwoman Jones felt that the Joint Planning Area is the result of two governing bodies compromising for the betterment of the community and better use of tax dollars.

Councilman Peterson pointed out that most cities that have ETJ's and County appointments let the County appointments only vote on projects in the ETJ. Asheville is one of the few who allows County appointments to vote on all projects.

Mayor Worley felt the JPA is breaking ground in North Carolina and is shows extraordinary cooperation between the City and County.

Upon inquiry of Mayor Worley, Mr. Shuford said that regarding on-premise signs, the County's biggest concern was the ability to use existing signs, have them grandfathered, and have them maintained.

When Councilman Peterson asked how the protest petition process would work in the JPA, Mr. Shuford said that he would look into that issue. City Attorney Oast said that he felt that since the protest petition process applies in the ETJ, it would also apply in the JPA. Councilman Peterson asked for additional information on this issue.

Upon inquiry of Councilman Peterson, City Attorney Oast said that he is aware of the potential need for an opt out clause for either or both parties and will insert appropriate language in the Interlocal Agreement.

After discussion initiated by Vice-Mayor Bellamy, it was the consensus of City Council to have the Mayor send a letter to Commissioner Ramsey asking that the County respond to the City on the key issues expeditiously so that the seated Council can take action since it is the group that has worked on this issue.

CLINGMAN FOREST GREENWAY MASTER PLAN

Superintendent of Parks Jim Orr said that this is the consideration of a resolution to adopt the Clingman Forest Greenway Master Plan.

Clingman Forest is an approximately 10-acre forest in downtown Asheville, bounded roughly by the YWCA, Asheville Middle School, and Charles Street to the East, Aston Park to the North, Clingman Avenue to the West, and the River/Arts Warehouse District to the South.

Ms. Tamara Calabria, representing Mountain Housing Opportunities, said that a committee of stakeholders was formed to lead the project and work closely with the design consultant to develop the plan. This committee included representatives from the City's Parks and Recreation and Planning Departments, the Asheville Greenway Commission, Mountain Housing Opportunities, the West End/Clingman Avenue Neighborhood, Buncombe County Parks and Recreation and Buncombe County Board of Education. The planning effort was made possible through generous grants received by Mountain Housing Opportunities from the Pigeon River Fund and Carolina Power and Light.

Much of the property within the proposed greenway corridor is currently owned by public or quasi-public agencies, including the City of Asheville, Buncombe County, and the Buncombe County Board of Education. There are several small parcels within these larger tracts that are currently in private ownership. The proposed linear park is indicated as a primary off-road greenway corridor in the Asheville Greenway Master Plan.

The purpose of the Master Plan was to develop an understanding of the site through detailed site analysis, receive public input, and establish guidelines for development of the greenway. The future Clingman Forest Greenway will eventually provide a greenway connection between Buncombe County's Aston Park and Asheville's French Broad River Riverfront District. The corridor is planned to serve as a valuable natural resource for recreation and environmental education, and also contribute to the revitalization of the surrounding area. The future greenway will serve both the community in the immediate vicinity as well as the broader Asheville area.

Key design concepts will be to (1) provide network of trails; (2) incorporate infill housing; (3) protect the site's natural character; (4) incorporate environmental education; and (5) reinforce a sense of place.

Currently secured funding and support includes: (1) The N.C. Dept. of Transportation (NCDOT) Enhancement Grant ($172,00)) for streetscape improvements to Clingman Avenue, to include construction of the on-street portion of the Clingman Forest Greenway and stormwater infrastructure within Clingman Forest; (2) Community Development Block Grant funding ($34,000) which will provide the local match for the first phase of the NCDOT Enhancement Grant; and EPA 319 Stormwater Grant ($95,000) secured b NCSU Water Quality Group for constructed stormwater wetland within Clingman Forest.

The Parks and Recreation Department and Asheville Greenway Commission recommend the City of Asheville adopt the Clingman Forest Greenway Master Plan as a document that will serve as a guideline for greenway development.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

Ms. Calabria responded to various questions/comments from Council, some being, but are not limited to: why isn't there a more direct tie into Aston Park; what is the total budget for the project; and what type of grants will they use to secure funds.

Councilwoman Jones wanted to make sure that since the timeline for implementing this Master Plan is long-range, we will have an opportunity to educate the public and receive some genuine feedback.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

PUBLIC ACCESS CHANNEL COMMISSION UPDATE

Public Access Channel Commission Chair Beth Lazer said that this is the consideration of a resolution authorizing the Mayor of the City of Asheville to enter into an Interlocal Agreement with Buncombe County for the purpose of providing funding of a Countywide public access television operation and facility.

In March 2000 the Asheville City Council appointed the Public Access Channel Commission (PACC) to facilitate the establishment and management of a public access channel in Asheville. Since that time, the Commission has formed a non-profit organization to manage the channel (URTV, Inc.), developed a management and operations plan for the station, identified sources of funding, and worked with other groups, to include the Asheville Chamber of Commerce and Buncombe County government to identify opportunities for collaboration.

Most recently, Buncombe County government reviewed and agreed to enter into a Interlocal Agreement with the City of Asheville to provide for funding of a Countywide public access television operation and facility. This agreement provides that the City and County will cooperate in the provision of public access television to serve the Asheville-Buncombe area, through a non-profit corporation.

This agreement is the first step in the realization of a Public Access Channel. Over the next month, PACC board members will work with City and County staff to orchestrate next steps and provide additional recommended action for Asheville City Council's consideration.

City staff recommends City Council adopt the resolution authorizing the Mayor to enter into an Interlocal Agreement with Buncombe County for the purpose of providing funding of a Countywide public access television operation and facility.

Ms. Lazer said that the PAC is ready to go, but the organizational work still needs to be done to mature this collaboration. Therefore, she requested to come back to Council in approximately 30-45 days to update Council on what they see URTV needs to get going, to ask Council to dissolve the PAC as currently constituted, to ask Council to endorse the URTV, Inc. organization and Board as the management organization, and to direct staff to work on drafting one management agreement.

Upon inquiry of Vice-Mayor Bellamy, Ms. Lazer said that the proposal for the URTV Board is that it will consist of 11 members. Currently there are five members of the PAC, who are willing to be a part of the first Board, leaving six open seats. They will work with Assistant City Manager Jeff Richardson to come up with a way to collaborate with the City and County on how to fill those remaining seats. They need people who have special skills, e.g. a producer, an attorney, etc. There is also a definite need for youth representation - perhaps a youth from Project STEAM. They would also like to reach out to the Latino and African American communities. They hoped to have a public application process for people to express an interest, noting that diversity most certainly will be attempted.

Vice-Mayor Bellamy pointed out that the agreement states that in the event of a war, emergency or national disaster that requires reallocation of funds or other assets, notice of termination shall be provided for in writing at least 60 days in advance of said termination. She was concerned that 60 days was too long and that it should be 30 days. City Attorney Oast said that he would look into that matter.

Ms. Lazer responded to the concern raised by Councilman Dunn about content on the channel.

Councilwoman Jones said that 3.5 years of working on this project shows a remarkable commitment and appreciated the work of Ms. Lazer and the entire Commission.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

RE-EVALUATION OF WATER TREATMENT PLANT TOURS

Interim Water Resources Director David Hanks said that this is the consideration of reinstating the North Fork Water Treatment Facility and the Mills River Water Treatment Plant tours.

The Water Resources Department suspended tours of the North Fork Water Treatment Facility and the Mills River Water Treatment Plant in February, 2003 due to potential terrorists threats, general uncertainty of world events and the recommendation of a third party consulting firm through the Environmental Protection Agency (EPA) mandated water system vulnerability assessment (VA). The VA sited potential threats from local environmental activists and the general liability associated with tours of the plant and wooded area around the facility. Security at all Water Resources facilities has been upgraded to include camera surveillance, electric key card gates and door access.

The Water Treatment Plants and the watersheds are owned by the City of Asheville and the City of Asheville has the liability if someone is injured or killed on the property or water flow is disrupted by a malicious act by an individual or group. That potential has been identified along with other potential liabilities of the water system listed in the VA.

Currently, the Water Education Coordinator is scheduling classroom events and programs through local and county-wide schools. Per the Water Education Coordinator, schools have cut back on tours for the same reasons the Water Resources Department eliminated water treatment plant tours and that is potential liability and potential harm to the participants. Classroom participation and events at schools are being scheduled as requests are received. The department is also working with the North Carolina Department of Environment and Natural Resources (NCDENR) on a video program as part of the science water curriculum for tenth grade students throughout the state.

The Water Resources Department has been pursuing other possible options of providing water education through a joint venture with the Asheville Parks and Recreation Department by having a joint use resource center located on the French Broad River at the French Broad River Park with access to the river and a natural wetlands area. This potential project will be addressed during the Fiscal Year 2004-2005 budget process due to current funding limitations by both departments.

Due to the liability factor and in order to maintain compliance with the VA recommendation that tours of the Water Treatment Facilities not be started back, City staff recommends continuing to pursue a Water Education Resource Center so that groups and schools classes can still receive quality water education and conservation information at a central location.

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Councilman Ellis encouraged the Water Resources Department and the Parks & Recreation Department to continue searching for grants to proceed with a plan at the French Broad River Park.

Upon inquiry of Councilman Jones, Mr. Hanks explained what the preliminary $2 Million budget included at the French Broad River Park.

Councilman Peterson felt the community benefit of the tours outweighs the liability factor.

Councilwoman Jones asked that Council define the word "consensus" at the upcoming retreat.

It was the consensus of Council to continue ceasing the tours at the North Fork Water Treatment Facility and the Mills River Water Treatment Plant.

At 5:10 p.m., Mayor Worley announced a short break.

FOR OUR KIDS PROPOSAL

Councilman Mumpower presented to Council a program he developed called "For our Kids..." which is his personal effort to move us along to look for ways of improving the public housing picture. He explained how the program evolved thanking Mr. David Jones, Executive Director of the Housing Authority of the City of Asheville, and Mr. Michael Godwin and Mr. Gene Bell, both with the Housing Authority.

The mission is about creating a safe and healthy environment for our kids that support their growth and well-being. The goal is to target unsafe areas that affect our children and their quality of life. In partnership with the City of Asheville, the Housing Authority, residents and the community, we seek to address key factors that can have a positive and lasting impact on our children.

Who will benefit? Our children; our schools (they are better able to teach children nurtured and supported at home); all residents of public housing (a better place four our kids is a better place for everyone); our community at large (public housing problems eventually affect everyone); and public dollars (money currently devoted to litter, vandalism, etc. can be better invested in improving public housing).

Councilman Mumpower explained how the following 10-point program will bring us together in support of public housing:

(1) Operation Clean-Up

- (a) monthly "litter days" in each public housing development;
- (b) "For Our Kids..." trash cans personalized to each development – make it fun (Biltmore Iron and Metal have graciously said that they will donate the cans); and
- (c) outside support from churches, civic clubs, volunteers and others;

(2) Church & Civic Club Sponsorship

- (a) provide support, outside investment, and sponsorship for constructive initiatives within public housing;
- (b) decrease the isolation and separation of some public housing residents; and

- (c) expand our sense of community and mutual concern;

(3) Mentoring Program for Children

- (a) an additional source of attention, example, and support for children at risk;
- (b) countering influences to negative exposures that can occur; and
- (c) use existing programs and develop new programs;

(4) Concentrated Law Enforcement

- (a) persistent and enthusiastic attention to public safety issues in public housing;
- (b) "Officer of the Day" program; and
- (c) deny a safe haven for criminals and others who abuse our public housing developments;

(5) Resident Rule Education and Enforcement

- (a) raise the awareness of resident rules designed to support public housing as a safe and pleasant place to live;
- (b) provide written standards consistently applied to all; and
- (c) enforcement that supports good tenants;

(6) Gun Purchasing Program

- (a) an ongoing efforts to reduce the numbers of weapons in public housing;
- (b) provide financial rewards and immunity for turned in firearms; and
- (c) reduce the dangers by reducing the numbers;

(7) Activities Program

- (a) intentional efforts to ensure that all children in public housing have access to activities that support their needs;
- (b) direct and continuing access to athletics, brownies, cub scouts, etc.
- (c) flower/vegetable garden programs and others that support a sense of community;

(8) Volunteers and Community Service

- (a) a community minded way to bring energy and resources to bare on public housing issues
- (b) community service can have a major impact on litter, playground maintenance, and other concerns; and
- (c) collaborative efforts that help others help themselves.

(9) Resident Recognition

- (a) direct attention to those residents who make public housing a good place to live;
- (b) provision of regular awards, rewards, and appreciation for exceptional residents; and
- (c) recognition for children;

(10) Jobs Program

- (a) connect with employers willing to support residents with good job opportunities;
- (b) education employers on the powerful impact a job can have on children and families in public housing; and
- (c) seek ways to help residents find, secure, and thrive in a good job.

He explained how the program will work: (1) formation of a Task Force dedicated to bringing each of these 10 efforts to life in our public housing; (2) develop Action Committees devoted to each public housing development; (3) ongoing oversight of the effort by the Housing Authority Board and City Council; (4) ensure that residents have a strong role in each part of For Our Kids …; (5) maintain a focus that is about identifying and solving problems over blaming or criticizing faults; and (6) For Our Kids … is about partnership, action and respect.

He said that we have the Housing Authority's staff support, the City's Housing and Community Development Committee's support and the support of residents, interested churches and civic clubs, the police and others. He said we now the support of City Council, the Housing Authority's Board's and the support of the Resident's Council.

Councilwoman Jones said we need to make sure that whatever effort goes forward is that we have the ownership of the community members themselves. She also wanted to make sure that there wasn't a duplication of efforts because there are strong non-profit efforts already taking place.

Ms. Trina Gardner, President of the Resident's Council, said that she is excited about working together to make a difference in the public housing projects.

Vice-Mayor Bellamy said that she tried to bring this issue before Council at their 2002 Retreat, however, for various reasons City Council did not support her plan. Despite that fact, she would wholeheartedly support Councilman Mumpower's efforts because the ultimate goal is to protect our children.

After a short discussion of how to proceed, Councilman Mumpower asked to be allowed the time to lay more groundwork behind the scenes, build the necessary partnerships, gather positive momentum and formulate the Task Force. After those items are accomplished, he would then like to bring the matter back to Council.

CLOSED SESSION

At 5:55 p.m., Vice-Mayor Bellamy moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: City of Asheville for the Regional Water Authority of Asheville Buncombe and Henderson; and J. C. Clark. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 5:58 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

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ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:58 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – October 28, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Veteran of the U.S. Air Force Ray Green led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Bellamy gave the invocation.

AGENDA CHANGE

At the request of Mayor Worley, it was the consensus of City Council to move the resolution authorizing the Mayor to enter into an Interlocal Agreement with Buncombe County to provide funding of a Countywide public access television operation and facility immediately after the public hearing.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 8, 2003, AS "WORLD TOWN PLANNING DAY'

Mayor Worley read the proclamation proclaiming Saturday, November 8, 2003, as "World Town Planning Day" in the City of Asheville. He presented the proclamation to Planning & Zoning Commission Chair Hedy Fischer, who briefed City Council on some activities taking place during the day.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 14, 2003, AND THE WORKSESSION HELD ON OCTOBER 21, 2003

B. RESOLUTION NO. 03-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICE AGREEMENT RENEWAL WITH MOTOROLA COMMUNICATIONS & ELECTRONICS INC.

Summary: The consideration of a resolution authorizing the City Manager to execute a service agreement renewal with Motorola Communications and Electronics, Inc. to provide maintenance of the City's radio communication system for another year at a cost of $11,161.39 per month.

Motorola Communications and Electronics, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2003, through August 31, 2004, has increased by three percent. This is the first increase in the maintenance cost per unit in ten years.

This renewal agreement reflects a monthly increase of $1,366.29. The agreement covers additional equipment purchased by the City that has come out of warranty during the past year. The agreement also covers radio equipment for the Asheville Transit Authority this year. The monthly cost of this service is $11,161.39.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-3001 C44108 to cover the monthly cost of this agreement.

City staff recommends City Council adopt the resolution which authorizes the City Manager to execute a renewal of the service agreement with Motorola Communications and Electronics, Inc. to provide maintenance to the City's radio communication system.

RESOLUTION BOOK NO. 28 – PAGE 40

C. RESOLUTION NO. 03-178 - RESOLUTION ACCEPTING OXFORD COURT AND THE REMAINDER OF PINE ACRE BOULEVARD AS CITY MAINTAINED STREETS

Summary: The consideration of a resolution to accept Oxford Court and the remainder of Pine Acre Boulevard as City maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Oxford Court and a portion of Pine Acre Boulevard were constructed approximately ten years ago with the understanding that they were to become publicly maintained streets. Engineering Department Staff inspected the streets at the time of construction and found them to be constructed in accordance with the standards at that time.

The streets were never officially accepted by City Council for maintenance. Oxford Court is approximately 490 feet long and has an average width of 20 feet. The length of Pine Acre Boulevard that staff is requesting acceptance of is approximately 930 feet long and has an average width of 20 feet. Staff is only requesting a portion of Pine Acre Boulevard be accepted by the City for maintenance because the remainder of the street is currently maintained by the City.

Following City Council's approval of this resolution, Oxford Court and the remainder of Pine Acre Boulevard will be added to the official Powell Bill list.

City staff requests City Council accept Oxford Court and the remainder of Pine Acre Boulevard as City maintained streets.

RESOLUTION BOOK NO. 28 – PAGE 41

D. RESOLUTION NO. 03-179 - RESOLUTION SUPPORTING ASHEVILLE'S ENTRY INTO THE GREAT AMERICAN MAIN STREET AWARD COMPETITION

Summary: The consideration of a resolution of support for an entry into the Great American Main Street Award competition.

The Asheville Downtown Association, Public Interest Projects, Inc. and the City of Asheville are putting together an application for the Great American Main Street Award. If selected, the award will be given to the community of Asheville as a whole. The award recognizes the accomplishments in the revitalization of traditional downtowns and neighborhood commercial districts and is given to five towns or cities each year from across the country. As part of the application, there is a required resolution of support from the applicant's city or town council.

The application package will include the following: a history of downtown's revitalization; the key participants; major achievements; business development; a summary of the economic impact of revitalization; slides depicting our success including before and after shots of renovated buildings; and other letters of support.

City staff recommends approval of the resolution of support for an entry into the Great American Main Street Award competition.

RESOLUTION BOOK NO. 28 – PAGE 42

E. RESOLUTION NO. 03-180 - RESOLUTION AUTHORIZING THE CHAIRMAN OF THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO EXECUTE A GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION (PROJECT 36244.15.5.1)

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the following project: AIP 24: Raise and Recable HIRL, Runway and Taxiway Safety Area Improvements.

The grant, in the amount of $27,777, has been approved by DOT based on a total estimated cost of $555,540.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 28 – PAGE 43

F. RESOLUTION NO. 03-181 - RESOLUTION AUTHORIZING THE CHAIRMAN OF THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO EXECUTE A GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION (PROJECT 36244.15.6.1)

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the following project: AIP 25: Rehabilitate Airfield Electrical Vault, Expand General Aviation Apron, Construct Bypass Taxiway – Runway 34, and Expand Terminal Building – Phase I.

The grant, in the amount of $298,965, has been approved by DOT based on a total estimated cost of $5,979,300.

City staff recommends adoption of the resolution.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Ellis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING TWO PROPERTIES LOCATED AT 653 AND 659 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

ORDINANCE NO. 3065 - ORDINANCE TO REZONE TWO PROPERTIES LOCATED AT 653 AND 659 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Worley opened the public hearing at 5:09 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone two properties located at 653 and 659 Brevard Road from RS-8 Residential Single-Family High Density District to Office District. This public hearing was advertised on October 17 and 24, 2003.

The property owners, Jeannette Hall, Dr. Phil Davis and Janna Gower, wish to rezone the properties in order to utilize them for uses permitted in the Office District. The purpose of the Office District is to reserve areas for the development of small-scale office uses adjacent to residential uses. The district may also serve as a transition as residential areas convert to other uses or between residential and commercial areas.

The properties, which total 1.81 acres, are located in the City limits on Brevard Road south of Interstate 40 (PIN Nos. 9627.16-92-8533 and 9627.16-92-8606). The existing land uses and zoning in the area include a dentist office and residence to the north zoned Office/Conditional Use Zoning and vacant and residential uses zoned RS-8 and Commercial Industrial District to the west. Property to the east across Brevard Road is unzoned agricultural land while the property directly south, which is also zoned Commercial Industrial District, contains a medical office and single-family residences. The subject properties are also part of a small, 17-acre RS-8 District along Brevard Road that is surrounded by large Highway Business and Commercial Industrial zoning districts to the north, west, and south.

Currently, there are two buildings on the northern site, a single-family residence and a shed/warehouse structure that appears to have been used commercially in the past. There are two access points to the site, one directly in front of the shed building and another to the south of the parcel, which also provides shared access to the landlocked property behind. The southern property contains a single-family residence that is accessed by a driveway on the southern portion of the site.

Initially the applicant was encouraged by the staff to pursue a conditional use rezoning for the properties that could tie into the property to the north that was conditionally rezoned in 2000, but the property owners did not choose to pursue that option. Staff's rationale for a conditional use rezoning was the same as for the property to the north, to preserve the existing residential-scaled buildings for specific low impact commercial uses, limit land disturbance and tree removal on the site, and ensure compatibility with surrounding residential uses. A conditional plan could also be used to help design an integrated complex of office and similar uses, consolidate access points onto Brevard Road and preserve and improve the shared access to the landlocked parcel to the west, which is partially zoned Commercial Industrial District.

This area along Brevard Road has and will continue to receive increased pressure to transition to commercial uses, especially as the North Carolina Department of Transportation (NCDOT) plans to widen this section of Brevard Road to four or five lanes. In order to deal with the increasing development pressure, a corridor study could be undertaken to help formulate guidelines for future land use decisions along Brevard Road.

Rezoning the properties would allow the property owners the opportunity to redevelop their parcels for uses permitted in the Office District. If rezoned, the existing buildings on the properties could be adaptively reused or the owners could choose to demolish the buildings and erect new buildings subject to the standards of the Unified Development Ordinance (UDO).

While a conditional use rezoning would provide the best compatibility with the existing surrounding development pattern, staff recognizes that the purpose of the Office District states that the District "may serve as a transition as residential areas convert to other uses", which is the case in this situation as the area is in transition from residential to more commercial types of uses and will continue to feel pressure to change as Brevard Road is widened. Office zoning on these two parcels would also act as a step in the transition of zoning districts from the north as zoning goes from the purely residential RS-8 District to limited medical office and residential use of the Office/Conditional Use Zoning District to more flexible Office zoning to the even more flexible Commercial Industrial and Highway Business districts along Brevard Road.

In consideration of the above, the adjoining zoning and land uses in the area surrounding site, and the site's frontage on Brevard Road, the proposed zoning change appears to be consistent with the intent and purpose of the UDO and staff recommends approval of the request. The Planning and Zoning Commission at its October 2003 meeting voted 6-0 to recommend approval of the rezoning as well. It also recommended that Council direct staff to perform an abbreviated corridor study for this area to help determine appropriate zoning for the future.

Councilman Peterson spoke in support of an abbreviated corridor study

Dr. Phil Davis, property owner, asked for City Council's support of the proposed rezoning.

Mayor Worley closed the public hearing at 5:20 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3065. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilman Peterson moved to direct staff to perform an abbreviated corridor study for this area to help determine appropriate zoning for the future. This motion was seconded by Vice-Mayor Bellamy.

When Councilman Mumpower asked what would be involved in the corridor study, Mr. Shuford said that it would comprise of reviewing the land use and zoning to correspond to widening of Brevard Road for areas around the road. He said that the cost would be for staff time and would take approximately 3-6 months.

Councilman Dunn wanted to make sure that if someone came in and wanted their property rezoned that the corridor study would not prevent them from moving forward.

The motion made by Councilman Peterson and seconded by Vice-Mayor Bellamy carried unanimously.

ORDINANCE BOOK NO. 20 - PAGE 491

AGENDA CHANGE

RESOLUTION NO. 03-182 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY TO PROVIDE FUNDING OF A COUNTYWIDE PUBLIC ACCESS TELEVISION OPERATION AND FACILITY

Public Access Commission Chair Beth Lazer said that this is the consideration of a resolution authorizing the Mayor of the City of Asheville to enter into an Interlocal Agreement with Buncombe County for the purpose of providing funding of a Countywide public access television operation and facility.

In March 2000 the Asheville City Council appointed the Public Access Channel Commission (PACC) to facilitate the establishment and management of a public access channel in Asheville. Since that time, the Commission has formed a non-profit organization to manage the channel (URTV, Inc.), developed a management and operations plan for the station, identified sources of funding, and worked with other groups, to include the Asheville Chamber of Commerce and Buncombe County government to identify opportunities for collaboration.

Most recently, Buncombe County government reviewed and agreed to enter into a Interlocal Agreement with the City of Asheville to provide for funding of a Countywide public access television operation and facility. This agreement provides that the City and County will cooperate in the provision of public access television to serve the Asheville-Buncombe area, through a non-profit corporation.

This agreement is the first step in the realization of a Public Access Channel. Over the next month, PACC board members will work with City and County staff to orchestrate next steps and provide additional recommended action for Asheville City Council's consideration.

City staff recommends City Council adopt the resolution authorizing the Mayor to enter into an Interlocal Agreement with Buncombe County for the purpose of providing funding of a Countywide public access television operation and facility.

Ms. Lazer said that the organizational work still needs to be done to mature this collaboration. Therefore, she said that they plan to report back to Council in approximately 30-45 days to update Council on what they see URTV needs to get going, to ask Council to dissolve the PAC as currently constituted, to ask Council to endorse the URTV, Inc. organization and Board as the management organization, and to direct staff to work on drafting one management agreement.

Ms. Lazer responded to various questions/comments from Councilman Peterson, some being but are not limited to: what has the discussion been about a multi-media center; funds collected for the PAC should not be diverted for use as an economic development tool; where do we stand with cooperating with UNC-Asheville; A-B Tech and the local high schools; how is it envisioned to insulate the governing bodies from programming material; who determines program content; and what will be non-profit board make-up and who will make appointments to said board.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the non-profit organization (URTV, Inc.) has been formed to insulate the governing bodies from program content criticism and decisions and to a certain extent liability. He said that this is a model that exists and works in other cities across the state and this arrangement is a better way to take care of problems that most routinely arise.

Councilman Dunn was concerned that free speech can be slanted one way or the other and he would pay particular attention to the make-up of the non-profit board.

Mr. Fred English, resident of Asheville, felt we should not use taxpayers money to fund the channel because the Educational Channel is not being fully utilized plus there will be commercials run on the Public Access Channel.

Mr. Peter Dawes spoke about the need for the Public Access Channel, but urged City Council to scrutinize the board's make-up.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Ellis moved for the adoption of Resolution No. 03-182. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 45

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 03-183 - RESOLUTION ADOPTING THE ASHEVILLE CITY DEVELOPMENT PLAN 2025

Planning & Development Director Scott Shuford said that this is the consideration of a resolution accepting Asheville City Development Plan 2025 as the official comprehensive plan for the City. The public hearing on this Plan was held on April 22, 2003.

This culminates a two year + planning and public participation process that has been overseen in great detail by a 60 member committee (the City Plan Advisory Committee – CPAC) and has involved nine public forums, one major community meeting, and innumerable CPAC meetings, focus group meetings and public presentations. The effort to involve the public in developing this plan has been unprecedented in the City's history and has included surveys, television presentations and announcements, outreach to specific groups (particularly groups that might typically be underrepresented at standard public forums, including minority groups and business organizations), media coverage, newspaper editorials, and other inventive methods of capturing public input. The reward for this effort has been over 1,000 specific comments from the public that have been carefully evaluated by CPAC and included in the plan.

The Asheville City Development Plan 2025 will serve as guide for development approvals, rezonings, code amendments, infrastructure improvements, legislative action requests, and other City efforts. However, the plan is not an end into itself – it is a guide for specific actions, with the individual consideration and implementation of these actions being the method by which the plan will be put into effect. The Asheville City Development Plan 2025 replaces the Asheville City Plan 2010, adopted in 1987.

He has proposed a number of amendments that are reflective of Council's comments and those of the Planning and Zoning Commission. In addition, staff will take steps to better distinguish headings and subheadings in the Implementation Matrix through the use of shading and/or color.

He felt some Council comments were already accommodated adequately in the plan. Specifically, please note:

- The way "big box" development is addressed under Goal VII and its associated strategies on page 155.
- The extent to which the relationship between infrastructure capacity and future development is considered (see especially Strategies 4, 11, 12, and 14 on pp. 147-149).

He was less successful in determining ways to specifically address the comment concerning directing development away from some areas. He hoped that that this is accommodated adequately in Goal III and its associated strategies on pp. 94-98 and through the following additional Goals and Strategies:

- Strategy 2 under Goal IV (p, 154)
- Goal IX and its associated strategies on pp. 156-157
- Goal XIII on pp. 159-160.

Please be aware that, for a variety of reasons, he was unable to accommodate a number of specific and general comments about such items as the plan's length, its "over-regulation" content, deletion of inclusionary zoning proposals, and its "minor focus" on all City services, especially public safety.

In addition, based on further contact from Council, a few additional comments have been incorporated to the list of amendments. The most substantive of these amendments is the proposed change to the name of the plan, but two others deserve note. These changes are listed as follows:

Title - The proposed name of the plan - Asheville City Development Plan 2025 (plus the new subtitle previously proposed).

Page 50 - Revise Goal III to read: Goal III. "Explore the full range of zoning tools necessary to increase both the supply of affordable housing and the compatibility of such housing with existing neighborhoods and community development patterns, including development incentives, code streamlining efforts, neighborhood design standards, and inclusionary zoning practices."

Page 66 - Revise the last sentence of the first paragraph (continued from page 65) to read: "The City of Asheville should explore statutory authority for mandatory design review, and if such authority is granted, the City should review its potential application to selected zoning districts and to specific areas of the City for which this development tool is determined appropriate."

The Planning and Zoning Commission recommended approval of Asheville City Development Plan 2025 as the official comprehensive plan for the City on March 27, 2003, by a unanimous vote (5-0), subject to a variety of amendments. City staff also recommends approval of the Plan as proposed.

Mr. Shuford said that he will regularly review the Plan implementation with Council and within 5 years a comprehensive review and update will take place.

Upon inquiry of Councilwoman Jones, Mr. Shuford said that the Plan amendments have been circulated.

Mr. Jim Torpey, member of the CPAC, spoke in support of the Plan noting that when he was on the Planning & Zoning Commission, the 2010 Plan was used as a guide only. He was certain the 2025 Plan will be used as a guide as well.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-183 with Plan amendments previously presented to Council and the amendments outlined by Mr. Shuford today. This motion was seconded by Councilman Peterson.

Councilwoman Jones suggested that the motion be amended to make a revision on page 51 – Goal IV, as follows: "Enforce and evaluate the City's Minimum Housing Code program …" (underlining denotes addition)

Mayor Worley suggested that the motion be amended to make a revision on page 154, Strategy 3 under Goal V, as follows: "The City should consider legislation authorizing inclusionary zoning for larger residential developments." (underlining denotes change)

There was a brief discussion initiated by Councilman Dunn on page 93 about cooperating with the Blue Ridge Parkway to determine the effectiveness of current viewshed protection measures. Councilman Dunn was supportive of protecting the viewshed, but where is their support for the City of Asheville since they will not issue the City a permit to cross a bridge located on Parkway property, which it is costing Asheville taxpayers $15-18,000 a month to dump land clearing and inert debris elsewhere. He suggested that Open Space Strategy 2 under Goal I be deleted or a strong letter be sent to the Parkway pointing out the money the taxpayers are having to spend on this particular issue.

Mayor Worley agreed with Councilman Dunn's frustrations but pointed out in terms of the language, this is a guide and how we coordinate and determine the effectiveness of current viewshed protection measures is entirely up to City Council.

Councilman Mumpower suggested this matter be scheduled at a worksession to separate that issue from the adoption of the 2025 Plan.

Mr. Shuford said that this particular strategy is scheduled for implementation in 2005.

Vice-Mayor Bellamy and Councilman Peterson were agreeable to amending their motion to include the two amendments suggested by Councilwoman Jones and Mayor Worley

Councilwoman Jones said that a lot of viewpoints have been captured and the scope of the Plan is broad. She felt that the title "Asheville City Plan 2025" was accurate and didn't support the name change, however, she felt it was vital to move forward.

Councilman Mumpower still had some concerns about the document, but pointed out there are no perfect documents and he is comfortable with the majority of it. He felt they all worked together to reach a reasonable compromise that will protect the future of our community.

Mayor Worley spoke in support of the collective desire of this Council to work together for the betterment of the entire community and on behalf of City Council, thanked the CPAC for their extraordinary service to the citizens in developing this document.

The original motion made by Vice-Mayor Bellamy and seconded by Councilman Peterson (including amendments by Councilwoman Jones and Mayor Worley) carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 46

V. NEW BUSINESS:

A. RESOLUTION NO. 03-184 - RESOLUTION ADOPTING THE CLINGMAN FOREST GREENWAY MASTER PLAN

At the request of Vice-Mayor Bellamy, Councilman Mumpower excused Vice-Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Ellis and carried unanimously.

Ms. Tamara Calabria, representing Mountain Housing Opportunities, said that this is the consideration of a resolution to adopt the Clingman Forest Greenway Master Plan.

Clingman Forest is an approximately 10-acre forest in downtown Asheville, bounded roughly by the YWCA, Asheville Middle School, and Charles Street to the East, Aston Park to the North, Clingman Avenue to the West, and the River/Arts Warehouse District to the South.

A committee of stakeholders was formed to lead the project and work closely with the design consultant to develop the plan. This committee included representatives from the City's Parks and Recreation and Planning Departments, the Asheville Greenway Commission, Mountain Housing Opportunities, the West End/Clingman Avenue Neighborhood, Buncombe County Parks and Recreation and Buncombe County Board of Education. The planning effort was made possible through generous grants received by Mountain Housing Opportunities from the Pigeon River Fund and Carolina Power and Light.

Much of the property within the proposed greenway corridor is currently owned by public or quasi-public agencies, including the City of Asheville, Buncombe County, and the Buncombe County Board of Education. There are several small parcels within these larger tracts that are currently in private ownership. The proposed linear park is indicated as a primary off-road greenway corridor in the Asheville Greenway Master Plan.

The purpose of the Master Plan was to develop an understanding of the site through detailed site analysis, receive public input, and establish guidelines for development of the greenway. The future Clingman Forest Greenway will eventually provide a greenway connection between Buncombe County's Aston Park and Asheville's French Broad River Riverfront District. The corridor is planned to serve as a valuable natural resource for recreation and environmental education, and also contribute to the revitalization of the surrounding area. The future greenway will serve both the community in the immediate vicinity as well as the broader Asheville area.

Key design concepts will be to (1) provide network of trails; (2) incorporate infill housing; (3) protect the site's natural character; (4) incorporate environmental education; and (5) reinforce a sense of place.

Currently secured funding and support includes: (1) The N.C. Dept. of Transportation (NCDOT) Enhancement Grant ($172,00)) for streetscape improvements to Clingman Avenue, to include construction of the on-street portion of the Clingman Forest Greenway and stormwater infrastructure within Clingman Forest; (2) Community Development Block Grant funding ($34,000) which will provide the local match for the first phase of the NCDOT Enhancement Grant; and EPA 319 Stormwater Grant ($95,000) secured b NCSU Water Quality Group for constructed stormwater wetland within Clingman Forest.

The Parks and Recreation Department and Asheville Greenway Commission recommend the City of Asheville adopt the Clingman Forest Greenway Master Plan as a document that will serve as a guideline for greenway development.

Councilman Ellis stated that since some of this land will be used for infill development, he assured the public that the City will go through extensive public hearings prior to any public land being sold.

Councilwoman Jones said that this process has been a very open public process to date and will look forward to seeing how that continues.

Councilman Peterson asked what some thoughts have been to address the safety concerns at Aston Park and also on the greenway itself. Ms. Calabria explained that the consultants have worked with guidelines that the Asheville Police Department has for environmental design for safety and they also listened to residents. The idea of natural surveillance or "having eyes on the park" will go hand in hand with the Police guidelines.

Upon inquiry of Councilman Mumpower, Parks & Recreation Director Irby Brinson guessed that maintenance of this greenway would be approximately $8,000/year. He felt that because of the neighborhood setting, the greenway will have a fairly heavy use. Regarding funding for this greenway vs. other park needs, Mr. Brinson felt that the opportunities for outside funding is greater for greenways than for park renovations. He felt this particular greenway will have a lot of partners, and has the potential to be funded in a number of creative ways. Regarding policing concerns, Mr. Brinson said that to date we have had no problems on any greenways. He felt that the building of the park would be in the range of medium/high renovation because it is a difficult corridor to work in with a number of board walks to be constructed and topography being an issue. The total budget for both phases of the project is approximately $1.3 million and he anticipated approximately 15% would ultimately be the City taxpayer's contribution.

Councilman Peterson noted that a big part of the funding is the roundabout and since that's not the trail, it's something that if this hadn't been brought forward the Public Works Department might have suggested that anyway. In addition, Councilwoman Jones felt the same situation might have occurred for the road improvements to Haywood Road.

Upon inquiry of Councilwoman Jones, Ms. Calabria said that some of the secured funding is part of the overall plan.

Councilman Dunn understood the concept of leveraging money, but pointed out it is still spending money.

Mr. Fred English felt the cost of the greenway was too much and wondered why Mountain Housing Opportunities was involved since he thought they were in the housing business and not the greenway business.

Mayor Worley said that we anticipate being able to get a substantial portion of this project from grants, but this is more than a greenway. This is about what we are as a City and our ability to attract people and jobs to our area.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 03-184. This motion was seconded by Councilwoman Jones and carried unanimously.

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of October 3-16, 2003: Jesse Morris (Water), Andre Griffin (Police), Latosha R. Little (Streets), Asheville Showcase (Water), Sonja Davis (Parks & Recreation), Natasha Allen (Police), Caroline Yongue (Water), and Christal Brice (Transit Services).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

On October 15, 2003, the City filed a Complaint against Harlan J. Henderson, and wife Debra Paulette J. Henderson. The nature of the proceeding is a violation of City Code sec. 10-31 – regulating abandoned or junked motor vehicles. This matter will be handled in-house.

On October 15, 2003, the City filed a Complaint against Michael Ross Butner and wife Debra Darlene Butner. The nature of the proceeding is a violation of City Code sec. 10-31 – regulating abandoned or junked motor vehicles. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Martin Reidinger, attorney representing Mr. Mike Fryar, felt that there is a legal defect in the ordinance annexing the property of Mr. Fryar. He said that the ordinance incorporated two descriptions – a metes and bounds description; and a map – and they don't match. He felt that raises a problem as to whether or not the City has defined adequately what you have annexed and what the boundary is of Asheville. An underlying problem is that one of the reasons that was stated to Council as to why you need to annex was that Mr. Fryar has a building on his property that was 40% in the City and 60% out of the City and you needed to be consistent. The description in metes and bounds show that it incorporates 100/% of the building. So if that is accurately your annexation area, then the reason that was stated for adopting the ordinance was inaccurate. He asked that Council repeal the ordinance and then, if you wish, go back and do it right. If Council chooses not to repeal the ordinance, he suggested City Council waive the statute of limitations for appeal, since Mr. Fryar has let the deadline pass, and then let a Court decide. Again, he asked Council to either repeal the ordinance or let them challenge it in court. Councilman Mumpower responded that he wished he was in a position to support the suggestions, but the precedent concerns him and the arguments are not persuasive to him.

Mr. Peter Dawes stressed the need for the City to audit the ABC Board in that sales were up by $300,000 last year but the City received less money.

Mr. Fred English questioned why a permit was issued to the Wiccans to use park property for a religious ceremony. Mayor Worley responded that the City can't discriminate against any group in the use of public property.

Mr. Chad Nesbitt wanted to make sure that the Wiccans have to comply with the same regulations, in particular insurance provisions, that other groups have to comply with to use public property. City Attorney Oast responded that the City is satisfied they are meeting our insurance requirements.

Mr. Dennis Justice thanked the Civic Center Commission for reviewing the two hockey proposals at the Civic Center. He feels that this is hockey's last chance in Asheville and it should be their best chance. Because of the financial concerns of the City, he felt the team should provide safety nets but the City should install them and perhaps the Plexiglas should be on a 50/50 basis. Mr. Waronker was not convinced that the ice cooling system would survive for 3 years and felt that work needs to be done on the Zamboni. Mr. Justice said that other sports teams that have been at the Civic Center have had infrastructure upgrades. He pointed out that every dollar of every ticket that is bought at the Civic Center goes into some sort of fund for upgrades. He calculated if you have 2,000 people attend each game for 3 years at 30 games a season, you get $180,000. Even if you don't tie them in exclusively to hockey specific upgrades, that money could go for upgrades for scoreboards, new speakers or painting. There is a meeting of the hockey community Monday night and he invited City Council and will also invite Mr. Al White of the Altitude.

Councilman Dunn explained his reasons why the City needs a total accounting from the ABC Board. He felt that $168,000 for two police officers needed clarification. Mayor Worley said that Councilman Dunn's concerns are well taken and it is incumbent on us to review the financial information to make sure things are being run appropriately. He did note that the new Chair has met with him and he has shared with her Council's concerns. The ABC Board is in the process of hiring a new Supervisor and hopes to have them in place by January. He also said that the ABC Board is concerned about being certain that the ABC system is being run properly too.

CLOSED SESSION

At 7:17 p.m., Councilwoman Jones moved to go into closed session in order to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 8:05 p.m., Councilman Ellis moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:05 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Wednesday – November 5, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones (arrived in meeting at 3:48 p.m.) Councilman R. Carl Mumpower; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Budget Amendment – Section 108 Guaranteed Loan & Economic Development Incentive Grant

After a brief discussion, it was the consensus of City Council to delay consideration of the budget amendment for two weeks in order to give Eagle/Market Street Development Corporation, the neighborhood and interested people an opportunity to meet and discuss concerns. When the matter comes back to Council, City Council asked for additional information concerning the grant, South Pack Square Redevelopment Plan, a timeline for the public input process, and what is Council's role in receiving the grant.

Budget Amendment for Haz-Mat Equipment Grant for Fire Department

Summary: The consideration of a budget amendment, in the amount of $90,900, to receive grant money from the U.S. Department of Justice, sub-granted through the North Carolina Division of Emergency Management, for procurement of weapons of mass destruction preparedness equipment for Asheville Fire and Rescue Department's Haz-Mat Team.

The City of Asheville Fire and Rescue Department requested $90,900 from the NC Division of Emergency Management for equipment to better prepare the City for a hazardous materials or terrorism incident. Staff was successful in obtaining those funds. We received money to purchase a variety of equipment that includes chemical agent detectors, chemical protective clothing, multigas monitors, rescue equipment and a search camera. Twenty-two North Carolina cities received the $90,900 grant.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

Upon inquiry of Councilman Peterson, Fire Chief Grayson said that most items have multiple purposes and his staff is adequately trained to use the equipment.

Application for FEMA Fire Prevention and Safety Grant

Summary: The consideration of a resolution authorizing the City to apply for a fire prevention and safety grant from the Federal Emergency Management Agency (FEMA).

The City of Asheville Fire and Rescue Department desires to request $71,126 from FEMA for the purchase of fire safety education materials and promotion as well as a vehicle to transport previous granted equipment. The grant provides 70% of the total project, with the remaining 30% ($21,338) from city matching funds.

The material, promotion and vehicle are integral to the Department's mission and the grant funding will enable the City to conduct these programs with minimal City funding.

The program will enable the department to distribute fire safety and injury prevention materials to children. In addition, a vehicle for use in the Department to pull the department's safety houses is included in the grant. The safety house is primarily designed to educate adults about fire safety and home safety. Part of the mobile house is also to educate the public about residential fire sprinkler systems.

City staff recommends City Council authorize the City to apply for a fire prevention and safety grant from the Federal Emergency Management Agency.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ANNEXATION UPDATE

This item has been removed from the agenda.

DISCUSSION OF CARROLL HOUSE LOCATED AT 19 ZILLICOA STREET AS A LOCAL HISTORIC LANDMARK

Historic Resources Director Stacy Merten said that this is the consideration of motion setting a public hearing on November 25, 2003, to consider the designation of the Carroll House located at 19 Zillicoa Street as a local historic landmark.

The Robert S. and Grace P. Carroll house, built in 1922 is located inside the western edge of the Montford Historic District facing east on Zillicoa Street. It is part of an original complex of single family structures that later became part of Highland Hospital. The house is 2 ½ - story plus attic built in the Normanesque/Tudor Revival style and constructed of randomly laid granite stones.

Psychiatrist Robert S. Carroll, founder of Highland Hospital, a nationally recognized mental health facility, lived at the house until 1946 with his second wife Grace P. Carroll, a world renowned concert pianist with a national an international reputation. The house was connected by proximity, function and association to the Highland Hospital complex. Dr. Carroll may have used the house occasionally for patient treatment and Mrs. Carroll used the music room both as her own studio and also for larger community based musical events

The Robert S. and Grace P. Carroll House is significant for its association with the Carroll's, who built the house, founded Highland Hospital and made a significant contribution to the arts community in Asheville. It is also significant architecturally as an excellent example of the Norman/Tudor Revival/Craftsman style structure. The entire original configuration and architectural detailing of the exterior of the house remains intact except for the addition on the west elevation of an elevator tower, stairs and retaining wall on the south elevation and a fire escape on the north elevation.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes. Currently the tax appraisal for the land is $194,100 and the structure is valued at $654,800, for a combined total of $848,900.

The ordinance designates the Robert S. and Grace P. Carroll House as a local historic landmark. The property included in the designation consists of the Robert S. and Grace P. Carroll House and the .78 acre parcel on which it is located as described on the attached plat. The designation includes the exterior of the house, some interior details and landscape features.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC). All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The HRC, by unanimous vote, recommends to the Asheville City Council that the Robert S. and Grace P. Carroll House be designated as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

City staff recommends City Council set a public hearing on November 25, 2003, to consider the designation of the Robert S. and Grace P. Carroll House located at 19 Zillicoa Street as a local historic landmark.

After discussion by Council, it was the consensus to place this public hearing on the November 25, 2003, formal City Council agenda.

STORMWATER UTILITY FEASIBILITY STUDY

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to direct staff to complete a study to determine if a stormwater utility is a feasible, equitable, and effective method for funding stormwater quantity and quality needs in the City of Asheville; and a budget amendment, in the amount of $50,000, from fund balance to fund a portion of the study.

The City of Asheville must comply with the Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) Permitting and Stormwater Phase II Regulations as part of the Federal Clean Water Act. In March 2003, City Council approved a plan to comply with the "Six Minimum Measures" of the regulations, including strategies for:

1. Public Education and Outreach
2. Public Participation and Involvement in Implementing the Plan
3. Detection and Elimination of Illicit Discharges
4. Construction site Run-off Control
5. Post-Construction Run-off Control, and
6. Pollution Prevention and Good Housekeeping by the Municipality.

Once the plan is approved by NCDENR, Division of Water Quality, the City of Asheville must begin implementing the elements within the plan in order to comply with the State and Federal requirements. Staff has estimated that it will cost approximately $150,000 to $200,000 per year to implement this plan. The funding for this program has not been identified at this time.

In order to develop an effective program to improve water quality as part of the Phase II regulations, the City must also develop stormwater management approaches for drainage basins, assess existing outflows to creeks, identify capital improvement needs to manage stormwater, and increase infrastructure maintenance functions. Developing a Stormwater Utility is one means of developing a dedicated funding source for local stormwater management. A stormwater utility is (1) a fair and equitable method of funding Phase II Stormwater Regulations; (2) an enterprise fund much like water, sanitary sewer or parking; (3) a dedicated funding source for water quality and water quantity improvements; and (3) a stable funding source to improve water quality. It is not a rain tax because (1) fees are charged to both for profit and not for profit; (2) fees are based upon the impact to the system (impervious surface); and (3) credits are available for developers that treat stormwater runoff prior to discharging to the stream. Other options of developing a dedicated funding source for local stormwater management could include increasing property taxes or implementing an impact fee for development.

The feasibility study will:

- Establish a City Manager's Advisory Committee consisting of representatives from the development, environmental, residential, non-profit, engineering, as well as other stakeholders to manage and oversee the study's progress and make a recommendation to City Council,
- Analyze other possible sources of funding,
- Determine if a Stormwater Utility is the best method of developing a long-term funding source to address water quality issues and meet the required minimum measures, and
- Conduct financial analysis to determine the most equitable and effective framework to develop a utility.

Staff's goal is to complete the feasibility study in a time frame that City Council could review in conjunction with the Fiscal Year 2004-05 Budget. Staff estimates that the total cost of the study would be $65,000 plus staff time. However, staff is requesting $50,000 from the City's fund balance to cover the cost of hiring interns and leasing computer equipment for purposes of data collection and quality control. The remaining $15,000 for some professional service would come from the existing budget.

Approximately $25,000 of the $50,000 could be reimbursed to the fund balance from the Stormwater Utility if the Utility is established by City Council.

City staff recommends City Council authorize the City Manager to direct staff to complete a study to determine if a stormwater utility is a feasible method for funding stormwater quantity and quality needs in the City of Asheville; and, a budget amendment, in the amount of $50,000, from fund balance to fund a portion of the study.

When Vice-Mayor Bellamy asked why this was not a Metropolitan Sewerage District (MSD) issue, Ms. Ball said that it is not a sanitary sewer issue, however, MSD is under somewhat of a similar guideline.

Upon inquiry of Councilman Ellis, Ms. Ball said that the best method for collecting the fee would be through the existing water billing system, which is bi-monthly. She said that most cities have a tiered system for single-family residents. She said that preliminary numbers could range from $1-2 every two months. All monies collected will be required to go back into stormwater management.

Ms. Ball responded to various questions/comments from Council, some being, but are not limited to: why can only $25,000 of the $50,000 be reimbursed to the fund balance from the stormwater utility; what is the rationale behind requiring more sidewalks vs. it's impact on water quality; and how will the stormwater utility affect the agreement that the City has with the Housing Authority.

Councilman Peterson asked Ms. Ball to make sure that the feasibility study will present Council with options and the pros and cons of each one.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place these items on the next formal City Council agenda.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 11, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman James E. Ellis

PLEDGE OF ALLEGIANCE

Retired U.S. Marine Corp Gunny Sergeant Billy Cochran and Retired U.S. Navy Senior Chief Larry Owen led City Council in the Pledge of Allegiance.

INVOCATION

On this Veteran's Day, Councilman Dunn and Councilman Mumpower gave the invocation saluting and honoring all past, present and future veterans.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 28, 2003, AND THE WORKSESSION HELD ON NOVEMBER 5, 2003

B. ORDINANCE NO. 3066 - BUDGET AMENDMENT FOR HAZ-MAT EQUIPMENT GRANT FOR FIRE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $90,900, to receive grant money from the U.S. Department of Justice, sub-granted through the North Carolina Division of Emergency Management, for procurement of weapons of mass destruction preparedness equipment for Asheville Fire and Rescue Department's Haz-Mat Team.

The City of Asheville Fire and Rescue Department requested $90,900 from the NC Division of Emergency Management for equipment to better prepare the City for a hazardous materials or terrorism incident. Staff was successful in obtaining those funds. We received money to purchase a variety of equipment that includes chemical agent detectors, chemical protective clothing, multigas monitors, rescue equipment and a search camera. Twenty-two North Carolina cities received the $90,900 grant.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

ORDINANCE BOOK NO. 21– PAGE 1

C. RESOLUTION NO. 03-185 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A FIRE PREVENTION AND SAFETY GRANT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Summary: The consideration of a resolution authorizing the City to apply for a fire prevention and safety grant from the Federal Emergency Management Agency (FEMA).

The City of Asheville Fire and Rescue Department desires to request $71,126 from FEMA for the purchase of fire safety education materials and promotion as well as a vehicle to transport previous granted equipment. The grant provides 70% of the total project, with the remaining 30% ($21,338) from city matching funds.

The material, promotion and vehicle are integral to the Department's mission and the grant funding will enable the City to conduct these programs with minimal City funding.

The program will enable the department to distribute fire safety and injury prevention materials to children. In addition, a vehicle for use in the Department to pull the department's safety houses is included in the grant. The safety house is primarily designed to educate adults about fire safety and home safety. Part of the mobile house is also to educate the public about residential fire sprinkler systems.

City staff recommends City Council authorize the City to apply for a fire prevention and safety grant from the Federal Emergency Management Agency.

RESOLUTION BOOK NO. 28 – PAGE 49

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNNAMED ALLEY OFF COLLIER AVENUE

RESOLUTION NO. 03-186 - RESOLUTION TO PERMANENTLY CLOSE AN UNNAMED ALLEY OFF COLLIER AVENUE

Mayor Worley opened the public hearing at 5:12 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close an unnamed alley off Collier Avenue. This public hearing was advertised on October 17, 24, 31 and November 7, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Collier Avenue, the entry of which is located approximately 200 feet north of the intersection of Collier and Banks Streets.

Public Works Department staff has researched and determined that this alleyway is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are eight lots that abut this alley identified by PIN Nos. 9648.06-38-4514; 9648.06-38-3540; 9648.06-38-3620; 9648.06-38-4526; 9648.06-38-4684; 9648.06-38-5757; 9648.06-38-3750; 9648.06-38-3895; 9648.06-38-4514.

Mr. Cole said that the only utility present in the alley is an overhead telephone service line servicing 120 Coxe Avenue. The petitioner has agreed to work with BellSouth to relocate or provide easements for the telephone line as necessary.

City staff recommends that City Council adopt the resolution to close an unnamed alley off Collier Avenue.

Mayor Worley closed the public hearing at 5:17 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 03-186. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 50

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 03-187 - RESOLUTION AUTHORIZING STAFF TO COMPLETE A STORMWATER UTILITY FEASIBILITY STUDY

ORDINANCE NO. 3067 - BUDGET AMENDMENT TO FUND A PORTION OF THE STORMWATER UTILITY FEASIBILITY STUDY

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to direct staff to complete a study to determine if a stormwater utility is a feasible, equitable, and effective method for funding stormwater quantity and quality needs in the City of Asheville; and a budget amendment, in the amount of $50,000, from fund balance to fund a portion of the study.

The City of Asheville must comply with the Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) Permitting and Stormwater Phase II Regulations as part of the Federal Clean Water Act. In March 2003, City Council approved a plan to comply with the "Six Minimum Measures" of the regulations, including strategies for:

1. Public Education and Outreach
2. Public Participation and Involvement in Implementing the Plan
3. Detection and Elimination of Illicit Discharges
4. Construction site Run-off Control
5. Post-Construction Run-off Control, and
6. Pollution Prevention and Good Housekeeping by the Municipality.

Once the plan is approved by NCDENR, Division of Water Quality, the City of Asheville must begin implementing the elements within the plan in order to comply with the State and Federal requirements. Staff has estimated that it will cost approximately $150,000 to $200,000 per year to implement this plan. The funding for this program has not been identified at this time.

In order to develop an effective program to improve water quality as part of the Phase II regulations, the City must also develop stormwater management approaches for drainage basins, assess existing outflows to creeks, identify capital improvement needs to manage stormwater, and increase infrastructure maintenance functions. Developing a Stormwater Utility is one means of developing a dedicated funding source for local stormwater management. Other options could include increasing property taxes or implementing an impact fee for development.

The feasibility study will:

- Establish a City Manager's Advisory Committee consisting of representatives from the development, environmental, residential, non-profit, engineering, as well as other stakeholders to manage and oversee the study's progress and make a recommendation to City Council,

- Analyze other possible sources of funding,

- Determine if a Stormwater Utility is the best method of developing a long-term funding source to address water quality issues and meet the required minimum measures, and

- Conduct financial analysis to determine the most equitable and effective framework to develop a utility.

Staff's goal is to complete the feasibility study in a time frame that City Council could review in conjunction with the Fiscal Year 2004-05 Budget. Staff estimates that the total cost of the study would be $65,000 plus staff time. However, staff is requesting $50,000 from the City's fund balance to cover the cost of hiring interns and leasing computer equipment for purposes of data collection and quality control. The remaining $15,000 for some professional service would come from the existing budget.

Approximately $25,000 of the $50,000 could be reimbursed to the fund balance from the Stormwater Utility if the Utility is established by City Council.

City staff recommends City Council authorize the City Manager to direct staff to complete a study to determine if a stormwater utility is a feasible method for funding stormwater quantity and quality needs in the City of Asheville; and, a budget amendment, in the amount of $50,000, from fund balance to fund a portion of the study.

Some additional information brought up from Council's November 5, 2003, worksession will include (1) looking for methods to qualify what cleaner is and to be able to define those methods; (2) looking at the impact of fees or taxes on the public; (3) looking at the impact of the fees or taxes on the Joint Planning Area; and (4) reviewing previous agreements with other agencies.

Ms. Ball then answered various questions/comments from Council, some being, but are not limited to: when will this come back to City Council; who will be invited to participate in the stakeholders meeting; what kind of data will be gathered; and will the hardware and software be used on different projects once this project is complete.

Councilman Mumpower suggested talking with our legislative delegation expressing Council's frustration with the concept of unfunded mandates. Mayor Worley said that this has been underway since the early 1990's and felt it might be appropriate to continue working with the N. C. League of Municipalities, National League of Cities, and the Association of County Commissioners, all which have taken the position to educate our legislators on the burdens that unfunded mandates put on cities. City Manager Westbrook suggested waiting to talk to our delegates until after we know the cost of what the unfunded mandate will cost and then we would have some facts and figures on what the impact would be on our local citizens.

Mayor Worley said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 03-187. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 52

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3067. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 3

VI. OTHER BUSINESS:

A. ASHEVILLE FILM FESTIVAL

Mayor Worley spoke about the tremendous job City staff and the Asheville Film Commission did on coordinating Asheville's first Film Festival.

Parks & Recreation Director Irby Brinson thanked the Asheville Film Commission, the Film Festival Committee, City Council and the tremendous number of volunteers and staff.

Councilman Peterson voiced praise also about the Festival and asked about possible revenues and the economic impact of the Festival.

Vice-Mayor Bellamy, member of the Film Commission, thanked Film Commission Chair Leni Sitnick, Event Specialist Melissa Porter, all the Film Commission members, Mr. John Cram, and the countless volunteers for their hard work on the successful Festival.

B. RECOGNITION

Vice-Mayor Bellamy asked that recognition be made to the Asheville High School Field Hockey Team, the Asheville High School Football Team, and the Asheville Youth Sports Program Youth League for their successful year.

C. CLAIMS

The following claims were received by the City of Asheville during the period of October 17-30, 2003: BellSouth (Water), Samuel Benjamin (Police), Old Dominion Freight (Parks & Recreation), Grant Contr. (Water), Emily R. Kasinecz (Transit Services), Charlotte Harrison (Streets), Big Lots (Water) and Cornelius Miller (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English hoped that City Council would show more support in their recognition of Veterans Day.

Mr. Iver Thomas, resident on Knob Street, spoke about his dedication to the protection and well-being of children and offered to work closely with the Asheville Police Department to stop drug trafficking in Asheville, in particular the Housing Authority communities.

Mr. Walter Plaue agreed with Mr. English in that Council should prioritize their schedules, particularly on Veterans Day, in order attend ceremonies honoring our veterans.

CLOSED SESSION

At 5:50 p.m., Councilwoman Jones moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

At 6:15 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:15 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 18, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Grant for Crash Investigation Equipment and Software

Summary: The consideration of a resolution and budget amendment, in the amount of $9,480, to receive additional grant money from the North Carolina Governor's Highway Safety Program for crash investigation equipment and software and travel/training money for the Asheville Police Department's Regional County Coordinator.

In August of 2003, City Council accepted an $8,000 grant from the Governor's Highway Safety Program (GHSP) to fund crash investigation equipment and software and travel/training needs for the City's Regional Coordinator. GHSP recently informed the City that it will receive an additional $9,480 in grant money. The total amount available to the City will now be $17,480. There is no match requirement for these funds.

The crash investigation equipment and software will enhance the capabilities of the Asheville Police Department to investigate vehicular accidents and provide greater safety to the officers at the scene of an accident. The travel/training funds will allow the Regional Coordinator to participate in highway safety meetings throughout the southeast offered by the Federal government as well as those in North Carolina offered by the State government to fulfill their duties as the Regional Coordinator.

City staff recommends the adoption of a resolution and budget amendment, in the amount of $9,480, to accept additional grant funding from the N.C. Governor's Highway Safety Program for crash investigation equipment and software and travel/training funds for the Regional Coordinator.

Bid Award for Ballfield Light Replacement at Memorial Stadium

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Lighting Company for the installation of field lighting at Memorial Stadium.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of renovation is the Memorial Stadium Complex, which is situated above McCormick Field. This park is the home of the Asheville Youth Sports Program, the Asheville Splash (women's semi-professional soccer team), the Asheville Grizzlies (men's semi-professional football team), the Asheville Assault (women's semi-professional football team), the Asheville-Buncombe Youth Soccer Association and many other user groups. This particular segment of the renovation has become a necessity within the last year, due to safety issues surrounding the existing system. Existing poles are too deteriorated for repair companies to work on them, light fixtures do not illuminate enough of the playing field, and "banks" of lights are going out in the middle of scheduled activity. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. The following is a list of the six qualified bidders that responded:

The Lighting Company	$107,092
M.B. Haynes Electric Company	$124,900
Progress Energy	$129,746
Newco Inc.	$130,000
Greenlight Electric Company	$134,111
Wise Electric Control Inc.	$169,726

The Lighting Company was the lowest responsible bidder, at a cost of $107,092. The bid process and The Lighting Company have complied with the Minority Business Plan. This project will be financed, along with other Fiscal Year 2004 equipment purchases, through an installment purchase contract over a period of five years. The Finance Department anticipates soliciting proposals for financing in January of 2004. Funding for this year's installment payments for the lighting project is included in the Parks and Recreation Fiscal Year Capital Improvement Plan.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with The Lighting Company to furnish and install the lighting system for Memorial Stadium.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESOLUTION NO. 03-188 - RESOLUTION OF INTENT TO CLOSE AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD AND SETTING A PUBLIC HEARING ON DECEMBER 16, 2003

Summary: The consideration of a resolution of intent to close a portion of an unopened section of Emma Road between Leicester Highway and Old County Home Road and setting a public hearing for December 16, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened section of Emma Road extending northwesterly from Leicester Highway toward Old County Home Road to a line extending from the northeastern corner of the property of Dennis and Dane Dettweiler (PIN No. 9629.14-23-7485) to the northwestern corner of the property of Charles and Doris Haney (PIN No. 9629.14-23-9397).

Public Works Department staff has researched and determined that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by four lots, identified by PIN Nos. 9629.14-23-9397; 9629.14-32-0959; 9629.14-23-8346; and 9629.14-23-7485.

City staff recommends that City Council adopt the resolution setting a public hearing for December 16, 2003 to close a portion of an unopened section of Emma Road.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

Councilwoman Jones moved to adopt Resolution No. 03-188. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 53

CIVIC CENTER MINOR LEAGUE HOCKEY

Mr. Paul Hornyak, member of the Civic Center Commission, said that over the past several months the Civic Center Commission has conducted due diligence into the viability of two hockey leagues that concluded with our meeting of October 27, 2003. Based on our evaluation we recommended that Civic Center staff immediately begin negotiations with the World Hockey Association 2 (WHA2) for the placement of a hockey team in the Asheville Civic Center for the 2004/2005 hockey season. In addition we believe that the following guidelines should be followed during these negotiations:

1. Any upgrades or repairs required specifically for hockey should be the responsibility of the hockey team or league. The league or team's due diligence on the facility should be finalized before negotiations are complete.
2. Under no circumstances should City funds be used for the financial sustenance or viability of the hockey team.
3. Cognizant of the potential additional liability to the city as a result of having ice in the Civic Center, the contract should insure that this liability is mitigated through standard risk avoidance/diminution language.
4. The contract should seek to limit the city's liability from systems failures at the Civic Center through legal and other risk mitigation strategies. The center should be leased "as is" and not with a service level that is unattainable.

The Commission recognizes and proclaims that, in addition to the money collected from ticket and concession sales, a positive economic impact will be engendered to the City as a whole by the addition of 30 events at the Civic Center. This could mean 30-90,000 additional patrons of our restaurants, hotels, retailers and city parking facilities.

Mr. Hornyak then reviewed with Council the weighted evaluation template that was used for the hockey leagues.

Civic Center Director David Pisha said that the following items are the major points of the contract:

- The term is for three years beginning July 1, 2004, and ending June 30, 2007.
- The team is responsible for any upgrades to the Ice Plant or ancillary equipment to meet their standards.
- The team has agreed to hold the City harmless for any losses resulting from any equipment, system or premises failure.
- The team agrees to pay for any repairs to the Ice Plant in excess of $2,500.00.
- The rent to be paid the Civic Center is based on ticket sales and actual attendance at games.
- The team is required to put down a $60,000.00 non-refundable deposit at the beginning of each season. It will be credited back to them on a pro-rata basis, but if for any reason the team stops play at any time, the remainder of any deposit is forfeited.
- The team is allowed to practice only at the discretion of the Civic Center Director when it does not interfere with the financial interests of the venue.
- Any promotions by the team that cost the City money are to be made up by the team.

- The City can terminate the contract should the lease interfere with the City's plans to perform major renovations or construct a new facility. It can also terminate the agreement it the cooling tower fails and the City decides not to purchase a new unit.

City staff recommends City Council adopt the resolution authorizing the City Manager to execute any related contractual documents regarding booking a hockey team affiliated with the WHA2 into the Asheville Civic Center.

Mr. Pisha answered various questions/comments from Council regarding the contract, some being, but are not limited to: wear and tear of equipment, especially the Zamboni; what happens to the $1 user fee; how does the rent sliding scale work; are the backers of this team stable; what is the City's fixed costs per game; and how was the figure of $2,500 arrived at for repairs.

Vice-Mayor Bellamy suggested that as we look to renovations of the Civic Center and perhaps our main users will see fit to join hands with us and achieve that goal.

Vice-Mayor Bellamy suggested that City Council be provided with a pro forma or additional financial information anytime the City enters into a contract that we have financial liability.

Councilwoman Jones said that if renovations are planned to the Civic Center, she hoped that we communicate that with our users as early as possible, especially if they invest in capital improvements to the Civic Center.

Councilman Mumpower thanked the City Manager, Civic Center Director, Civic Center Commission and City Attorney's Office for their efforts in this agreement to protect the City's interest.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ACCEPTANCE OF SECTION 108 GUARANTEED LOAN & ECONOMIC DEVELOPMENT INCENTIVE GRANT

After a brief discussion on November 5, 2003, it was the consensus of City Council to delay consideration of the budget amendment for two weeks in order to give Eagle/Market Street Development Corporation, the neighborhood and interested people an opportunity to meet and discuss concerns. Additional information was also requested.

Planning & Development Director Scott Shuford reviewed with Council additional information on the financing and background to Eagle/Market Streets Development Corporation's proposed redevelopment project on Eagle Street and South Market Street.

At the City Council worksession on November 5, 2003, Council Members requested additional information on the background to a proposed budget amendment which would recognize receipt from the U. S. Dept. of Housing and Urban Development (HUD) of an $800,000 Section 108 Guaranteed Loan and a $340,000 Economic Development Initiative (EDI) grant for South Pack Square redevelopment.

The following was provided to Council:

- A chronology of significant events over the last 10 years in the effort to redevelop South Pack Square.

- A budget and timeline for the redevelopment project now proposed.
- Architectural Plans for the project.
- Relevant extracts from the South Pack Square Design Guidelines.
- An organization chart for the development team.

Council already has a copy of the South Pack Square Redevelopment Plan, as amended in Sept 1996, which Mr. Gene Ellison handed out at the November 5, 2003, worksession.

The Project

The project under consideration consists of the rehabilitation of a row of retail units at 17-23 Eagle Street (the Collette Building), 38 S. Market Street (the Campbell or Del Cardo Building), and a new infill building, which will become 40 S. Market Street.

A third existing building at 3 Wilson Alley is part of the redevelopment plan, but it is heavily contaminated by mold and must be demolished. Its site will provide additional parking, with the possibility of future redevelopment.

The project has been recommended by the South Pack Square Design Review Committee and approved by the Downtown Commission. It does not require Planning & Zoning Commission or Council approval. However, adjacent property owners whose window light is affected by the infill building have raised objections and suggested that the project is not consistent with the Redevelopment Plan, and that there has been inadequate opportunity for review and input by interested parties.

The Architectural Plans and their Review

Although staff was shown some tentative scale drawings in July, we understand that the existing plans, which are significantly different, were not completed until the end of September.

On October 3, plans were submitted to the Downtown Commission and, on October 6, to area property owners and Community Development staff. After hearing concerns from the owners of 13-15 Eagle Street and 42-44 South Market Street, the plans were redrawn to pull the infill building at least 3 feet away from those buildings.

The plans show how the existing buildings will be physically tied into the new structure. The infill construction will not only result in four new commercial units and 12 new residential units, but will also provide basement parking extending under the Collette Building and elevator and staircase access to the 2nd and 3rd floor residential units in the Del Cardo Building. The development team has stressed to staff that without the infill building, the rehabilitation of the existing structures becomes both physically and financially infeasible.

Future Development Phases

The project described above is just the first phase of a larger redevelopment being pursued by the development team. The second phase, which should also start quite soon, is the rehabilitation of the three derelict buildings to the east of S Market Street, which belong to Mount Zion Missionary Baptist Church. The financial feasibility of each Phase depends on the other. Separately, each would be too small to attract the financial backing they now have. Future phases will center on the buildings south of 42-44 S. Market Street, and on the large vacant parcel around the Jones Convenience Store, but these phases are not so advanced in planning.

Redevelopment Roles

The South Pack Square Redevelopment Plan, originally approved in 1993 and amended in 1996, sets out roles for various bodies with interests in the area:

(1) **Eagle Market Streets Development Corporation** (EMSDC), whose mission is closely tied to the redevelopment of the area, is accountable to the City for administering the Redevelopment Plan, carrying out physical development work, and managing public involvement in implementation of the Plan. It is the "redeveloper" defined in State redevelopment law, and, along with the City must approve any revisions to the Plan.

(2) The **YMI Cultural Center** is to have input into the process

(3) The **YMI Community Development Corporation** (YMICDC) is to implement job training and business development activities (in practice EMSDC has assumed this role).

(4) The **South Pack Square Association** is to have input into the process. At the time when the Plan was prepared, this was an extremely active group of property owners, business owners, residents, bankers and other concerned citizens. It was never an incorporated entity and has not met for several years. Mr. Ellison has recently established a new group under the name of the South Pack Square Business Association, which may be able to serve a similar role in the future.

(5) The **City of Asheville** is the major source of funding. It contracts annually with EMSDC for specific implementing steps and monitors EMSDC's progress.

(6) The **South Pack Square Design Review Committee** consisting of City staff, representatives of EMSDC and YMICDC, a property owner and an architect, is to review proposed redevelopment work and coordinate with other review bodies (e.g. Planning & Zoning Commission and the Downtown Commission). This Committee has recently met to review the plans for the current proposed project.

Additionally, a **Development Team** has been created by EMSDC and its partners in this particular project. Its complexity is typical of redevelopment projects where multiple partners and funding sources are necessary to the success of the project. The involvement of Rogers & Associates and the Enterprise Foundation has been critical in getting the project to this point.

After 10 years of very slow progress, EMSDC has finally put together a Development Team with the expertise and financial capacity to effectively implement the goals of the Redevelopment Plan. During that period, some conditions have changed and new ideas have surfaced, including the concept of an infill building at 40 South Market St. The Plan encourages such flexibility and innovation (page v: "This Redevelopment Plan should be viewed as a starting point and not a final product"; page 16: "The predominant land use ... will be that of mixed use development which includes residential, commercial, office and light manufacturing"; page 21: "Infill on vacant property for new commercial structures on Market Street and Biltmore Avenue is encouraged".)

It is staff's view that the project is consistent with the Redevelopment Plan, and, further, represents the only realistic opportunity for significantly implementing the Plan that has been offered in the past 10 years.

Failure to authorize use of the Section 108 and EDI funds at this stage would cause both this project and the Mount Zion project to fail. Staff can see no prospect then of reviving interest in a major redevelopment effort. It would be left to individual property owners to do what they see fit with their own properties without regard to the Redevelopment Plan. This may ultimately result in the demolition of buildings in the area, resulting in loss of the historic fabric of the area and its links to the African American community.

City staff recommends approval of the budget amendment to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square.

There was considerable discussion regarding the project, the roles of each interested body, the different companies, questions raised by Mr. Gene Ellison, risks, public input, and what the consequence of delay.

Councilman Peterson hoped that this project would not be like the Pack Plaza Project where the City of Asheville lost money.

Councilman Dunn moved to not place this item on the November 25, 2003, formal meeting agenda until there was more resolution of the matter and for City staff to add it to an agenda as soon as possible. This motion was seconded by Vice-Mayor Bellamy.

Members of Council voiced their opinion on Councilman Dunn's motion.

Rev. John Grant from Mt. Zion Missionary Baptist Church and Ms. Elizabeth Russell from the Eagle-Market Streets Development Corporation voiced opposition in delaying the budget amendment.

The property owner of the Wilson Building and Mr. Gene Ellison, owner of the Ritz Building, voiced support to delay action on the budget amendment.

The motion made by Councilman Dunn and seconded by Vice-Mayor Bellamy carried on a 4-3 vote, with Vice-Mayor Bellamy, Councilman Dunn, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Ellis and Councilman Mumpower voting "no."

At 4:50 p.m., Mayor Worley announced a short break.

REPORT ON RENOVATIONS TO MEMORIAL STADIUM

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

The Parks and Recreation Department has been working the past several months on a conceptual design for renovations to historic Memorial Stadium. The Stadium was originally constructed in the late 1920's and dedicated in the early 1930's as a memorial for veterans who served and died in WWI. The Stadium was dedicated again to WWI and WWII veterans in the 1940's. However, a true memorial to the men and women who gave the ultimate sacrifice to our country was never properly constructed.

In addition, Memorial Stadium was for years the home of both Lee Edwards/Asheville High Cougars and the Stephens-Lee Bears. Today, a number of youth sports groups including the Asheville Youth Sports, Asheville Grizzlies, WNC Bears, Asheville Assault, Asheville Splash, Asheville-Buncombe Youth Soccer Association, and a number of other groups currently call Memorial Stadium home.

The Stadium is in desperate need of repairs to a number of features including the lights, press box and Stadium seating and, more importantly, a proper recognition to our war dead as originally planned still needs to be constructed at this site. A plan has been developed by the

Parks and Recreation staff to incorporate these issues into a conceptual design for the Stadium. This plan will address a number of funding options that include local civic club contributions, veterans groups, grants and foundation funding, and sponsorships. It is anticipated that the cost for the renovations and upgrades will total $1.5 million. An Action Committee has been formed which will work with the Parks and Recreation Department to aggressively secure funding through grants, foundations and sponsorships, as well as the Capital Improvement Plan for the City of Asheville. The Department has also been working with Asheville Splash on a potential partnership that will assist in funding a portion of the cost. Memorial Stadium has been a high priority for the Department for a number of yeas due to the degree of use and age of the facility.

City staff is requesting City Council authorize the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

Vice-Mayor Bellamy said that there are other individuals working on renovation of Mountainside Park and would let them know they should contact Mr. Brinson for coordination.

Councilman Peterson suggested contacting some of the athletic associations from years ago that used Memorial Stadium to see if they would like to help with funding renovations.

Mr. Brinson answered various questions from Council, some being, but are not limited to: is the City working with the Asheville Tourists on addressing the parking needs and are there plans to alter McCormick Street.

Mr. Brinson said that he had received two letters of support for renovation from the Asheville Tourists and the Asheville Youth Sports Program.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ABC BOARD

Councilman Dunn voiced problems with the ABC Board and their management of the ABC operations.

He reviewed with Council the 2003 Management Letter of Crawley, Lee & Company, P.A.'s audit of the financial statement of the Asheville Board of Alcoholic Control. The auditors noted certain matters involving internal control and its operation that they consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to their attention relating to significant deficiencies in the design or operation of internal control that, in their judgment, could adversely affect the Asheville Board of Alcoholic Control's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. Councilman Dunn then reviewed each of the conditions the auditors believed to be a material weakness: improve segregation of duties; develop accounting procedures and policy manuals; adopt a records storage and retrieval system; store data backup files off-site; and miscellaneous items.

Some issues Councilman Dunn were concerned with was the funding for police activity; money to non-profits; raises of board members; and the embezzlement case.

He felt that City Council as a responsibility to investigate the operation of the ABC Board. Councilman Dunn said that City staff has contacted the N.C. Alcoholic Beverage Control Commission. In Asheville's attempt to help improve the operations of the ABC Board, they suggested (1) review of the composition of the current board for needed financial/managerial/

business expertise; (2) obtain audits of other ABC boards for comparative purposes; (3) contact other ABC Managers across the State to discuss successful business strategies; (4) contact other ABC Boards to compare their experience providing their own law enforcement; (5) request a copy from the Interim Asheville ABC Manager of the Management Report provided by the independent auditors for this year and last year's audits; (6) retain an outside consultant to conduct a head to toe managerial review of the entire Asheville ABC operation; and (7) put the hiring of a permanent manager on hold until the results of the above steps are available.

Therefore, Councilman Dunn requested City Council support in following the State Board's suggestions and ask the local Board have a management review performed by an independent firm; request legislation to increase the Board be raised from 3 to 5 members; direct the local Board not fill the Supervisor's position until after the study is complete; and ask the current Board members questions concerning the problems at the local Board.

Mayor Worley pointed out that the ABC Board has recently lost their Supervisor and has also gone through an embezzlement case. He said that the Board Chair has been extremely conscientious in keeping him up-to-date.

It was the consensus of City Council to (1) request a copy of 2002 audit and management letter; (2) add to the legislative agenda the increase of the ABC Board from 3 members to 5 members; (3) postpone appointing a member to the ABC Board and have the City Attorney review the statutes to see if the Chair can serve at the pleasure of Council; and (4) have the Mayor and Councilman Dunn meet with the Chair of the local Board and request the local Board to have a management review performed by an independent firm. If the local Board chooses not to do that, then the City will submit a request to the State Board for this.

BOARDS & COMMISSIONS

It was the consensus of City Council to appoint Alison Watson, Kathleen Kasben and Heidi Daugherty to the Asheville Film Commission.

It was the consensus of City Council to appoint Dana Irwin to the Public Art Board.

It was the consensus of City Council to appoint Jeff Richardson, Bill Schaefer and Ben Durant to the Victoria of Asheville Board of Directors.

MISCELLANEOUS

Upon inquiry of Councilwoman Jones, Mayor Worley said that he would talk with Buncombe County Commissioner Nathan Ramsey on whether or not the Interlocal Agreement with Buncombe County on the Joint Planning Area would be addressed on November 25, 2003, and advise City Council.

CLOSED SESSION

At 6:12 p.m., Councilman Mumpower moved to go into closed session in Room 209 of the City Hall Building to consider the qualifications, competence, performance, character, or fitness of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:32 p.m., Vice-Mayor Bellamy moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:32 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – November 25, 2003 - 3:00 p.m.
Room A109 – Public Works Facility
161 S. Charlotte Street, Asheville, N.C.

Special Joint Meeting of Asheville City Council and Buncombe County Commissioners

Asheville City Council:

Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson (Councilwoman Diana Hollis Jones was absent)

Buncombe County Commissioners:

Present: Commissioner Chair Nathan Ramsey; Vice-Chairman David Young; Commissioner David Gantt; Commissioner Patsy Keever; Commissioner Bill Stanley; County Attorney Joe Connolly; County Manager Wanda Greene; and Clerk to the Board Kathy Hughes

CITY OF ASHEVILLE RESOLUTION NO. 03-189 (BUNCOMBE COUNTY RESOLUTION NO. 03-1113) – RESOLUTION ENDORSING CONTINUED DEVELOPMENT OF THE JOINT PLANNING AREA AND REGULATIONS

The Asheville City Council and the Buncombe County Board of Commissioners each discussed all the important cooperative efforts they have achieved in the past, for example, the Joint Emergency Center, the City-County Housing Task Force, the exchange of properties for the Buncombe County Detention Center expansion, and the Public Access Channel.

Buncombe County Zoning Administrator Jim Coman explained the Joint Planning Area (JPA) is one mile around the City limits, includes the previous City's extraterritorial jurisdiction (ETJ), and the JPA would expand with annexation. He did note that farming is exempt from regulation.

Mr. Coman said that the Zoning Ordinance of the JPA of Buncombe County is based on the Limestone Township zoning ordinance which was adopted in January of 1982. They have added some provisions from the Unified Development Ordinance and noted that changes to the County's subdivision ordinance would be required.

He said that the cooperative agreement between the City and County will require adoption and amendments or rezonings by action of both governments, will require approval by both Planning Boards, and will be administered by the County with City input on largest projects.

He showed a map of the initial area of the JPA. He explained that the City's ETJ is replaced by the JPA. He said that there will be 8 zoning districts and 2 overlay districts. Other requirements will include landscaping and buffering; conditional use standards; stormwater management; on-premise signs; traffic impact analysis; and mixed use development.

After Mr. Coman explained the notice process for the joint City/County public hearing on adoption of the Zoning Ordinance on the JPA and the map, Mayor Worley felt it was only fair that the City and County split the costs for the first-class notices.

He explained that the next step in this process is for the City and County to adopt an Interlocal Agreement. After discussion by Council and the Commissioners, it was the consensus of both bodies that the City Council would consider adoption on January 27, 2004, and the County Commissioners would consider adoption on February 3, 2004.

Commissioner Chair Ramsey hoped that the remaining issues on the Zoning Ordinance for the JPA could be resolved by the first of the year.

After a brief discussion on when the proposed ordinance should be submitted to the City and Council planning commissions, it was the consensus of both bodies that submission be done not later than March 31, 2004.

Commissioner Young moved to approve County Resolution No. 03-1113. This motion was seconded by Commissioner Keever and carried unanimously.

Vice-Mayor Bellamy moved to approve City Resolution No. 03-189. This motion was seconded by Councilman Dunn and carried unanimously.

Councilman Dunn suggested the City and County work together to find a way to hold their meetings on different days or different times. In addition, he hoped that the City and County will work together regarding economic development.

Both bodies expressed their willingness to work together for the betterment of our community.

At 3:45 p.m. Commissioner Stanley moved to adjourn the Buncombe County meeting. This motion was seconded by Commissioner Young and carried unanimously.

At 3:45 p.m. Mayor Worley announced the City Council meeting was adjourned.

RESOLUTION BOOK NO. 28 – 54

Tuesday – November 25, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Diana Hollis Jones

PLEDGE OF ALLEGIANCE

U.S. Navy Veteran Larry Owen led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Ellis gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 11, 2003, AND THE WORKSESSION HELD ON NOVEMBER 18, 2003

B. RESOLUTION NO. 03-190 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY FOR A GRANT TO THE POLICE DEPARTMENT

Summary: The consideration of a resolution and budget amendment, in the amount of $9,480, to receive additional grant money from the North Carolina Governor's Highway Safety Program for crash investigation equipment and software and travel/training money for the Asheville Police Department's Regional County Coordinator

In August of 2003, City Council accepted an $8,000 grant from the Governor's Highway Safety Program (GHSP) to fund crash investigation equipment and software and travel/training needs for the City's Regional Coordinator. GHSP recently informed the City that it will receive an additional $9,480 in grant money. The total amount available to the City will now be $17,480. There is no match requirement for these funds.

The crash investigation equipment and software will enhance the capabilities of the Asheville Police Department to investigate vehicular accidents and provide greater safety to the officers at the scene of an accident. The travel/training funds will allow the Regional Coordinator to participate in highway safety meetings throughout the southeast offered by the Federal government as well as those in North Carolina offered by the State government to fulfill their duties as the Regional Coordinator.

City staff recommends the adoption of a resolution and budget amendment, in the amount of $9,480, to accept additional grant funding from the N C Governor's Highway Safety Program for crash investigation equipment and software and travel/training funds for the Regional Coordinator.

RESOLUTION BOOK NO. 28 – PAGE 55

C. ORDINANCE NO. 3068 - BUDGET AMENDMENT FOR ADDITIONAL GRANT MONIES FROM THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY

Summary: See Consent Agenda Item "B" above.

ORDINANCE BOOK NO. 21 – PAGE 5

D. RESOLUTION NO. 03-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE LIGHTING COMPANY TO FURNISH AND INSTALL THE LIGHTING SYSTEM FOR MEMORIAL STADIUM

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with The Lighting Company for the installation of field lighting at Memorial Stadium.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of renovation is the Memorial Stadium Complex, which is situated above McCormick Field. This park is the home of the Asheville Youth Sports Program, the Asheville Splash (women's semi-professional soccer team), the Asheville Grizzlies (men's semi-professional football team), the Asheville Assault (women's semi-professional football team), the Asheville-Buncombe Youth Soccer Association and many other user groups. This particular segment of the renovation has become a necessity within the last year, due to safety issues surrounding the existing system. Existing poles are too deteriorated for repair companies to work on them, light fixtures do not illuminate enough of the playing field, and "banks" of lights are going out in the middle of scheduled activity. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. The following is a list of the six qualified bidders that responded:

The Lighting Company	$107,092
M.B. Haynes Electric Company	$124,900
Progress Energy	$129,746
Newco Inc.	$130,000
Greenlight Electric Company	$134,111
Wise Electric Control Inc.	$169,726

The Lighting Company was the lowest responsible bidder, at a cost of $107,092. The bid process and The Lighting Company have complied with the Minority Business Plan. This project will be financed, along with other Fiscal Year 2004 equipment purchases, through an installment purchase contract over a period of five years. The Finance Department anticipates soliciting proposals for financing in January of 2004. Funding for this year's installment payments for the lighting project is included in the Parks and Recreation Fiscal Year Capital Improvement Plan.

The Parks and Recreation Department recommends that authorization be given to the City Manager to enter into a contract with The Lighting Company to furnish and install the lighting system for Memorial Stadium.

RESOLUTION BOOK NO. 28 – PAGE 56

E. RESOLUTION NO. 03-192 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM COMMISSION

Summary: The terms of Peter Loewer, Kathi Peterson; Ray Sanow, Bill Norwood, Robbie Williams and Michael Rangel, as members on the Asheville Film Commission, expired on November 1, 2003.

At City Council's worksession on November 18, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Sanow, Ms. Williams and Mr. Rangel to each serve a three year term respectively, terms to expire November 1, 2006, or until their successors have been appointed.

In addition, at City Council's worksession on November 18, 2003, City Council instructed the City Clerk to prepare the proper paperwork to appoint Ms. Alison Watson, Ms. Kathleen Kasben and Ms. Heidi Daugherty to each serve a three year term respectively, terms to expire November 1, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 57

F. RESOLUTION NO. 03-196 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Summary: Mr. Kenn Kotara has resigned as a member of the Public Art Board leaving a vacancy until December 31, 2005.

On November 18, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Ms. Dana Irwin to serve the unexpired term of Mr. Kotara, term to expire December 31, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 58

G. RESOLUTION NO. 03-197 - RESOLUTION REAPPOINTING MEMBERS TO THE BOARD OF DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: The terms of Assistant City Manager Jeff Richardson, Finance Director Bill Schaefer and Budget Director Ben Durant, as members of the Board of Directors of Victoria of Asheville Inc., expire on November 29, 2003.

At City Council's worksession on November 18, 2003, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Richardson, Mr. Schaefer and Mr. Durant to each serve an additional three year term, terms to expire November 29, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 59

H. RESOLUTION NO. 03-198 - RESOLUTION AUTHORIZING THE PARKS AND RECREATION DEPARTMENT TO PROCEED WITH A CONCEPTUAL PLAN FOR RENOVATIONS OF THE HISTORIC MEMORIAL STADIUM

Summary: This is the consideration of a resolution authorizing the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

The Parks and Recreation Department has been working the past several months on a conceptual design for renovations to historic Memorial Stadium. The Stadium was originally constructed in the late 1920's and dedicated in the early 1930's as a memorial for veterans who served and died in WWI. The Stadium was dedicated again to WWI and WWII veterans in the 1940's. However, a true memorial to the men and women who gave the ultimate sacrifice to our country was never properly constructed.

In addition, Memorial Stadium was for years the home of both Lee Edwards/Asheville High Cougars and the Stephens-Lee Bears. Today, a number of youth sports groups including the Asheville Youth Sports, Asheville Grizzlies, WNC Bears, Asheville Assault, Asheville Splash, Asheville-Buncombe Youth Soccer Association, and a number of other groups currently call Memorial Stadium home.

The Stadium is in desperate need of repairs to a number of features including the lights, press box and Stadium seating and, more importantly, a proper recognition to our war dead as originally planned still needs to be constructed at this site. A plan has been developed by the Parks and Recreation staff to incorporate these issues into a conceptual design for the Stadium. This plan will address a number of funding options that include local civic club contributions, veterans groups, grants and foundation funding, and sponsorships. It is anticipated that the cost for the renovations and upgrades will total $1.5 million. An Action Committee has been formed which will work with the Parks and Recreation Department to aggressively secure funding through grants, foundations and sponsorships, as well as the Capital Improvement Plan for the City of Asheville. The Department has also been working with Asheville Splash on a potential partnership that will assist in funding a portion of the cost. Memorial Stadium has been a high priority for the Department for a number of yeas due to the degree of use and age of the facility.

City staff is requesting City Council authorize the Parks and Recreation Department to proceed with a conceptual design for renovations to historic Memorial Stadium.

RESOLUTION BOOK NO. 28 – PAGE 60

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 891 PATTON AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT

On November 17, 2003, a letter was received by Dennis Ponder, Brooks & Medlock Engineering, PLLC, (representing petitioner) stating "Due to a number of conflicts in schedules and pending matters, I would like to request that the Harry's Cadillac matter be pulled from the November Council agenda. We will ask for a re-scheduling of this matter at a more appropriate time. I hope this postponement is acceptable and I think you for your help."

B. PUBLIC HEARING TO CONSIDER DESIGNATING THE CARROLL HOUSE, LOCATED AT 19 ZILLICOA STREET, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3069 - ORDINANCE DESIGNATING THE CARROLL HOUSE, LOCATED AT 19 ZILLICOA STREET, AS A LOCAL HISTORIC LANDMARK

Mayor Worley opened the public hearing at 5:17 p.m.

Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to designate the Carroll House, located at 19 Zillicoa Street, as a local historic landmark. This public hearing was advertised on November 14 and 21, 2003.

The Robert S. and Grace P. Carroll house, built in 1922 is located inside the western edge of the Montford Historic District facing east on Zillicoa Street. It is part of an original complex of single family structures that later became part of Highland Hospital. The house is 2 ½ - story plus attic built in the Normanesque/Tudor Revival style and constructed of randomly laid granite stones.

Psychiatrist Robert S. Carroll, founder of Highland Hospital, a nationally recognized mental health facility, lived at the house until 1946 with his second wife Grace P. Carroll, a world renowned concert pianist with a national an international reputation. The house was connected by proximity, function and association to the Highland Hospital complex. Dr. Carroll may have used the house occasionally for patient treatment and Mrs. Carroll used the music room both as her own studio and also for larger community based musical events.

The Robert S. and Grace P. Carroll House is significant for its association with the Carroll's, who built the house, founded Highland Hospital and made a significant contribution to the arts community in Asheville. It is also significant architecturally as an excellent example of the Norman/Tudor Revival/Craftsman style structure. The entire original configuration and architectural detailing of the exterior of the house remains intact except for the addition on the west elevation of an elevator tower, stairs and retaining wall on the south elevation and a fire escape on the north elevation.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in property taxes, which is approximately $2,200 annually. Currently the tax

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appraisal for the land is $194,100 and the structure is valued at $654,800, for a combined total of $848,900.

The ordinance designates the Robert S. and Grace P. Carroll House as a local historic landmark. The property included in the designation consists of the Robert S. and Grace P. Carroll House and the .78 acre parcel on which it is located as described on a plat. The designation includes the exterior of the house, some interior details and landscape features.

When a property is designated historic, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County (HRC). All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

The HRC, by unanimous vote, recommends to the Asheville City Council that the Robert S. and Grace P. Carroll House be designated as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Upon inquiry of Ms. Hazel Fobes, Ms. Merten explained how City Council is involved in the designation.

Mayor Worley closed the public hearing at 5:25 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3069. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 7

C. PUBLIC HEARING TO CONSIDER REZONING ONE LOT ON GLENDALE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3070 - ORDINANCE TO REZONE ONE LOT ON GLENDALE AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:27 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone one lot on Glendale Avenue from RS-8 Residential Single-Family High Density District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on November 14 and 21, 2003.

Petitioners Tom and Tammy Reilly requested the rezoning request. The properties are located within the City limits in the Oakley community. Glendale Avenue is one of the cross routes between Swannanoa River Road and Fairview Road in Oakley. There is a range of zoning districts in close proximity along this street. The River District is the zoning type along Glendale closest to Thompson Street. South from this area, the zoning is Commercial Industrial (CI) which includes the newly completed Target Store. The new Target Store placed the stormwater detention pond on property bordering Glendale Avenue as a part of the CI zoned property. In addition a secondary store access point connects from Glendale. Across from the CI zoned property are several properties zoned RM-16 Residential Multi-Family High Density District. Further south, and including the property included in this rezoning request, the properties are all zoned RS-8. Single family development is most common residential development type along Glendale Avenue. One nearby property to the rear of the Glendale lot, with access from Wood Avenue is the large Oak Knoll multi-family apartment community. In the past, growth pressures from businesses with access from River Hills Drive, the north end of Glendale Avenue and the Target Store have caused concern among residents in the Glendale Avenue area.

RM-8 Residential Multi-Family Medium Density District would allow either single family or multi-family housing at a rate of 8 units per acre or other limited uses that support residential areas. The RM-8 district is intended to provide a transitional area between high density single family areas and multi-family areas and to permit medium density multi-family development in areas where existing conditions make higher density developments inappropriate

The Glendale Avenue area has received development pressure from numerous commercial projects over the last decade. Protecting the remaining residential uses is appropriate for this area. The RM-8 zoning change provides a buffer from the high density residential uses at the rear of the property. In addition RM-8 zoning will provide for a mix of housing types in the neighborhood while at the same time blending with the underlying residential zoning density and character.

Staff recommends approval of the rezoning request. The Planning and Zoning Commission voted 6-0 to recommend approval.

Mayor Worley closed the public hearing at 5:33 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Bellamy asked that the staff be sensitive to the development in this neighborhood, e.g., landscaping and keeping traffic congestion to a minimum.

Councilman Mumpower moved for the adoption of Ordinance No. 3070. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 13

D. PUBLIC HEARING TO CONSIDER THE REZONING OF 5 LOTS ON HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3071 - ORDINANCE TO REZONE 5 LOTS ON HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 5:34 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone five lots on Hazel Mill Road from RM-8 Residential Multi-Family Medium Density District to

Community Business I District. This public hearing was advertised on November 14 and 21, 2003.

Mr. Pettibone said that the properties are located in the City limits on the south side of Hazel Mill Road south of the Patton Avenue/I-240/Smokey Park Bridge interchange (petitioner is Morosani and Associates). Surrounding land uses and zoning include commercial warehouse and storage to the north across Hazel Mill Road zoned Highway Business (HB), vacant property zoned Commercial Industrial (CI) to the east across Toxaway Street, and residential and vacant properties to the south and west.

The applicant wishes to rezone the properties in order to utilize them for uses permitted in the CB I District. The purpose of the CB I District is to provide areas for medium-density business and service uses serving several residential neighborhoods.

Currently, there are two office buildings with associated parking on the largest of the five properties. They are part of a project that was approved prior to the adoption of the Unified Development Ordinance (UDO) and the area's designation as RM-8 Residential Multi-Family Medium Density District. The previous zoning for the site was light industrial, as was the property located to the north across Hazel Mill Road. The other four parcels are vacant. The properties' access would be from Hazel Mill Road, which provides an entrance to and exit from Patton Avenue/I-240 and the Westgate Shopping and other areas north of I-240.

On Thursday, October 23, 2003, the applicant held a neighborhood meeting with members of the surrounding community.

Rezoning the properties would allow the applicant the opportunity to redevelop the parcels for uses permitted in the CB I District. It would provide for one of the UDO's least intensive commercial zoning categories on a street that already is used by significant non-residential vehicular traffic and serves commercial uses on both sides of the street. The small size of the property should also ensure a residential scale and a limited traffic impact, addressing two concerns raised by neighbors in the recent neighborhood/developer meeting.

In addition, a rezoning to CB I would legitimize the commercial use of the existing office buildings on the largest property since that use is currently non-conforming. CB I zoning on these parcels would also act as transition between the HB and CI to the north and east and the RM-8 residential neighborhood to the south and west.

In consideration of the above, the adjoining zoning and land uses in the area surrounding site, and the site's frontage on Hazel Mill Road, the proposed zoning change appears to be consistent with the intent and purpose of the UDO. Staff recommends approval of the rezoning request. The Planning and Zoning Commission voted 6-0 to recommend approval.

Upon inquiry of Vice-Mayor Bellamy, Mr. Pettibone said that a specific plan has not been brought forward so it's hard to address issues raised at the neighborhood/developer meeting. He did say that the scale of the project and traffic impact where the major concerns. With regard to traffic, he said that City staff didn't feel the rezoning itself warranted traffic calming measures. The City's Traffic Engineer did say that this area is on our priority list, but since it's not one of the busiest streets in the City, it's not one of the highest priorities. Again, there appear to be some traffic issues that are more far reaching that the rezoning could address and we will follow normal procedures for traffic calming.

Councilman Peterson expressed concern about the possibility of the owner combining the lots and building a different use allowed under the Community Business I District. He suggested that the property be rezoned to Neighborhood Business or Office to prohibit some of the uses, e.g., bars or nightclubs, near the residential area.

Planning & Development Director Scott Shuford said that the Community Business I District scale seemed to be appropriate for this particular situation and it allows a little more flexibility in terms of the likely uses for the applicant. The applicant did hear a lot from the neighborhood about the design of the building and as a result of that meeting an element of trust was built. That is something we are trying to achieve through the neighborhood/developer meeting process. Again, he did say that staff considered the full range of uses under the Community Business I District and felt that a bar would be unlikely to occur in an area that gets this level of traffic volume.

Councilman Mumpower was encouraged by the neighborhood/developer process that was used in this rezoning request.

Mr. George Morosani, developer, spoke in support of the proposed rezoning. He responded to Councilman Peterson's concern stating that one of the existing buildings is used by Memorial Mission Hospital. They have equipment in the building that zaps surgical packs for the hospital and under that zoning, it would not be allowed. He said the main thing that will control what he can and cannot use the property for is the strict limitation of the topography and the size of the buildings.

Mayor Worley closed the public hearing at 6:03 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Peterson felt that since any uses permitted under the Community Business I District would be allowed to be built on the property, he did not think they were compatible to the neighborhood and would not support the rezoning. He felt that Neighborhood Business District or Office would be more compatible.

Vice-Mayor Bellamy explained how the topography affected her decision to support the rezoning. Since the existing businesses opened, there has been a decrease in litter and graffiti on that part of the street and more eyes on the street can help with crime.

Councilman Ellis moved for the adoption of Ordinance No. 3071. This motion was seconded by Councilman Mumpower and carried on a 5-1 vote with Councilman Peterson voting "no."

ORDINANCE BOOK NO. 21 – PAGE 15

At 6:07 p.m., Mayor Worley announced a short recess.

E. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED ON POLE CREASMAN ROAD AND BREVARD ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

City Attorney Oast said that following the Planning & Zoning Commission meeting the City receive a protest petition on this rezoning. There were two property owners involved in signing the protest petition. The applicant has since advised him that the protestors have withdrawn their petitions and has been handed a copy of the signed withdrawal. Our code allows

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the withdrawal of protest petitions in writing submitted anytime prior to Council's vote. He has no reason to doubt the validity of the signatures, however, they are only copies. The applicant advised him that he mistakenly brought the copies instead of the originals and he could have the originals brought to use tomorrow. He said City Council could (1) continue the matter; or (2) adopt the ordinance, subject to a second reading at a later time. Ordinarily "in writing" he believes means bearing the original signature. That is not a statutory requirement but a requirement of our ordinance. The fact is that if Council does act on this tonight it would be subject to challenge, but the only people who would challenge it would be the people who signed the protest petition and subsequently withdrew it.

Upon inquiry of Councilman Peterson, City Attorney Oast explained why this protest petition issue is different from the one which came up for the Broadway Corridor rezoning.

Mr. Carr Swicegood, applicant, said that after receiving a copy of the protest petition he contacted the people who signed it and asked why they were against the rezoning. He noted that those people were given false information and now they are willing to support the rezoning. He did not realize that he only had copies of the withdrawals until he arrived at this meeting. He would be happy to drive to his office and look for the originals, however, he did not think he could be back in time before the meeting adjourned.

City Attorney Oast said that the language in the copies of the withdrawals is sufficient and the withdrawals do not have to be notarized, but he does need to have the originals.

Mayor Worley said that in order to protect the validity of action Council takes, City Council can (1) go forward with public hearing, close the public hearing and continue the vote until December 16, 2003; (2) continue the entire matter until December 16, 2003; or (3) take the risk of our action being challenged. He felt Council has a duty to try to assure what they do is done properly and is done in a way that will most likely successful in the event of a challenge.

Mr. Swicegood said that the City wants developers to work friendly with the neighborhood. He felt that the neighborhood should be willing to work with developers too. He then requested City Council continue the matter until December 16, 2003.

Councilman Dunn moved to continue the consideration of the Pole Creasman Road rezoning until December 16, 2003. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3072 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR NEIGHBORHOOD/DEVELOPER MEETINGS AS AN OPTIONAL, ALTERNATIVE STEP IN THE REVIEW PROCESS FOR REZONINGS, CERTAIN CONDITIONAL USE PERMITS, CONDITIONAL USE REZONINGS, AND LEVEL III DEVELOPMENTS

Mayor Worley said that this public hearing was held on October 14, 2003. This matter was then continued in order to give the Planning & Development Director time to meet with the focus group regarding the timing issue.

Planning & Development Director Scott Shuford said that at the Council meeting on October 14, 2003, City Council members expressed an interest in receiving training on these meetings. They are in the process of developing a training program that they think will be both informative and entertaining, and will schedule the training after the new Council is seated, likely in January, 2004. He has also provided several publications for Council's review. He felt they may be helpful in understanding the philosophy behind this type of dispute resolution process.

Mr. Shuford said the following are revised procedures for Neighborhood/Developer Meetings that address concerns raised by some focus group members about the timing issue. The revised time frame includes a 60 days notice period with the initial meeting occurring a minimum of 20 days prior to the City Council meeting for which the project is scheduled. Additionally, the procedures provide for posting of properties for Neighborhood/Developer Meetings.

Please note that he did not include a suggestion by Council members to list Neighborhood/Developer Meetings in *City Works*. This was done to respect the intent of the Neighborhood/Developer Meeting process – to keep the meeting focused primarily on the most-directly-affected persons.

He reviewed the following Neighborhood/Development Meeting Procedures:

- Developer registers project application a minimum of 60 days before the City Council meeting at which the public hearing is scheduled to occur.
    - Plans are placed on record and made available to the public at a central location (City Planning and Development Department).
    - Plans will provide as much information as available at time of posting.
    - Plans will be made available on City website if possible.
    - Staff contact person is clearly identified.
- Notification procedures:
    - Property owners within 400 feet of the property proposed for development would be mailed notice of the Neighborhood/Developer Meeting by the City of Asheville. This is a minimum notification area and developers are advised to determine if additional property owners should be notified (e.g., if the project is located on a dead-end road 600 feet long, perhaps it would be good practice for the developer to notify all property owners fronting the road); developers would be responsible for any additional mailing costs associated with a larger notice area.
    - Any affected neighborhood association registered with the City and located within 400 feet of the property proposed for development would also receive notice of the Neighborhood/Developer Meeting. It is expected that the designated person(s) receiving this notice will identify key participants outside the general notice area and arrange for them to attend the Neighborhood/Developer Meeting. However, this should not be construed as an open invitation for all neighborhood association members outside the notice area to attend. The intent is to have representation from affected neighborhood associations while ensuring that most neighborhood participants are from the notice area.
    - Timing: The City shall mail Neighborhood/Developer Meeting notices at least 60 days before the City Council meeting at which the public hearing is scheduled to occur. The initial Neighborhood/Developer Meeting shall occur no less than 20 days prior to the City Council meeting at which the public hearing is scheduled to occur.
    - The City of Asheville will also provide notice of the public hearing to adjacent and nearby property owners as provided for under state law or City Code requirements, whichever is more restrictive.
    - The City of Asheville will post the property, providing the date, time and place of the Neighborhood/Developer Meeting and the City Council public hearing.
- Meeting location: Neutral site of sufficient size for meeting.

- Meeting Facilitation - The meeting must be managed by someone who knows the rules (mediator/facilitator) and is able to effectively run a meeting. The developer will pay for the cost of the mediator/facilitator. City staff will attend the meeting as technical advisor(s) only and will not facilitate the meeting. City staff will also maintain a list of facilitators and may add to or remove names from this list depending on interest and demonstrated competence.
- Meeting Ground Rules - The following set of ground rules are adopted to promote effective communication during Neighborhood/Developer Meetings. These ground rules must be reviewed by the meeting facilitator at the outset of each meeting and "enforced" during the meeting by the facilitator.
  - Listen to one another (really listen before responding)
  - Ask for feedback from one another
  - Accept the need for compromise by each of us
  - No stereotyping (let's keep a level of objectivity in our discussions)
  - Be open minded
  - Clearly define our statements to insure that all parties understand their meaning
- Conduct of the Meeting – Meetings will have a structured agenda to include: Ground rules for the meeting; Areas of allowable discussion clarified; Clarification of any zoning rules that apply to the situation; Project presentation (including how the project addresses the "big picture"); Identification of areas of agreement and disagreement, Negotiation of issues of concern; and Identification of next steps, if any. City staff must attend the meeting to provide technical advice and information and to indicate official "condoning" of the process.
- Results of the Meeting - The meeting is intended to result in a signed document of supported and non-supported issues that will be generated by the facilitator (who will also identify the necessary signees). Alternately, the facilitator may submit a summary of key issues and concerns, particularly if no consensus is reached between the neighborhood participants themselves. City staff will provide any written materials from the facilitator in the staff report to the City Council, as well as providing a summary of the meeting in the staff report.

Mr. Shuford noted that a suggestion was made to notify Planning & Zoning Commission members about the neighborhood/developer meetings and to get their input on whether the requested action was a good idea. He explained why he did not think this was a good idea.

Mr. Shuford then thanked the Focus Group participants along with Mr. Paul Godfrey who served as the facilitator.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3072. This motion was seconded by Councilman Dunn and carried on a 5-1 vote, with Councilman Peterson voting "no.".

ORDINANCE BOOK NO. 21 – PAGE 17

V. NEW BUSINESS:

A. RESOLUTION NO. 03-199 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR A MINOR LEAGUE HOCKEY TEAM AFFILIATED WITH THE WORLD HOCKEY ASSOCIATION 2

Mr. Peter Crosa, Chair of the Civic Center Director, said that over the past several months the Civic Center Commission has conducted due diligence into the viability of two hockey leagues that concluded with our meeting of October 27, 2003. Based on our evaluation we recommended that Civic Center staff immediately begin negotiations with the World Hockey Association 2 (WHA2) for the placement of a hockey team in the Asheville Civic Center for the 2004/2005 hockey season. In addition we believe that the following guidelines should be followed during these negotiations:

1. Any upgrades or repairs required specifically for hockey should be the responsibility of the hockey team or league. The league or team's due diligence on the facility should be finalized before negotiations are complete.
2. Under no circumstances should City funds be used for the financial sustenance or viability of the hockey team.
3. Cognizant of the potential additional liability to the city as a result of having ice in the Civic Center, the contract should insure that this liability is mitigated through standard risk avoidance/diminution language.
4. The contract should seek to limit the city's liability from systems failures at the Civic Center through legal and other risk mitigation strategies. The center should be leased "as is" and not with a service level that is unattainable.

The Commission recognizes and proclaims that, in addition to the money collected from ticket and concession sales, a positive economic impact will be engendered to the City as a whole by the addition of 30 events at the Civic Center. This could mean 30-90,000 additional patrons of our restaurants, hotels, retailers and city parking facilities.

Civic Center Director David Pisha said that this is the consideration of a resolution authorizing the City Manager to sign and execute a contract and any related documents for a minor league hockey team affiliated with the World Hockey Association 2 (WHA2) to play it's home games at the Asheville Civic Center starting in the 2004-2005 season.

The following items are the major points of the contract:

- The term is for three years beginning July 1, 2004 and ending June 30, 2007.
- The team is responsible for any upgrades to the Ice Plant or ancillary equipment to meet their standards.
- The team has agreed to hold the City harmless for any losses resulting from any equipment, system or premises failure.
- The team agrees to pay for any repairs to the Ice Plant in excess of $2,500.00.
- The rent to be paid the Civic Center is based on ticket sales and actual attendance at games.
- The team is required to put down a $60,000.00 non-refundable deposit at the beginning of each season. It will be credited back to them on a pro-rata basis, but if for any reason the team stops play at any time, the remainder of any deposit is forfeited.
- The team is allowed to practice only at the discretion of the Civic Center Director when it does not interfere with the financial interests of the venue.
- Any promotions by the team that cost the City money are to be made up by the team.
- The City can terminate the contract should the lease interfere with the City's plans to perform major renovations or construct a new facility. It can also terminate the agreement it the cooling tower fails and the City decides not to purchase a new unit.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute any related contractual documents regarding booking a hockey team affiliated with the WHA2 into the Asheville Civic Center.

Mr. Pisha answered various questions/comments from Councilman Peterson, some being, but are not limited to: will there by any difficulty with ice change-over; what was factored into the calculation of rent; how will the non-hockey uses impact hockey; how much time will be available for public skating or youth leagues; have improvements been made to minimize problems encountered the last time hockey was in the Civic Center; and are there any significant capital improvements the City will need to make before hockey starts in 2004.

Mr. Dennis Justice, Fletcher resident, thanked the Civic Center Commission for their efforts to bring hockey back to Asheville. He did point out that the WHA2 has not done their due diligence in contacting the NBDL. He stressed that hockey and basketball must work together. He also felt the City review the language regarding WHA2 providing six months written notice if they wish to terminate the lease. He felt that if a new arena is built somewhere else, they would leave. He felt that a hefty penalty should be imposed if they do terminate the lease.

Mr. Scott Osborne felt that the way the City has planned the renovation Memorial Stadium can be used to address the Civic Center because there are public, private and entrepreneurial interests. He said that Council will see a new ice facility in the south end of town within the next six months to a year which will be available for the hockey team to practice on if they would like.

Vice-Mayor Bellamy said that the Council heard from the community that they wanted hockey and instructed staff to move in that direction.

Councilman Mumpower and Councilman Peterson both commended the Civic Center Commission, Civic Center Director, and Assistant City Attorney Euler for their hard work and efforts on negotiating a contract that goes a long way to protect the City's interests.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-198. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 62

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 31-November 13, 2003: Buncombe County (Transit Services), Reed Street (Streets), Bobby Sloan (Parks & Recreation), Karen Major (Police), Nancy Flack (Fire) and Carolyn Hembree (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

B. PRIMARY ELECTION RESULTS - CITY OF ASHEVILLE - OCTOBER 7, 2003 GENERAL ELECTION RESULTS - CITY OF ASHEVILLE, NOVEMBER 4, 2003

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes cast in the Primary Election, City of Asheville, held on October 7, 2003. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 4, 2003.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Ms. Hazel Fobes

Ms. Hazel Fobes, Chair of the Citizens for Safe Drinking Water and Air (CSDWA), read a letter of appreciation to Councilman Peterson from members of CSDWA expressing their deep respect and gratitude for his steady presence, exploratory questioning and insightful judgment to the programs and issues before the City Council. Members of CSDWA hope that Councilman Peterson will retain his seat on the Regional Water Authority until the expiration of his term in September of 2005.

Comments by Ms. Julie Brandt

Ms. Julie Brant, member of the Asheville People Advocating Real Conservancy, said that her organization is a citizens group opposed to the selling of public park land for the proposed Grove Park Inn building for their luxury high-rise condominiums. She asked that if any negotiations were taking place regarding the Grove Park Inn, the Downtown Development Agreement or amendment to the Option she wanted to be made aware of them so she could keep her organization accurately informed.

Mayor Worley responded that he was not aware of any negotiations or conversations that any member of City Council has had with the Grove Park Inn regarding any changes or any alterations to the agreement that we entered into with them. He did state that he would be happy to sit down with her and review their website for any inaccuracies that might exist.

City Manager Westbrook suggested Ms. Brandt call him when they get information from the media, just to confirm the accuracy.

Air Quality Resolution Request

Mr. Will Harlan, Editor of Blue Ridge Outdoors Magazine, explained why it was important for Asheville to join the resolution urging the N.C. Attorney General Roy Cooper to file a petition for review against the Environmental Protection Agency's "Routine Maintenance" Rule Change in the New Source Review Provision of the Clean Air Act and to urge the entire North Carolina congressional delegation to co-sponsor legislation in Congress to repeal the Environmental Protection Agency's "Routine Maintenance" ruling. He explained that the rule change re-defines the term "routine maintenance" to include an annual investment valued at up to 20% of the total value of older power plants, factories and refineries. He said this policy will create a perpetual exempt status of tens of thousands of heavily polluting industries and will result in smokestack emission levels that will adversely affect the health North Carolinians and people throughout the county. He said that Jackson County, Sylva and Chapel Hill have joined the resolution with several more pending. He asked that the resolution be placed on Council's December 16, 2003, formal agenda for possible action because there is a late December deadline within which to join said resolution.

Mr. Michael Morgan also spoke in support of the City joining the resolution.

Ms. Nancy Thompson, Manager of Community Relations for Progress Energy, pointed out that the City of Raleigh, City of Winston-Salem, and Town of Black Mountain have all opposed joining the resolution and the City of Durham has tabled the resolution. She explained some inaccurate conclusions from the ruling that the Canary Coalition's draft resolution contains. She felt that the resolution places an unnecessary financial burden on our manufacturers in already weakened economy. She felt that maintaining a balance between the environment and the economy growth is important and urged City Council to not join in the resolution.

Comments by Mr. Mike Fryar

Mr. Mike Fryar spoke about the inaccuracies of the recent annexation of his property on Smoky Park Highway.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:17 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Exhibit "A" 347

MUNICIPAL

October 7, 2003

ABSTRACT OF VOTES

FOR

ASHEVILLE CITY COUNCIL OFFICERS

FOR

BUNCOMBE COUNTY, NC

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the Clerk of Superior Court. One copy is to be retained by County Board of Elections. One copy is to be mailed on the canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina.

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 10th day of October, 2003

Lucy B. Smith

This day personally appeared before me, JAMES BYRD, Chairman of the BUNCOMBE County Board of Elections, who, being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this the 10th day of OCTOBER, 2003

(Seal)

My Commission (if any) Expires: 6/14/05

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election **10/07/2003** **ASHEVILLE PRIMARY**

ASHEVILLE CITY COUNCIL

(Continued..)

Precinct	Craig F. Young	Rod A. Whiteside	William McKinley Stamey, III	Ryan Pickens	Chris Pelly
01.1	17	101	17	22	20
02.1	19	137	14	54	65
03.1	28	116	31	52	53
04.1	21	50	42	28	72
05.1	68	100	143	38	95
06.1	40	43	48	8	103
07.1	32	98	45	28	78
08.1	37	225	29	22	29
09.1	47	52	53	19	45
10.1	10	135	7	10	11
11.1	4	82	2	6	10
12.1	33	34	22	22	35
13.1	18	31	22	5	19
14.1	79	76	48	16	25
15.1	45	52	61	27	60
16.1	75	32	56	18	30
17.1	33	56	57	28	83
18.1	48	77	68	8	60
19.1	15	21	32	6	6
20.1	9	20	15	8	23
21.1	52	63	53	21	237
22 1	26	44	76	19	42
23.1	29	26	34	10	134
24.1	39	18	43	14	16
25.1	45	32	80	13	127
26.1	29	35	39	15	29
27.1	26	26	49	11	36
28.1	20	46	31	24	72
29.1	32	34	53	13	31
30.1	0	0	0	0	0
31.1	0	0	0	0	0
32.1	0	0	0	0	0
33 1	0	0	0	0	0
34.1	0	0	0	0	0
35.1	0	0	0	0	0
36.1	0	0	0	0	0
37.1	0	0	0	0	0
38.1	0	0	0	0	0
39.1	0	0	0	0	0

Release Date: Oc [illegible] 03 12:36PM

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election 1 03 **ASHEVILLE PRIMARY**

ASHEVILLE CITY COUNCIL

Precinct	Craig F. Young		Rod A. Whiteside		William McKinley Stamey, III		Ryan Pickens		Chris Pelly		(Continued..)
40 1	0		0		0		0		0		
41 1	0		0		0		0		0		
42.1	0		0		0		0		0		
43.1	0		0		0		0		0		
44.1	0		0		0		0		0		
45.1	0		0		0		0		0		
46.1	0		0		0		0		0		
47.1	0		0		0		0		0		
48.1	0		0		0		0		0		
49.1	0		0		0		0		0		
50.1	0		0		0		0		0		
51.1	0		0		0		0		0		
52.1	0		0		0		0		0		
53.1	0		0		0		0		0		
54.1	0		0		0		0		0		
55.1	0		0		0		0		0		
56.1	0		0		0		0		0		
57.1	0		0		0		0		0		
58.1	0		0		0		0		0		
59.1	0		0		0		0		0		
60.1	0		0		0		0		0		
61.1	0		0		0		0		0		
62.1	0		0		0		0		0		
63.1	0		0		0		0		0		
64.1	0		0		0		0		0		
65 1	0		0		0		0		0		
66.1	0		0		0		0		0		
67.1	0		0		0		0		0		
68.1	0		0		0		0		0		
681	0		0		0		0		0		
69.1	0		0		0		0		0		
70.1	0		0		0		0		0		
71.1	0		0		0		0		0		
ABSENTEE	48		97		57		37		97		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	1		4		4		2		2		
TRANSFER	1		4		1		2		2		
Totals	1,026	4%	1,967	8%	1,332	6%	606	3%	1,747	7%	

349

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election **10/07/2003** **ASHEVILLE PRIMARY**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	**Brownie Newman**	**Adam Leslie McBroon**	**Jan Howard**	**David Goree**	**Bryan Freeborn**	**(Continued..)**
01.1	95	15	25	2	10	
02.1	358	57	58	29	36	
03.1	254	50	51	32	41	
04.1	221	13	32	14	14	
05.1	332	23	73	14	8	
06.1	167	27	40	31	14	
07.1	234	33	115	25	22	
08.1	143	18	20	14	13	
09.1	123	17	33	21	16	
10.1	57	5	8	2	1	
11.1	47	12	8	4	10	
12.1	119	19	24	14	12	
13.1	83	13	12	13	7	
14.1	119	17	16	21	18	
15.1	184	25	41	29	30	
16.1	144	19	32	33	18	
17.1	222	16	45	14	19	
18.1	183	8	37	11	3	
19.1	22	3	9	2	3	
20.1	63	8	25	9	10	
21.1	158	12	37	9	9	
22.1	126	9	38	3	15	
23.1	82	4	15	11	6	
24.1	49	6	19	12	15	
25.1	123	15	30	31	10	
26.1	77	8	14	16	13	
27.1	140	14	27	8	9	
28.1	195	14	40	13	7	
29.1	102	8	18	4	8	
30.1	0	0	0	0	0	
31.1	0	0	0	0	0	
32.1	0	0	0	0	0	
33.1	0	0	0	0	0	
34.1	0	0	0	0	0	
35.1	0	0	0	0	0	
36.1	0	0	0	0	0	
37.1	0	0	0	0	0	
38.1	0	0	0	0	0	
39.1	0	0	0	0	0	

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election 103 **ASHEVILLE PRIMARY**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Brownie Newman		Adam Leslie McBroon		Jan Howard		David Goree		Bryan Freeborn		(Continued..)
40.1	0		0		0		0		0		
41.1	0		0		0		0		0		
42.1	0		0		0		0		0		
43.1	0		0		0		0		0		
44.1	0		0		0		0		0		
45.1	0		0		0		0		0		
46.1	0		0		0		0		0		
47.1	0		0		0		0		0		
48.1	0		0		0		0		0		
49.1	0		0		0		0		0		
50.1	0		0		0		0		0		
51.1	0		0		0		0		0		
52.1	0		0		0		0		0		
53.1	0		0		0		0		0		
54.1	0		0		0		0		0		
55.1	0		0		0		0		0		
56.1	0		0		0		0		0		
57.1	0		0		0		0		0		
58.1	0		0		0		0		0		
59.1	0		0		0		0		0		
60.1	0		0		0		0		0		
61.1	0		0		0		0		0		
62.1	0		0		0		0		0		
63.1	0		0		0		0		0		
64.1	0		0		0		0		0		
65.1	0		0		0		0		0		
66.1	0		0		0		0		0		
67.1	0		0		0		0		0		
68.1	0		0		0		0		0		
681	0		0		0		0		0		
69.1	0		0		0		0		0		
70.1	0		0		0		0		0		
71.1	0		0		0		0		0		
ABSENTEE	203		21		43		14		22		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	9		4		1		1		3		
TRANSFER	12		2		0		3		3		
Totals	4,446	19%	515	2%	986	4%	459	2%	425	2%	

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OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election 10/07/2003 **ASHEVILLE PRIMARY**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Jim Ellis	Jan Davis	Terry M. Bellamy	Totals
01.1	50	49	135	558
02.1	43	80	325	1,275
03.1	55	81	174	1,018
04.1	107	149	178	941
05.1	299	340	286	1,819
06.1	69	94	128	812
07.1	92	94	218	1,114
08.1	70	79	211	910
09.1	67	98	105	696
10.1	26	41	152	465
11.1	19	24	109	337
12.1	40	64	100	538
13.1	46	71	89	429
14.1	53	98	144	730
15.1	92	117	143	906
16.1	72	105	126	760
17.1	126	173	168	1,040
18.1	166	149	176	994
19.1	42	38	29	228
20.1	20	42	39	291
21.1	85	113	160	1,009
22.1	112	143	122	775
23.1	77	87	71	586
24.1	60	76	53	420
25.1	97	100	107	810
26.1	80	111	79	545
27.1	110	129	124	709
28.1	64	104	119	749
29.1	124	96	124	647
30.1	0	0	0	0
31.1	0	0	0	0
32.1	0	0	0	0
33.1	0	0	0	0
34.1	0	0	0	0
35.1	0	0	0	0
36.1	0	0	0	0
37.1	0	0	0	0
38.1	0	0	0	0
39.1	0	0	0	0

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election 1 [illegible] 03 **ASHEVILLE PRIMARY**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Jim Ellis		Jan Davis		Terry M. Bellamy		Totals
40.1	0		0		0		0
41.1	0		0		0		0
42.1	0		0		0		0
43.1	0		0		0		0
44.1	0		0		0		0
45.1	0		0		0		0
46.1	0		0		0		0
47.1	0		0		0		0
48.1	0		0		0		0
49.1	0		0		0		0
50.1	0		0		0		0
51.1	0		0		0		0
52.1	0		0		0		0
53.1	0		0		0		0
54.1	0		0		0		0
55.1	0		0		0		0
56.1	0		0		0		0
57.1	0		0		0		0
58.1	0		0		0		0
59.1	0		0		0		0
60.1	0		0		0		0
61.1	0		0		0		0
62.1	0		0		0		0
63.1	0		0		0		0
64.1	0		0		0		0
65.1	0		0		0		0
66.1	0		0		0		0
67.1	0		0		0		0
68.1	0		0		0		0
681	0		0		0		0
69.1	0		0		0		0
70.1	0		0		0		0
71.1	0		0		0		0
ABSENTEE	132		156		181		1,108
CURBSIDE	0		0		0		0
PROVISIONAL	11		9		5		56
TRANSFER	4		5		9		48
Totals	2,510	11%	3,115	13%	4,189	18%	23,323

334.

Exhibit "B"

MUNICIPAL

November 4, 2003
ABSTRACT OF VOTES
FOR
CITY OF ASHEVILLE OFFICERS
FOR
BUNCOMBE COUNTY, NC

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk. One copy is to be retained by County Board of Elections. One copy is to be mailed on the canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina.

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 7th day of November, 2003

Jone P. Byrd

Lucy N. Smith

This day personally appeared before me, Jone P. Byrd, Chairman of the BUNCOMBE County Board of Elections, who, being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed

my notarial seal, this the 7th day of NOVEMBER, 2003

(Seal)

My Commission (if any) Expires: 6/14/05

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election 2003 **2003 MUNICIPAL GENERAL**

ASHEVILLE CITY COUNCIL

Precinct	Terry M. Bellamy	Jan Davis	Jim Ellis	Brownie Newman	Chris Pelly
01.1	210	92	79	164	84
02.1	565	113	65	529	371
03.1	431	140	89	431	299
04.1	316	255	191	317	205
05.1	565	654	547	507	330
06.1	258	217	170	237	220
07 1	380	159	140	348	280
08.1	395	166	160	307	142
09.1	249	203	182	211	169
10.1	217	60	49	119	41
11.1	163	40	28	97	36
12.1	200	109	89	198	147
13.1	170	133	107	135	98
14.1	289	192	131	221	146
15.1	333	236	187	298	235
16.1	290	262	215	246	201
17.1	330	296	239	341	248
18.1	360	455	400	279	140
19.1	82	109	97	39	24
20 1	77	74	64	93	84
21.1	329	256	210	268	422
22 1	243	277	232	197	136
23 1	132	192	166	117	216
24.1	150	222	184	82	92
25.1	235	227	211	197	226
26.1	136	159	134	115	72
27 1	247	238	198	209	137
28.1	270	175	148	302	195
29.1	240	268	251	144	108
30.1	0	0	0	0	0
31.1	0	0	0	0	0
32 1	0	0	0	0	0
33.1	0	0	0	0	0
34.1	0	0	0	0	0
35.1	0	0	0	0	0
36.1	0	0	0	0	0
37 1	0	0	0	0	0
38.1	0	0	0	0	0
39.1	0	0	0	0	0

(Continued..)

Release Date: Nov 7 2003 1:14PM

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election **11/04/2003** **2003 MUNICIPAL GENERAL**

ASHEVILLE CITY COUNCIL

Precinct	Terry M. Bellamy	Jan Davis	Jim Ellis	Brownie Newman	Chris Pelly	(Continued..)
40 1	0	0	0	0	0	
41 1	0	0	0	0	0	
42 1	0	0	0	0	0	
43 1	0	0	0	0	0	
44 1	0	0	0	0	0	
45 1	0	0	0	0	0	
46 1	0	0	0	0	0	
47.1	0	0	0	0	0	
48 1	0	0	0	0	0	
49.1	0	0	0	0	0	
50.1	0	0	0	0	0	
51.1	0	0	0	0	0	
52.1	0	0	0	0	0	
53 1	0	0	0	0	0	
54 1	0	0	0	0	0	
55.1	0	0	0	0	0	
56.1	0	0	0	0	0	
57.1	0	0	0	0	0	
58 1	0	0	0	0	0	
59 1	0	0	0	0	0	
60.1	0	0	0	0	0	
61.1	0	0	0	0	0	
62.1	0	0	0	0	0	
63.1	0	0	0	0	0	
64.1	0	0	0	0	0	
65.1	0	0	0	0	0	
66.1	0	0	0	0	0	
67.1	0	0	0	0	0	
68.1	0	0	0	0	0	
681	0	0	0	0	0	
69.1	0	0	0	0	0	
70.1	0	0	0	0	0	
71.1	0	0	0	0	0	
ABSENTEE	400	293	257	392	280	
CURBSIDE	0	0	0	0	0	
PROVISIONAL	21	18	13	24	15	
TRANSFER	7	0	1	12	9	
Totals	8,290 23%	6,290 18%	5,234 15%	7,176 20%	5,408 15%	

Release Date: Nov. 7,2003 1:14PM

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election 2003 **2003 MUNICIPAL GENERAL**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Rod A. Whiteside	Write-in Robin Cape	Totals
01.1	135	0	764
02.1	180	0	1,823
03.1	173	0	1,563
04.1	73	0	1,357
05.1	146	2	2,751
06.1	82	0	1,184
07.1	166	0	1,473
08.1	324	0	1,494
09.1	123	0	1,137
10.1	165	0	651
11.1	115	0	479
12.1	77	0	820
13.1	77	0	720
14.1	152	0	1,131
15.1	109	0	1,398
16.1	103	0	1,317
17.1	105	0	1,559
18.1	145	0	1,779
19.1	33	0	384
20.1	39	0	431
21.1	107	0	1,592
22.1	69	0	1,154
23.1	45	0	868
24.1	61	0	791
25.1	86	0	1,182
26.1	60	0	676
27.1	56	0	1,085
28.1	94	7	1,191
29.1	80	0	1,091
30.1	0	0	0
31.1	0	0	0
32.1	0	0	0
33.1	0	0	0
34.1	0	0	0
35.1	0	0	0
36.1	0	0	0
37.1	0	0	0
38.1	0	0	0
39.1	0	0	0

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OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election **11/04/2003** **2003 MUNICIPAL GENERAL**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Rod A. Whiteside	Write-in Robin Cape	Totals
40.1	0	0	0
41.1	0	0	0
42.1	0	0	0
43.1	0	0	0
44.1	0	0	0
45.1	0	0	0
46.1	0	0	0
47.1	0	0	0
48.1	0	0	0
49.1	0	0	0
50.1	0	0	0
51.1	0	0	0
52.1	0	0	0
53.1	0	0	0
54.1	0	0	0
55.1	0	0	0
56.1	0	0	0
57.1	0	0	0
58.1	0	0	0
59.1	0	0	0
60.1	0	0	0
61.1	0	0	0
62.1	0	0	0
63.1	0	0	0
64.1	0	0	0
65.1	0	0	0
66.1	0	0	0
67.1	0	0	0
68.1	0	0	0
681	0	0	0
69.1	0	0	0
70.1	0	0	0
71.1	0	0	0
ABSENTEE	199	0	1,821
CURBSIDE	0	0	0
PROVISIONAL	13	0	104
TRANSFER	5	0	34
Totals	3,397 9%	9 0%	35,804

Release Date: N( )3 1:14PM

Nov. 4th, 2003 General Election **Asheville City Council** **Write-in Vote Count Summary**

Count of NAME	
NAME	Total
ABB	1
ABC	1
ADAM LESLIE MCBROOM	1
ADAM MCBROOM	1
ADAM ROACH	1
ANDERSON,TODD	1
ANDREW-GENTRY	1
BILL STAMEY	2
BILL STEWART	2
BRIAN PETERSON	4
BROWN-R	1
CAPE	1
CECELIAJOHNSON	1
CHANDLER	1
CHARLES MANSON	1
CRAIG MADISON	1
CRAIG YOUNG	1
CRAIGYOUNG	2
DAVID GOREE	1
DUNN	1
DUSTY PLESS	1
ED STEIN	1
ELVIS	1
ERVIN HUNTER, SR.	1
FRANK ZAPPA	1
FREEBORN, BRYAN	1
GAMERA	1
GEORGE CARLIN	1
HENERY CHANDLER	1
HENRY CHANDLER	1
HENRYCHANDLER	1
HOLLY JONES	1
HOMER SIMPSON	1
HOWARD, JAN	1
J.R. 'BOB' DOBBS	1
JAMES BRADLEY	1
JAN HOWARD	1
JIM BROWN	2
JIM.BROWN	1
JIMBROWN	1
JIMELLIS	1
JOHN BOYLE	1
JOHN LANGDON	1
JON	1
KELLY SINGLETON	1
LEWIS LANKFORD	1
LOU BELLOWS	1
MATT-KERN	1
MELANIE KASLIK	1
MICHAEL DIETHELM	1
MICHAEL RUNYON	1
MICKEY MAHAFFEY	1

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Nov. 4th, 2003 General Election **Asheville City Council** **Write-In Vote Count Summary**

Count of NAME	
NAME	Total
MIKE DIETHELM	1
NEIL NEWBERRY	1
NNNEE-OF-THE-ABOVE	1
NONE	1
NONE OF	1
NONE OF ABOVE	1
NONE OF THE ABOVE	1
PICK PICKENS	1
PICKENS, RYAN	1
RICHARD E. FOOR JR.	1
RL BAILEY	1
ROBERT BROWN	1
ROBIN CAPE	8
ROBINCAPE	1
ROBINCAPEROBINCAPE.	1
ROD A. WHITESIDE	1
ROD WHITESIDE	1
RYAN PICKENS	2
TERRY M BELLAMY	1
TRAVIS LEDFORD	1
WILLIAM STAMEY	1
YOUNG	1
Grand Total	89

Write-In Results:

CANDIDATE NAME:	Total Vote Count:	
Robin Cape	9	✓

Joe P. Byrd Jones R. Byrd, Chairman

Lucy M. Smith Lucy M. Smith, Secretary

Penny Squires Penny Squires, Member

Tuesday - December 2, 2003 - 4:10 p.m.

ORGANIZATIONAL SESSION:

Mayor Charles R. Worley welcomed everyone to the organizational session. He then introduced Air Force Veteran John Lorec, Past National Commander of the AMVETS and current active member with AMVETS Post 665, who asked that everyone stand and recite the Pledge of Allegiance. Mayor Worley then introduced The Reverend Pete Peery from First Presbyterian Church who gave the invocation.

The Honorable Gary Cash, Chief District Court Judge, Buncombe County, administered the Oath of Office to the following:

Council Member Terry M. Bellamy
Council Member Jan B. Davis
Council Member Brownie W. Newman

RESOLUTION NO. 03-193 - RESOLUTION OF APPRECIATION FOR COUNCILMAN BRIAN L. PETERSON

Mayor Worley read the resolution.

Councilwoman Bellamy moved to adopt Resolution No. 03-193. This motion was seconded by Councilwoman Jones and carried unanimously.

Individual Council Members expressed words of appreciation to Mr. Peterson.

Mayor Worley presented Mr. Peterson with the resolution, a plaque, his name plates and a City pen.

RESOLUTION BOOK NO. 28 - PAGE 63

RESOLUTION NO. 03-194 - RESOLUTION OF APPRECIATION FOR COUNCILMAN JAMES E. ELLIS

Mayor Worley read the resolution.

Councilwoman Jones moved to adopt Resolution No. 03-194. This motion was seconded by Councilman Dunn and carried unanimously.

Individual Council Members expressed words of appreciation to Mr. Ellis.

Mayor Worley presented Mr. Ellis with the resolution, a plaque, his name plates and a City pen.

RESOLUTION BOOK NO. 28 - PAGE 64

ELECTION OF VICE-MAYOR

Councilman Davis nominated Councilman Mumpower as Vice-Mayor of the City of Asheville. Councilman Dunn seconded the nomination.

After hearing no more nominations, Councilman Dunn moved to close the floor for nominations. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Worley then announced that the Vice-Mayor is R. Carl Mumpower.

Mayor Worley expressed appreciation to Councilwoman Bellamy for her two years of service as Vice-Mayor. He felt that Councilwoman Bellamy served in that position well and is a tremendous asset to City Council.

Councilwoman Bellamy said that she was honored to have served as Vice-Mayor and would work to keep the lines of communication open.

Vice-Mayor Mumpower also thanked Councilwoman Bellamy for her services and for Council's support in his position as Vice-Mayor.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 4:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – December 9, 2003 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Agreement with the N. C. Dept. of Transportation for Landscaping Adjacent to the W.T. Weaver Greenway

Summary: The consideration of a resolution authorizing the City Manager to sign a supplemental agreement with the N. C. Dept. of Transportation (NC DOT) for landscaping adjacent to the W.T. Weaver Greenway.

The City of Asheville received a grant from the NC DOT to install a greenway along W.T. Weaver Boulevard from Barnard Avenue to Broadway Street in Fiscal Year 2000. The amount of the grant was $300,000. There was no local match for the grant. The actual cost of the construction was approximately $200,000.

The City of Asheville and UNC-Asheville requested some of the remaining funds be used to provide landscaping to the W.T. Weaver Greenway. The City requested $34,070, which has been approved by the NC DOT. The grant does not require any local match.

Prior to requesting the money for the landscaping, City staff requested the remaining $100,000 for another greenway project but was denied because the project did not qualify under this original municipal agreement.

Staff recommends that City Council authorize the City Manager to sign a supplemental agreement with the NC DOT for landscaping adjacent to the W.T. Weaver Greenway in the amount of $34,070.

Easement across Brotherton Avenue for a Private Residential Sewer Line

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Brotherton Avenue for a private residential sewer line.

The City owns property (PIN No. 9638.18-21-9316) located on Brotherton Avenue and Virginia Avenue and the unopened right-of-way on Hubbard Street. The property is in the process of going back on the market after a sale contract failed to close. Infrastructure has been installed on the buildable portion of the property. The portion of the property near Hubbard Street is wooded and steep and is crossed by a sewer main. The intended use for that portion of the property is for green space.

David M. Bennert owns property on Hudson Street, which backs up to the unopened right-of-way of Hubbard Street where he is building two houses. Due to the topography and the location of the sewer main, the most direct and efficient route to provide sewer to the new houses is across unopened Hubbard Street and a portion of the City's property. The requested easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the use of the easement area for green space, which is the proposed use of that portion of the property.

Staff recommends adoption of the resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Brotherton Avenue for a private residential sewer line to David M. Bennert.

Contract and Budget Amendment for Synthetic Turf at Azalea Park and Memorial Stadium

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for the construction and installation of synthetic turf at Azalea Park and Memorial Stadium and the associated budget amendment.

The Parks and Recreation Department, along with its partner, WNC Soccer Foundation, has raised almost $2,250,000 toward the development of the first two phases of Azalea Park. These phases include the development of four synthetic turf soccer fields, construction of restroom/ concession facility, a Leathers playground, parking, and greenway trails. After extensive research, both the Parks and Recreation Department and the WNC Soccer Foundation have concluded that synthetic turf soccer fields will greatly enhance the playability for the John B. Lewis Soccer Complex. This will be accomplished by allowing additional practice times and games for soccer and other events without affecting the playing surface. This will also allow for the complex to be used in inclement weather for regular play as well as tournament competition. In addition, no harmful chemicals will need to be used on the fields.

The Parks and Recreation Department solicited bids from a number of vendors. The specifications in the bid package required the surface to be FIFA (Federation International Football Association) approved. FIFA is the international governing body of soccer. This insured that the quality of the product would be of the highest standards possible for the safety of the participants and durability of the surface. In addition, the bid package included replacing the grass field at Memorial Stadium with synthetic turf. The cost for this project is anticipated to be totally paid for by one of the user groups at Memorial Stadium. In calculating the final breakdown for the bids, staff deducted the amount of in-house labor that will be used in the construction, based upon the vendor's recommendation. In addition, staff had to take into consideration the specifications by the vendors in order to determine the amount of in-house support needed to meet the warranty for the products.

A total of four bids were received for the project as follows with the amount of cost savings deducted from each amount and adding back in-house material costs:

Vendor	Bid Price	Minus Cost savings	Plus Add. Items in sub-base Construction	Total
Taylor Murphy	$2,362,950	$1,717,950	$0	$1,717,950
Phillips & Jordan	$2,352,375	$1,762,970	$0	$1,762,970
Ballard Const. (e-turf)	$2,432,639	$1,522,861	$241,270	$1,764,131
Ballard Const. (f-turf)	$3,045,771	$2,135,993	$241,270	$2,377,263

After careful consideration, the Parks and Recreation Department and WNC Soccer Foundation recommend awarding the contract to Taylor Murphy Construction Company at a total price of $1,717,950. This project will be financed along with other Fiscal Year 2004 purchases through an installment purchase contract over a period of five years. The Finance Department anticipates soliciting proposals for financing in January of 2004. Funding for this first year's installment payment is included in the current funds for Azalea Park. The Parks and Recreation Department anticipates a majority of the funds for payment of the installment purchase contract to occur from sponsorships, foundation, and grant funding. Again, the funding for Memorial Stadium is anticipated to be totally paid for by one of the user groups.

The budget amendment includes funds secured from a number of sources including the Janirve Foundation for $500,000, Wachovia for $25,000, Arby's for $10,000, the N. C. Dept. of Transportation for $400,000 and several other individual donations for a total of $988,400.

The Parks and Recreation Department anticipates starting construction for this project in the next few months with completion of the John B. Lewis Soccer Complex in the fall of 2004.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract with Taylor Murphy Construction Company for $1,717,950 for the construction and installation of synthetic turf at Azalea Park and Memorial Stadium and to approve a budget amendment totaling $988,400.

Mr. Brinson responded to various questions from Council regarding the bids.

Chestnut Street Sidewalk Replacement

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dee Williams and Company to install sidewalks located along Chestnut Street in Asheville, North Carolina.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along the north side of Chestnut Street between Liberty Street and Furman Avenue. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Participation	Drug Free	Bond	Bid
Candler Concrete Works, Inc.	0	Yes	Yes	$158,287.90
Burleson Construction				$136,431.00
Dee Williams And Company Inc.	100%	Yes	Yes	$110,388.00

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Dee Williams and Company Inc. to install sidewalks along the north side of Chestnut Street between Liberty Street and Furman Avenue.

Mr. David Foster, Street Superintendent, responded to questions from Councilwoman Bellamy regarding sidewalk replacements vs. new sidewalks. City Engineer Cathy Ball also responded in that the City is continually looking for new funding for sidewalks.

Councilwoman Bellamy suggested we advertise information regarding Americans with Disabilities Act access on sidewalks on our Government Channel. City Manager Westbrook said that we are just about at our max with equipment and personnel for additions to our Government Channel, but will be able to include that information electronically.

Budget Amendment for Ballfield Lights at Valley Springs Middle School

Summary: The consideration of a budget amendment, in the amount of $33,420, for the installation of ballfield lights at Valley Springs Middle School.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of additional work is the Valley Springs Middle School ballfield complex. This project will be for lighting an additional ballfield at the complex. The site is the home for the South Buncombe Sports and Recreation Association. On June 25, 1992, the City of Asheville entered into a 30-year agreement with the Buncombe County School Board. This agreement stated that the Buncombe County School Board would provide land at Valley Springs Middle School for the purpose of providing athletic fields (baseball/softball) that the City of Asheville would fund, install, and maintain. This agreement provides for the much-needed athletic field space in South Buncombe and for the students at Valley Springs Middle School. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. Musco Lighting Company agreed to do the project for $33,420. Through the bid process, Musco Lighting Company has complied with the Minority Business Plan.

This project will be completely funded from a donation by the South Buncombe Sports and Recreation Association.

The Parks and Recreation Department recommend the approval of a budget amendment, in the amount of $33,420, for the installation of ballfield lighting at Valley Springs Middle School.

Contract for Architectural Services for Fire Station 6 Construction

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Stewart-Cooper-Newell Architects for architectural services for the construction of Fire Station #6 to be relocated to Old Haywood Road at East View Circle.

The relocation of Fire Station #6 has been in the planning stages for many years with the appropriation for purchase of the land in 2000 and appropriation for construction of the facility in 2003. The current location of fire station #6 does not maximize the City's equipment and staff resources. Current overall City response standard coverage will increase by approximately 4% with the relocation of this fire station. A fire station in the Exit 44 area is necessary to provide municipal level fire protection and emergency services to the western sections of the City. In addition to the building housing an engine company and a ladder company, the building will also house a police services area for the Asheville Police Department. Additional office and muster space is needed for the Police to provide services to citizens in the West district. This facility will make the best use of the space by combining common areas between fire and police.

A formal request for qualifications (RFQ) was properly advertised and a preliminary meeting was held with interested architects. Written proposals were received by City staff and were evaluated against identified rating criteria distributed in the RFQ. A team of staff from Fire and Rescue, Police, Parks and Recreation as well as the Budget Office reviewed all of the submittals. Three finalists were identified and one firm was clearly selected as the recommended architect to complete the job. References for the recommended firm, especially past performance with other North Carolina cities, were completed with a focus on combination fire and police stations. The committee selected Stewart-Cooper-Newell Architects as the recommended architects for this project.

Stewart-Cooper-Newell Architects, based in Gastonia, North Carolina, has provided architectural services for scores of North Carolina cities for fire stations and police stations. Stewart-Cooper-Newell has designed several combination fire and police stations. The firm continuously has between 25-35 fire stations in progress at any given time. Approximately 15-20 stations are completed each calendar year under their direction. Stewart-Cooper-Newell is the largest architectural firm in the fire station construction arena in the United States at the current time. With over 100 cities as customers, to date, Stewart-Cooper-Newell Architects reports that they have never completed a fire station project in which the owner did not use the firm again on subsequent fire station projects.

Fire Station 6 is planned to be approximately 15,000 square feet with approximately 10,000 square feet for fire and rescue use and approximately 5,000 square feet for police use. Construction cost of the project is anticipated at an average of $100.00 per square foot, or $1,500,000.00. Stewart-Cooper-Newell proposes their fee for full architectural, civil, structural, plumbing, mechanical and electrical design to be at eight (8) percent of the cost of construction, or approximately $120,000.00. Funding for the entire project including construction, architectural and utility/site/furnishings and other "soft" costs is budgeted at $2,000,000 in the Fiscal Year 2003-04 budget.

Completion of this station would be in approximately 24 months. Timeliness of this project is important to the City of Asheville due to the upcoming evaluation of the City's fire insurance rating by the Insurance Services Office and North Carolina Office of State Fire Marshal.

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #6. The contract is an AIA Document with appropriate modifications for the City of Asheville.

The Fire Chief and Police Chief recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #6.

Upon inquiry of Councilman Dunn, City Manager Westbrook explained the type of station that will be built.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

I-26 UPDATE

Planning & Development Director Scott Shuford said the I-26 Connector project first made it to the Transportation Improvement Plan in 1989. The Asheville Connector Advisory Committee was formed in 1991 to study alternative locations. Neighborhood, business groups, public workshops, and public hearings occurred in 1993 and 1994. In 1995, the selection of the "preferred corridor" occurred – the project would use the existing 19/23 and I-240 corridors instead of a new route because it (1) was the most direct route; (2) would not promote urban sprawl; (3) reduced congestion on Smoky Park bridges; and (4) created less damage to developed areas and the environment. In 1997, three alternatives were developed for the Connector section that would link 19/23 and I-240. Since 1997, there has been considerable public involvement. Most recently the Community Coordinating Committee was formed. That Committee is a 25 member committee. It's purpose is to facilitate balanced public input about the Connector and make recommendations. In 2000 the Community Coordinating Committee held project education and design forums attended by over 250 people. They made the following 9 key recommendations: (1) seriously consider alternative alignments that separate local and interstate traffic; (2) make aesthetics a big part of the design; (3) use the new traffic model in the design process; (4) add I-40 interchange to the project; (5) restore neighborhood connectivity; (6) interchanges need to be community sensitive in scale and design; (7) make safety a big part of the design; (8) release any unneeded right-of-way to City; and (9) expedite the project.

Achievements to date include (1) alternate alignments (a) the N. C. Dept. of Transportation (NC DOT) agreed to add two alternative alignments to the project design process; and (b) these alignments allow the separation of local and interstate traffic by separating Patton Avenue traffic from I-240 traffic; (2) I-40 interchange (a) NC DOT agreed to add the I-40 interchange with I-26 to the project; and (b) this will allow us to have full east-west and north-south movements at this critical location; (3) safety (a) NC DOT agreed to install overhead message board signs that will advise motorists of delays or accidents; (b) NC DOT agreed to examine other ways to improve safety prior to and during construction; and (4) aesthetics (a) NC DOT has agreed to a community-appointed aesthetics advisory board.

Mr. Shuford then reviewed with Council the connector alternatives, the current connector schedule (with a completion construction date of 2012) and highway design aesthetics.

Councilwoman Bellamy felt the biggest question is what we can do to speed up the 2012 completion date. Mayor Worley said that we have been repeatedly asking what we can do to complete the project quicker.

Councilman Dunn wanted to make sure that the funding is still dedicated for this project.

Mr. Shuford then answered various questions/comments from Council, some being, but are not limited to: can we ask the NC DOT to start acquiring some rights-of-way in advance; will the City have to pay for aesthetic improvements above and beyond basic aesthetic improvements; how can the City proactively seek funding; and is it realistic for the City to ask the NC DOT to turn over to the City any excess NC DOT right-of-way.

Mr. Shuford said that Mr. Drew Joyner of the NC DOT will be at a meeting on Monday, December 15, 2003, at 2:00 p.m. in the Sixth Floor of the City Hall Building to update the Community Coordinating Committee on the I-26 Connector status and invited City Council to attend.

PUBLIC ACCESS CHANNEL COMMISSION

Public Access Channel Commission Chair Beth Lazer said that this is the consideration of an ordinance to dissolve the Public Access Channel Commission (PACC) and provide direction as to the City's support of URTV, Inc., as the non-profit corporation responsible for policy and operational oversight of a public access cable channel pursuant to the terms of a Management Agreement with URTV, Inc. and the City of Asheville.

On October 28, 2003, City Council voted unanimously to allow the Mayor to enter into an Interlocal Agreement with Buncombe County government for the purpose of funding a Countywide public access television operation and facility. At that time, the PACC Chair Beth Lazer outlined future steps necessary toward the formation of URTV, Inc. as the oversight corporation of public access television for Asheville and all non-incorporated areas of Buncombe County. Those steps include: 1) adoption of an ordinance dissolving PACC, 2) direction as to Board of Director selection process of URTV, Inc.; and 3) once the URTV, Inc. Board of Directors is formed, the City of Asheville negotiate and enter into a Management Agreement with URTV, Inc.

The PACC has recommended that both Asheville City Council and Buncombe County Commissioners each receive one initial URTV Board of Director appointment. In addition, all five current PACC members have agreed to serve an initial term during this upcoming transition. Then, those seven inaugural board members would appoint the remaining four board members, for a total of eleven board members.

The PACC has put together a description of criteria they will look for in Board members and have also indicated the skills they think they will need to bring more expertise to the table. They would like to start the application as soon as possible and would be happy to provide their list of candidates to City Council.

Several City Council members requested data from other North Carolina cities that would outline the non-profit Board appointment process. The following cities were contacted and subsequent information collected:

Town of Chapel Hill/ The People's Channel: Private-non-profit public access channel since 1996. The Board of Directors consists of ten members, all of which are appointed by the Board itself. Current budget: $133,392. Of that amount, $110,341 is provided by the City through cable fees.

City of Greensboro/Greensboro Community Television: Private non-profit public access channel since 1995. The Board of Directors consists of eighteen members. Three members are appointed by the City of Greensboro and the remaining fifteen are appointed by the Board. Current budget: $225,000. Of that amount, $120,000 is provided by the City through cable fees.

City of Winston-Salem/Community Access Television (CATTV): Private non-profit public access channel since 1994. The Board of Directors consists of fourteen members, seven of which are currently vacant. Several board seats are held by member representatives; several seats are held by community organizations, such as the N.C. School of the Arts. No seats are appointed by the City of Winston-Salem.

City of Raleigh/Community Television: The City of Raleigh does not have a private non-profit organization to oversee its public access channel. The Public Affairs Department oversees the division responsible for government access, public access, and religion access television. These divisions are staffed with City employees. The Raleigh City Council appoints the Raleigh Telecommunications Commission, who has responsibility for policy oversight of Community Television.

City of Wilmington: The City of Wilmington does not have a public access television station. Time-Warner Cable Company does provide a channel for community access, accepting locally produced tapes for consideration. There is no City involvement, to include money and Board oversight at this time. The City does have the ability through its Cable Franchise Agreement to set up a public access channel in the future if it determines it necessary.

As you can see, there is a wide continuum of how other cities in our region have addressed public access channel programming oversight responsibility.

Staff recommends Council adopt the ordinance dissolving the Public Access Channel Commission and determine a method to appoint URTV, Inc. Board of Directors. Once the board is named, the City Manager shall negotiate, on behalf of the City, a management agreement subject to the City Council final approval.

Ms. Laser responded to various questions/comments from Council, some being, but are not limited to: what percentage of the proposed budget is user fees; what is the approximately annual operating budget; what type of facility is being looked at; and what happens if Buncombe County refuses to sign the management agreement.

Councilwoman Bellamy voiced concern of only one City representative on the Board. She also felt it would be appropriate for the City to have a liaison to the Board as well.

Discussion surrounded the City's representation on the Board. City Attorney Oast said that in general, the more appointments made to the Board increases the possibility of a liability situation.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SOUTH PACK SQUARE REDEVELOPMENT UPDATE

Planning & Development Director Scott Shuford said that this is the consideration of a budget amendment, in the amount of $1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative (EDI) grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square. This report replaces prior reports given to City Council on November 11 and November 25.

In June 2001, Council approved applications by the City for $800,000 in Community Development Block Grant (CDBG) Section 108 Loan funds and $340,000 in associated EDI grant funding in order to assist Eagle/Market Streets Development Corporation (EMSDC) to complete the acquisition and redevelopment of three key properties in the South Pack Square redevelopment area. The project is now ready to move forward and Council's authority is needed to create the necessary budgets to obligate and expend these funds.

The public and City Council have raised several questions and issues concerning the proposed development. In the following sections of this staff report, we have attempted to respond to these questions and issues.

1. Scope of Project

While the particular funds in this budget allocation will technically be used only for the property owned by EMSDC west of Market Street, the entire development project also encompasses three buildings owned by Mount Zion Church, on the other side of South Market Street. Each part of the project is mutually dependent for success on the other, because:

1. A project of sufficient size was needed to attract development expertise and financing
2. The joint development avoids competition in marketing
3. By eliminating blight from both sides of South Market Street, the area is sufficiently transformed to convince residents and businesses that it is safe to move there.

Essentially the budget allocation will facilitate the renovation of five historic buildings to the Department of the Interior standards and redevelop a parking lot with a mixed use infill building that has received design approval from the South Pack Square Design Review Committee and the Downtown Commission. It will result in a total investment of $6,600,000, producing 47 apartments and 12,000 square feet of leasable commercial space, creating 72 jobs, and adding approximately $76,000 a year to property tax revenues.

The principal developers for this consolidated project are Historic Acquisitions, LLC, an experienced developer of historic properties in North Carolina, and The Enterprise Foundation, an

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internationally recognized organization, founded by the late James Rouse, which specializes in community development projects.

2. Compliance with South Pack Square Redevelopment Plan
One issue that has arisen during public debate concerning the proposed EMSDC project is whether the infill building complies with the redevelopment plan. The plan makes reference to the Eagle/Market Façade Design Guidebook, which illustrates the infill building site as a parking lot. However, it also contains references to promoting infill development.

Legal review of case law concerning redevelopment plans reveals that such plans should be broadly interpreted, allowing flexibility for redevelopment activities to take place. This indicates that the proposed infill building is consistent with the purposes and intent of the plan and that no plan modification is necessary to accommodate the building.

3. Public Involvement
City Council received a chronology of recent public involvement activities and also a list prepared by a neighboring property owner (Mr. Ellison) that outlines suggested concessions that might win his support for the project. Included on this list are such concessions as: EMSDC transfer of ownership of two condominiums in the infill building to Mr. Ellison, construction of a joint-use elevator by EMSDC to serve both the Ritz and the infill buildings, and purchase of an approximately 100 square foot site owned by Mr. Ellison by EMSDC for $200,000. While these concessions proved unacceptable to EMSDC, the agency did modify the infill building design to pull it back 3 feet from adjacent property lines and has indicated its willingness to explore other concessions. The intent in providing this information is to illustrate there have been efforts to negotiate compromises with adjoining property owners that are not necessarily listed on the public involvement timeline.

The most recent meeting that is relevant to this matter took place on December 2 with EMSDC, Mt. Zion Church, the YMI, and property owners. Some progress was made although adjacent property opposition continues with regard to the infill building.

On December 4, 2003, a luncheon meeting was held at the request of Virgil Smith with regard to the proposed development. Also attending the meeting were James Geter of EMSDC and Gene Ellison, area property owner. Mr. Smith called the meeting in an effort to determine if there was any room for compromise between these two parties regarding the proposed infill building that is part of the development proposal. As discussion unfolded, it became apparent that there was no opportunity to reach a compromise that would simultaneously move the project forward consistent with Mr. Geter's needs and still meet Mr. Ellison's concerns.

Another meeting was scheduled for the morning of December 9. In summary, there was a recommendation to "delay or slow down the process" to ensure that there is appropriate time for stakeholders of the Block and the public to voice their support or concerns regarding the physical design of the Phase I project, specifically the infill between the Ritz, Wilson, Campbell, and Collette buildings.

4. Current Status
The redevelopment work is now almost ready to start. The Development Partnership has been informed that the lender's loan committee has approved the issuance of a loan commitment letter, subject to the City's funding approval. The partnership has also decided that EMSDC should retain ownership of its property and lease it to the partnership, on similar terms to those already agreed for the Mount Zion property. The partners are now finalizing the organizational and loan closing documents. Staff is finalizing the federally-required environmental review process and is preparing closing documents for the Section 108 Loan and EDI Grant. The developer expects site work to start as soon as these steps are complete.

5. Consequences of not authorizing budgets
If Council decides not to authorize the budgets for the Section 108 loan and EDI grant, the following consequences can be expected:

- The proposed development will be abandoned and the outside partners will withdraw, having lost significant expenditure of time, overhead, and legal/organizational costs.
- Approximately $400,000 in CDBG funds already invested in the project (mainly for property acquisition, architectural and other professional fees) will be lost, except that the real estate will remain as an asset to EMSDC. This amount does not include a much larger sum spent by the City and other funders since 1990 on planning studies, surveys, appraisals, community-building activities, and the operating costs of EMSDC.
- The $340,000 EDI grant will have to be surrendered.
- Another use for the Section 108 loan (already drawn down and in the City's possession) will have to be negotiated with HUD; meanwhile the City will have to pay interest of $38,000 a year.
- EMSDC will have to create another redevelopment project for its buildings; if this is unsuccessful the buildings will eventually become the property of the City.
- Mount Zion Church will have to create a new project redevelop its buildings, which will remain in their current state in the meantime.
- Substantial public support for moving forward with the project was apparent at the November 17 public meeting. Therefore, significant community disappointment may be apparent in the event that this project does not go through.
- Eventually, if demand for downtown land remains high, private development of some sort will probably occur in the area. In the absence of an effective non-profit redeveloper to promote development according to the Redevelopment Plan, the result could be demolition and replacement of existing dilapidated buildings and permanent loss of the historic fabric and identity of the area. A private property owner not using public funds is not obliged to follow the redevelopment plan, the recommendations of the Downtown Commission, or the National Historic District guidelines.

Finally, the withdrawal at a late stage of pre-development of public funds committed to the project two years ago will damage to the City's reputation for supporting historic rehabilitation and community development projects. The opportunities for partnering with experienced private sector redevelopers or with national non-profits such as the Enterprise Foundation, National Development Council, or Local Initiatives Support Corporation, will be diminished.

6. Consequences of delaying budget authorization.
The partnership may lose its loan commitment and be forced to withdraw, in which case the consequences will be the same as those outlined above.

Mr. Shuford said that public involvement could have been better and more thorough, but City Council needs to determine if that is a fatal flaw for a project that has this much benefit.

Since it appears that further delay to allow discussion between the parties involved will not be fruitful, he recommended that Council scheduled the budget amendment on December 16, 2003.

Mr. Shuford reviewed the funding sources and costs and an analysis of major soft costs. Three soft costs he detailed was environmental; survey/appraisal fee; and leasing fee/marketing initiatives. He described the project in a visual sense and then showed the site plan for the area.

The project provides 14 apartments (market rents); 8700 square feet retail or office space; and 17 garage parking spaces. There will be 33 apartments and 2800 square feet of retail space in Mt. Zion buildings. Some of these apartments may be made affordable to low income households. He reviewed the preliminary plan for the Mt. Zion site.

He reviewed the history of the project since 1993 by showing a timeline. There has been a concern raised regarding adequate public comment. In response to that concern (1) the Redevelopment Plan gives EMSDC responsibility for this; (2) design charette was held prior to funding application; (3) public meeting on November 17, 2003; (4) three meetings of stakeholders group convened by Virgil Smith on December 2, December 4 and December 9; and (5) public comments may be taken by City Council at their formal meeting. Another concern raised was does the project modify the Redevelopment Plan. The City Attorney and Planning Director have carefully reviewed the Plan and determined that infill development is not a Plan modification.

The EMSDC feels that further delay jeopardizes the project and it is unacceptable to them. If they modify the infill building anymore, it would not make the project work. The Infill building is one of the key pieces to make the project happen. The EMSDC will keep people involved in the process and will continue to address concerns. Mr. Shuford then talked about the developers and explained the enterprise foundation.

Mr. Shuford said that this morning Mr. Jesse Ray, representing the YMI Cultural Center, said that the YMI is concerned about the process but not the project. They felt the process was not inclusive. Because the process was not inclusive, it called into question the validity of the project.

Mr. Shuford and Community Development Director Charlotte Caplan then responded to various questions/comments from Council, some being, but are not limited to: what is the financing of the Mt. Zion project; explanation of what the Section 108 loan can be used for; explanation of private investor tax credits; is it normal for developers not to have any hard dollars invested in a project; what would be the risk factors for the developer and for the City if the project fails; what is the negative impact on the surrounding property owners; who pays if the loan is not paid and what fund will that come out of; in 2001 when the City made application for the Section 108 and EDI funds, was a building included in that application; is there a residential requirement in Section 108 loans; was the infill building a conceptual concept out of the charette; what is the vacancy rate for rental units in the City; what are market rates; what type of things would constitute a Plan modification; explanation of the default process; is the developer from Asheville; where are the banks located that will be lending the money; how much will the units be rented for; home many residential households are in this area now; what is the anticipated tax base if the project is implemented; and how much money is 1% more on the interest rate.

Councilwoman Bellamy voiced concern about the process and felt that the infill building was a modification of the Redevelopment Project. She expressed concern about moving forward.

After discussion, City Attorney Oast said that the Redevelopment Plan is not parcel specific as is typical of any plan of this type. The Plan covers a lot of things and it does call for infill development.

Mr. Shuford passed out the South Pack Square Development Plan Task Force's Statement dated December 9, 2003, which in summary said that "the Task Force is in favor of redevelopment of the Block and is not totally opposed to the infill component of Phase I of the project. We recognize the funding timelines, according to EMSDC and the City of Asheville Planning Department, have essentially driven the project to date; however we need more time to discuss this issue and to reach consensus among task force members."

Upon inquiry of Vice-Mayor Mumpower, Mr. David Rogers, developer, explained that in the past 30 days interest rates have risen by 1%.

Upon inquiry of Mayor Worley, City Attorney Oast said that the public input process was not legally inadequate.

Discussion occurred on whether City Council should schedule the budget amendment on the December 16, 2003, formal meeting. It was noted that the Task Force needed more time to discuss the issue and it was hoped that their meeting could occur prior to the December 16 meeting. Mayor Worley then said that the matter would be scheduled on the December 16 agenda and City Council could determine at that meeting whether to vote on the project or delay consideration to another date.

At 6:10 p.m., Mayor Worley announced a short recess.

AZALEA ROAD SITE

This item was pulled from the agenda.

HOSPITALITY HOUSE REQUEST

Councilwoman Jones said that this is the consideration of a request by Hospitality House for a grant of $7,500 from the Contingency Fund.

In November, 2002, City Council appropriated $20,000 from the Contingency Fund to provide Hospitality House the means to operate the A HOPE Homeless Day Center on Saturdays. This was decided after discussion about the number of homeless individuals in our community and the efforts of the Downtown Association and the Downtown Commission to solve some of the problems they create. These funds, along with Community Development Block Grant (CDBG) funding for Sundays, have enabled Hospitality House to keep the Center open seven days a week through December, 2003.

The current CDBG grant is sufficient to maintain Sunday opening through June 2004, but the General Fund grant will run out at the end of December 2003.

Representatives from Hospitality House attended the Housing and Community Development Committee meeting in October to request an additional $10,000 in City support to allow them to keep the Center open on Saturdays from January through June, 2004. A representative from the Downtown Merchants' Association stated that weekend opening of A HOPE has eased the problems for downtown merchants and residents. The Housing and Community Development Committee suggested that the City might fund $7,500 if Hospitality House would commit to raising the remaining $2,500 from downtown businesses. Mr. Buckner, representative of Hospitality House, agreed to present this recommendation to the Downtown Merchants' Association.

Staff has advised the Hospitality House that any future grant requests should be made at the appropriate time for consideration in the normal budget cycle.

The Housing and Community Development Committee and City staff recommend approval of a budget amendment, appropriating $7,500 to Hospitality House for the continued operation of A HOPE Day Center on Saturdays.

Councilwoman Bellamy hoped that the Hospitality House will do additional outreach to make sure that people know that this service is available. She suggested brochures or flyers be placed in the jail for inmates to see when they are released.

Ms. Christy Carter, Executive Director of Hospitality House, gave numbers of how many people are using the Day Center on Saturdays. She did note that the numbers fluctuated with the weather.

When Councilman Newman asked if he had a conflict of interest if he is a member on the Board for A HOPE, City Attorney Oast suggested Councilman Newman contact him tomorrow to discuss the matter in detail.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ABC BOARD APPOINTMENT

Mayor Worley said that City Attorney Oast has advised Council that a current member of the ABC Board can continue to serve following the expiration of his/her term.

Mayor Worley noted that he has written to the Chair of the ABC Board requesting a meeting with him and Councilman Dunn meet to discuss various concerns.

Councilwoman Bellamy said that the Boards and Commissions Committee recommended that the current Chair be reappointed noting that after she was appointed she immediately started asking probing questions.

Upon inquiry of Councilman Dunn, Mayor Worley said that it was the consensus of Council to increase the membership of the ABC Board from 3 to 5 members, however, that takes legislative action and will be placed on our upcoming legislative agenda.

APPLICATION FOR CHRONIC HOMELESSNESS GRANT

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing the City to apply for $500,000 in HOME funds made available for housing for chronically homeless people.

The U. S. Department of Housing & Urban Development (HUD) has announced a national grant competition for recaptured HOME funds to be used by HOME entitlement communities to develop supportive housing for the homeless. Thirteen grants of $500,000 will be made to communities who can demonstrate:

A. High productivity in the use of HOME funds for producing rental housing.
B. A plan for ending chronic homelessness by 2012.
C. Commitment to specific policies that support affordable housing.

An unusual feature of the competition is that 75% of the points are pre-awarded on the basis of past performance (item A above). Asheville scored sufficiently high in this pre-scoring to have a chance of winning a grant.

Another unusual feature is that the grant application requires no information on the proposed use of the funds. This can be determined after the funds are awarded.

Since the funds are subject to the HOME program rules, matching funds are required, in principle. However, excess match expended on local HOME projects in previous years can be counted for this purpose, meaning that no additional local funds will need to be identified as match for this grant.

The grant deadline is December 18, 2003. The Housing and Community Development Committee has indicated its support for this grant application.

Staff recommends City Council approve the submittal of a grant application to apply for $500,000 in HOME funds made available for housing for chronically homeless people.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CITY COUNCIL LIAISON ASSIGNMENTS

After a quick review and brief discussion of liaison and member positions on various boards and commissions, it was the consensus of City Council to have all Council relay their preferences to Mayor Worley. Mayor Worley will then have a list prepared for the January 6, 2004, worksession so appointments can be made.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:12 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – December 16, 2003 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Diana Hollis Jones

PLEDGE OF ALLEGIANCE

Retired Navy Veteran J. Howard Collins led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

AGENDA CHANGE

Mayor Worley announced that moments ago the City was served with a temporary restraining order filed by Eugene Ellison and Howard McGlohon against the City of Asheville and Eagle/Market Streets Development Corporation. That lawsuit will prevent City Council from hearing the item on today's agenda entitled "Budget amendment to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Incentive Grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square."

I. PROCLAMATIONS:

A. ASHEVILLE SISTER CITIES INC.

Mr. Carroll Hughes and Mr. Kaltsunis updated City Council on the developments with our to-be-Sister City in Karpenisi, Greece. They presented Mayor Worley with a gift from Mayor Bill Karabas as a token of friendship between our municipalities and a shepherd's stick from the Asheville Sister Cities Inc. organization and the local Greek community.

B. ASHEVILLE YOUTH SPORTS PROGRAM RECOGNITION

Mayor Worley recognized Mr. Jim Drummond, Coach Wynn and the Asheville Youth Sports Program for their successful year. Mr. Drummond explained that over 5,000 boys and girls have played football and cheered for the Cougars. This year, for the first time in the history of the 16 youth organizations of WNC Youth Football & Cheerleading Conference, Asheville Youth Sports Program h ad all three age divisions playing in the football championship, the "Super Bowl," as undefeated teams. Also, all three cheerleader squads placed either First Place or Second Place in their division competition.

II. CONSENT:

At the request of Vice-Mayor Mumpower, Consent Agenda "B" was removed from the agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS HELD ON NOVEMBER 25, 2003, AND DECEMBER 2, 2003, AND THE WORKSESSION HELD ON DECEMBER 9, 2003

B. RESOLUTION NO. 03-195 – RESOLUTION OF APPRECIATION TO RETIRING CHIEF OF POLICE WILL ANNARINO

This item was removed from the consent agenda for an individual vote.

C. RESOLUTION NO. 03-200 - RESOLUTION ADOPTING THE 2004 SCHEDULED CITY COUNCIL MEETINGS

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D. RESOLUTION NO. 03-201 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A SUPPLEMENTAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR LANDSCAPING ADJACENT TO W.T. WEAVER GREENWAY

Summary: The consideration of a resolution authorizing the City Manager to sign a supplemental agreement with the N. C. Dept. of Transportation (NC DOT) for landscaping adjacent to the W.T. Weaver Greenway.

The City of Asheville received a grant from the NC DOT to install a greenway along W.T. Weaver Boulevard from Barnard Avenue to Broadway Street in Fiscal Year 2000. The amount of the grant was $300,000. There was no local match for the grant. The actual cost of the construction was approximately $200,000.

The City of Asheville and UNC-Asheville requested some of the remaining funds be used to provide landscaping to the W.T. Weaver Greenway. The City requested $34,070, which has been approved by the NC DOT. The grant does not require any local match.

Prior to requesting the money for the landscaping, City staff requested the remaining $100,000 for another greenway project but was denied because the project did not qualify under this original municipal agreement.

Staff recommends that City Council authorize the City Manager to sign a supplemental agreement with the NC DOT for landscaping adjacent to the W.T. Weaver Greenway in the amount of $34,070.

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E. RESOLUTION NO. 03-202 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY ON BROTHERTON AVENUE TO DAVID M. BENNERT

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Brotherton Avenue for a private residential sewer line.

The City owns property (PIN No. 9638.18-21-9316) located on Brotherton Avenue and Virginia Avenue and the unopened right-of-way on Hubbard Street. The property is in the process of going back on the market after a sale contract failed to close. Infrastructure has been installed on the buildable portion of the property. The portion of the property near Hubbard Street is wooded and steep and is crossed by a sewer main. The intended use for that portion of the property is for green space.

David M. Bennert owns property on Hudson Street, which backs up to the unopened right-of-way of Hubbard Street where he is building two houses. Due to the topography and the location of the sewer main, the most direct and efficient route to provide sewer to the new houses is across unopened Hubbard Street and a portion of the City's property. The requested easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the use of the easement area for green space, which is the proposed use of that portion of the property.

Staff recommends adoption of the resolution authorizing the Mayor to convey an easement over a portion of City-owned property on Brotherton Avenue for a private residential sewer line to David M. Bennert.

Upon inquiry of Councilwoman Bellamy, Mr. Ed Vess, Field Services Coordinator, explained what is happening with the Brotherton property. He said the City will receive $136 for the permanent easement.

Upon inquiry of Councilman Newman, Mr. Vess explained how the easement amount is calculated.

RESOLUTION BOOK NO. 28 – PAGE 68

F. ORDINANCE NO. 3073 - BUDGET AMENDMENT FOR AZALEA PARK AND MEMORIAL STADIUM SYNTHETIC TURF

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for the construction and installation of synthetic turf at Azalea Park and Memorial Stadium and the associated budget amendment.

The Parks and Recreation Department, along with its partner, WNC Soccer Foundation, has raised almost $2,250,000 toward the development of the first two phases of Azalea Park. These phases include the development of four synthetic turf soccer fields, construction of restroom/ concession facility, a Leathers playground, parking, and greenway trails. After extensive research, both the Parks and Recreation Department and the WNC Soccer Foundation have concluded that synthetic turf soccer fields will greatly enhance the playability for the John B. Lewis Soccer Complex. This will be accomplished by allowing additional practice times and games for soccer and other events without affecting the playing surface. This will also allow for the complex to be used in inclement weather for regular play as well as tournament competition. In addition, no harmful chemicals will need to be used on the fields.

The Parks and Recreation Department solicited bids from a number of vendors. The specifications in the bid package required the surface to be FIFA (Federation International Football Association) approved. FIFA is the international governing body of soccer. This insured that the quality of the product would be of the highest standards possible for the safety of the participants and durability of the surface. In addition, the bid package included replacing the grass field at Memorial Stadium with synthetic turf. The cost for this project is anticipated to be totally paid for by one of the user groups at Memorial Stadium. In calculating the final breakdown for the bids, staff deducted the amount of in-house labor that will be used in the construction, based upon the vendor's recommendation. In addition, staff had to take into consideration the specifications by the vendors in order to determine the amount of in-house support needed to meet the warranty for the products.

A total of four bids were received for the project as follows with the amount of cost savings deducted from each amount and adding back in-house material costs:

Vendor	Bid Price	Minus Cost savings	Plus Add. Items in sub-base Construction	Total
Taylor Murphy	$2,362,950	$1,717,950	$0	$1,717,950
Phillips & Jordan	$2,352,375	$1,762,970	$0	$1,762,970
Ballard Const. (e-turf)	$2,432,639	$1,522,861	$241,270	$1,764,131
Ballard Const. (f-turf)	$3,045,771	$2,135,993	$241,270	$2,377,263

After careful consideration, the Parks and Recreation Department and WNC Soccer Foundation recommend awarding the contract to Taylor Murphy Construction Company at a total price of $1,717,950. This project will be financed along with other Fiscal Year 2004 purchases through an installment purchase contract over a period of five years. The Finance Department anticipates soliciting proposals for financing in January of 2004. Funding for this first year's installment payment is included in the current funds for Azalea Park. The Parks and Recreation Department anticipates a majority of the funds for payment of the installment purchase contract to occur from sponsorships, foundation, and grant funding. Again, the funding for Memorial Stadium is anticipated to be totally paid for by one of the user groups.

The budget amendment includes funds secured from a number of sources including the Janirve Foundation for $500,000, Wachovia for $25,000, Arby's for $10,000, the N. C. Dept. of Transportation for $400,000 and several other individual donations for a total of $988,400.

The Parks and Recreation Department anticipates starting construction for this project in the next few months with completion of the John B. Lewis Soccer Complex in the fall of 2004.

The Parks and Recreation Department requests City Council authorize the City Manager to enter into a contract with Taylor Murphy Construction Company for $1,717,950 for the construction and installation of synthetic turf at Azalea Park and Memorial Stadium and to approve a budget amendment totaling $988,400.

ORDINANCE BOOK NO. 21 – PAGE 19

G. RESOLUTION NO. 03-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TAYLOR MURPHY CONSTRUCTION COMPANY FOR THE CONSTRUCTION AND INSTALLATION OF SYNTHETIC TURF AT AZALEA PARK AND MEMORIAL STADIUM

Summary: See Consent Agenda Item "E" above.

RESOLUTION BOOK NO. 28 – PAGE 69

H. RESOLUTION NO. 03-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH DEE WILLIAMS AND COMPANY TO INSTALL SIDEWALKS LOCATED ALONG CHESTNUT STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Dee Williams and Company to install sidewalks located along Chestnut Street in Asheville, North Carolina.

The City is in need of a contractor to provide sidewalk installation services for sidewalks along the north side of Chestnut Street between Liberty Street and Furman Avenue. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for sidewalk installation services were solicited and three responses were received. The bidders are listed below:

Company	MB Participation	Drug Free	Bond	Bid
Candler Concrete Works, Inc.	0	Yes	Yes	$158,287.90
Burleson Construction				$138,431.00
Dee Williams And Company Inc.	100%	Yes	Yes	$110,388.00

Funding for this project has already been allocated in the Public Works Department's Capital Improvement budget.

The Public Works Department staff recommends City Council adopt a resolution authorizing the City Manager to enter into contract with Dee Williams and Company Inc. to install sidewalks along the north side of Chestnut Street between Liberty Street and Furman Avenue.

RESOLUTION BOOK NO. 28 – PAGE 70

I. ORDINANCE NO. 3074 - BUDGET AMENDMENT FOR THE INSTALLATION OF BALLFIELD LIGHTS AT VALLEY SPRINGS MIDDLE SCHOOL

Summary: The consideration of a budget amendment, in the amount of $33,420, for the installation of ballfield lights at Valley Springs Middle School.

The City of Asheville Parks and Recreation Department is continuing to upgrade parks throughout the City of Asheville. One of the parks in need of additional work is the Valley Springs Middle School ballfield complex. This project will be for lighting an additional ballfield at the complex. The site is the home for the South Buncombe Sports and Recreation Association. On June 25, 1992, the City of Asheville entered into a 30-year agreement with the Buncombe County School Board. This agreement stated that the Buncombe County School Board would provide land at Valley Springs Middle School for the purpose of providing athletic fields (baseball/softball) that the City of Asheville would fund, install, and maintain. This agreement provides for the much-needed athletic field space in South Buncombe and for the students at Valley Springs Middle School. In order to complete this portion of the project, staff prepared bid specifications for the installation of a turn-key field lighting system. Musco Lighting Company agreed to do the project for $33,420. Through the bid process, Musco Lighting Company has complied with the Minority Business Plan.

This project will be completely funded from a donation by the South Buncombe Sports and Recreation Association.

The Parks and Recreation Department recommend the approval of a budget amendment, in the amount of $33,420, for the installation of ballfield lighting at Valley Springs Middle School.

ORDINANCE BOOK NO. 21 – PAGE 21

J. RESOLUTION NO. 03-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH STEWART-COOPER-NEWELL ARCHITECTS FOR ARCHITECTURAL SERVICES FOR THE CONSTRUCTION OF FIRE STATION #6 TO BE LOCATED TO OLD HAYWOOD ROAD AT EAST VIEW CIRCLE

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Stewart-Cooper-Newell Architects for architectural services for the construction of Fire Station #6 to be relocated to Old Haywood Road at East View Circle.

The relocation of Fire Station #6 has been in the planning stages for many years with the appropriation for purchase of the land in 2000 and appropriation for construction of the facility in 2003. The current location of fire station #6 does not maximize the City's equipment and staff resources. Current overall City response standard coverage will increase by approximately 4% with the relocation of this fire station. A fire station in the Exit 44 area is necessary to provide municipal level fire protection and emergency services to the western sections of the City. In addition to the building housing an engine company and a ladder company, the building will also house a police services area for the Asheville Police Department. Additional office and muster space is needed for the Police to provide services to citizens in the West district. This facility will make the best use of the space by combining common areas between fire and police.

A formal request for qualifications (RFQ) was properly advertised and a preliminary meeting was held with interested architects. Written proposals were received by City staff and were evaluated against identified rating criteria distributed in the RFQ. A team of staff from Fire and Rescue, Police, Parks and Recreation as well as the Budget Office reviewed all of the submittals. Three finalists were identified and one firm was clearly selected as the recommended architect to complete the job. References for the recommended firm, especially past performance with other North Carolina cities, were completed with a focus on combination fire and police stations. The committee selected Stewart-Cooper-Newell Architects as the recommended architects for this project.

Stewart-Cooper-Newell Architects, based in Gastonia, North Carolina, has provided architectural services for scores of North Carolina cities for fire stations and police stations. Stewart-Cooper-Newell has designed several combination fire and police stations. The firm continuously has between 25-35 fire stations in progress at any given time. Approximately 15-20 stations are completed each calendar year under their direction. Stewart-Cooper-Newell is the largest architectural firm in the fire station construction arena in the United States at the current time. With over 100 cities as customers, to date, Stewart-Cooper-Newell Architects reports that they have never completed a fire station project in which the owner did not use the firm again on subsequent fire station projects.

Fire Station 6 is planned to be approximately 15,000 square feet with approximately 10,000 square feet for fire and rescue use and approximately 5,000 square feet for police use. Construction cost of the project is anticipated at an average of $100.00 per square foot, or $1,500,000.00. Stewart-Cooper-Newell proposes their fee for full architectural, civil, structural, plumbing, mechanical and electrical design to be at eight (8) percent of the cost of construction, or approximately $120,000.00. Funding for the entire project including construction, architectural and utility/site/furnishings and other "soft" costs is budgeted at $2,000,000 in the Fiscal Year 2003-04 budget.

Completion of this station would be in approximately 24 months. Timeliness of this project is important to the City of Asheville due to the upcoming evaluation of the City's fire insurance rating by the Insurance Services Office and North Carolina Office of State Fire Marshal.

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #6. The contract is an AIA Document with appropriate modifications for the City of Asheville.

The Fire Chief and Police Chief recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #6.

RESOLUTION BOOK NO. 28 – PAGE 71

K. RESOLUTION NO. 03-206 - RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A GRANT APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR HOUSING CHRONICALLY HOMELESS PEOPLE

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing the City to apply for $500,000 in HOME funds made available for housing for chronically homeless people.

The U. S. Department of Housing & Urban Development (HUD) has announced a national grant competition for recaptured HOME funds to be used by HOME entitlement communities to develop supportive housing for the homeless. Thirteen grants of $500,000 will be made to communities who can demonstrate:

A. High productivity in the use of HOME funds for producing rental housing.
B. A plan for ending chronic homelessness by 2012.
C. Commitment to specific policies that support affordable housing.

An unusual feature of the competition is that 75% of the points are pre-awarded on the basis of past performance (item A above). Asheville scored sufficiently high in this pre-scoring to have a chance of winning a grant.

Another unusual feature is that the grant application requires no information on the proposed use of the funds. This can be determined after the funds are awarded.

Since the funds are subject to the HOME program rules, matching funds are required, in principle. However, excess match expended on local HOME projects in previous years can be counted for this purpose, meaning that no additional local funds will need to be identified as match for this grant.

The grant deadline is December 18, 2003. The Housing and Community Development Committee has indicated its support for this grant application.

Staff recommends City Council approve the submittal of a grant application to apply for $500,000 in HOME funds made available for housing for chronically homeless people.

RESOLUTION BOOK NO. 28 – PAGE 72

L. ORDINANCE NO. 3075 - BUDGET AMENDMENT TO ENABLE THE HOSPITALITY HOUSE TO KEEP THE A HOPE CENTER OPEN ON SATURDAYS FROM JANUARY THROUGH JUNE 2004

The resolution authorizes the City Manager to execute a contract with Stewart-Cooper-Newell Architects for Fire Station #6. The contract is an AIA Document with appropriate modifications for the City of Asheville.

The Fire Chief and Police Chief recommends City Council authorize the City Manager to sign the contract with Stewart-Cooper-Newell Architects for architectural services in the construction of Fire Station #6.

RESOLUTION BOOK NO. 28 – PAGE 71

K. RESOLUTION NO. 03-206 - RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A GRANT APPLICATION TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR HOUSING CHRONICALLY HOMELESS PEOPLE

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Staff recommends City Council approve the submittal of a grant application to apply for $500,000 in HOME funds made available for housing for chronically homeless people.

RESOLUTION BOOK NO. 28 – PAGE 72

L. ORDINANCE NO. 3075 - BUDGET AMENDMENT TO ENABLE THE HOSPITALITY HOUSE TO KEEP THE A HOPE CENTER OPEN ON SATURDAYS FROM JANUARY THROUGH JUNE 2004

A. PUBLIC HEARING RELATIVE TO CLOSING AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD

RESOLUTION NO. 03-207 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD

Mayor Worley opened the public hearing at 5:38 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution permanently closing a portion of an unopened section of Emma Road between Leicester Highway and Old County Home Road. This public hearing was advertised on November 22, 28, December 5 and 12, 2003.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened section of Emma Road extending northwesterly from Leicester Highway toward Old County Home Road to a line extending from the northeastern corner of the property of Dennis and Dane Dettweiler (PIN No. 9629.14-23-7485) to the northwestern corner of the property of Charles and Doris Haney (PIN No. 9629.14-23-9397). The closing of this right-of-way would allow Mr. David Ledford to purchase, consolidate and develop the abutting parcels.

Public Works Department staff has researched and determined that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by four lots, identified by PIN Nos. 9629.14-23-9397; 9629.14-32-0959; 9629.14-23-8346; and 9629.14-23-7485.

This right-of-way is 30 feet wide. All property owners abutting this right-of-way have joined in the petition to close. The property on both sides of the right-of-way have been posted. Local water, sewer, electric, telephone, gas and cable companies have been notified of the petition and have indicated that the closure of the right-of-way would not affect their utilities.

The City's Engineer and Traffic Engineer have raised concerns that closing this portion of Emma Road will eliminate connectivity between New Leicester Highway and Old County Home Road. Staff believes this future connection is an important and valuable City asset that should be preserved.

Mr. Cole explained that New Leicester Highway and Old County Home Road parallel each other for approximately ½ mile. Using a map, he showed how the section of Emma Road offers a means of connecting New Leicester Highway to Old County Home Road.

In an effort to address the connectivity concerns and the petitioner's need to close, the City Engineer has determined that if an alternate right-of-way, owned by the petitioner, along the northern boundary of the consolidated parcels was provided, connectivity can be preserved and the value of this section of Emma Road proposed for closing loses it's importance to the City. The alternate right-of-way was discussed with the petitioner and the petitioner is not receptive to providing such an alternate right-of-way.

City staff recommends against City Council adopting the resolution permanently closing an unopened section of Emma Road.

Traffic Engineer Anthony Butzek explained that staff 's concern is based on the ability to provide a connection at a future date. Although the right-of-way is not currently providing a transportation function, as that area develops further and becomes more dense, having that right-of-way does provide another means of connecting the two streets as opposed to the current nearest connection to the north of that is ¼ mile away. Staff felt the distance between the connections at Eliada Home Road and where Old County Home Road meets New Leicester Highway to the north is too long a distance to be without a connection.

Upon inquiry of Councilwoman Bellamy, Mr. Cole said that the petitioner cannot develop his land for what he is anticipating if the right-of-way is not closed.

Mr. David Ledford, petitioner, asked for the closing so they can join the two parcels for development of a retail center which they feel would beautify the area, enhance incoming revenues from tax bases and be assistance to the locals. He pointed out that all people signing the petition are in joint interest in closing this road. Using a map, he showed where there are several encroachments into the right-of-way and explained that the right-of-way was originally established for a continuation from Eliada Home Road, but a different road was developed instead and they determined the right-of-way wasn't necessary. He felt that the right-of-way would never be able to be utilized because of the people who have already encroached on it.

Mr. Ledford presented City Council with a copy of a letter dated December 16, 2003, from Wilson Engineering regarding the City's alternate right-of-way request. The problems with the alternate right-of-way is the decline from New Leicester Highway from a geographically outlook and (2) the speed of the traffic that flows down New Leicester Highway. He said he contacted the N.C. Dept. of Transportation (NC DOT) and asked them if they could get a curb-cut for that section and they said no. Mr. Ledford said that if they give the alternate 50 foot right-of-way with a 25 foot setback, they will have to maintain it for the rest of their lives because it will never be used as a City street. Also, if you develop the alternate right-of-way, the amount of material fill necessary will encroach upon the adjoining parcel. He felt it would be more appropriate to widen the road next to the new CVS Pharmacy (that has a traffic light) and enlarge the radius onto Old County Home Road.

Councilwoman Bellamy noted that the area is rapidly growing and will eventually have the need for additional access from the area.

When Planning & Development Director Scott Shuford said that he believed the zoning district on the other side of Old County Home Road was residential single-family, Councilman Davis was having difficulty in understanding why we would want more connectivity to the residential section through that commercial area. Mr. Shuford felt the rationale behind this is that if you are able to create what are more traditional type of blocks, then you can have a more effective transportation network that allows people to get out from the homes multiple ways and not overburden any particular intersection.

Councilman Davis felt the alternate right-of-way is awfully close to the current entrance. He felt that might create a greater traffic problem in that it does slope and the speed of the traffic on New Leicester Highway. Mr. Shuford responded that it would be over 750 feet, which is a very long block.

Upon inquiry of Councilwoman Bellamy, Mr. Ledford said that it is the opinion of Tom Wilson, Engineer, that due to the topography and alignment, the alternate right-of-way would not be feasible because it drops 22 feet from New Leicester Highway in a distance of less than 150 feet. His opposition in the alternate right-of-way is that once they give the right-of-way it won't be used because (1) it's not feasibly possible; and (2) NC DOT will not give a curb-cut to New Leicester Highway. He feels a more valid point would be to widening the existing road where it gets narrow and where it ties into Old County Home Road so that would make a better and safe access at the existing traffic light on New Leicester Highway. He said that he is willing to sacrifice some of his property for those improvements.

When Councilwoman Bellamy asked if Mr. Ledford would be willing to make the road improvements, Mr. Ledford said he would possibly be willing to do some of those improvements. He might want some City participation but it really depends on what they are dealing with. The road improvements are probably not a problem, but he doesn't know about the relocation of the sewer and what MSD's standpoint would be on that.

Upon inquiry of Councilman Newman, Mr. Ledford said that if the road is not closed, they probably won't be interested in doing the development because they don't have the frontage they need or the total acreage to get the buildings in there. Not closing the road would potentially kill the whole site.

Mr. Jack Westall, attorney representing the Mr. Ledford, pointed out that the existing right-of-way is only 30 feet in width. Even if the City accepted the road and tried to open it, due to the limitations for construction and traffic the City would have to tear down the improvements that have already been made by other property owners on the right-of-way. Again, the City would have to condemn additional property to make the road wider than 30 feet.

Upon inquiry of Councilman Newman about theoretically having a connector road, Mr. Butzek said that we have looked at this corridor in a general sense and based on the information available, the elevation difference between New Leicester Highway and Old County Home Road is approximately 20 feet. The separation between the two streets is about 280 feet, which comes out to an average grade of approximately 7%. Based on the standards that we have for designing streets within the City, a street could be constructed with such a grade. We recognize that a significant amount of grading may be required especially as you approach New Leicester Highway. Regarding the issue of the NC DOT connection, he has reviewed that and he is not aware of NC DOT's response. However, he does feel that with the speed of traffic on New Leicester Highway, he doesn't feel this is any greater danger than any other uncontrolled intersection in the corridor.

Councilman Newman asked about the encroachment of buildings in the right-of-way. Mr. Butzek said that in the near-term it would be difficult to construct the existing roadway. However, if the City wanted to construct it, there would be some grounds for doing that.

After Mr. Ledford explained he doesn't own the parcel touching Old County Home Road for the alternate right-of-way from New Leicester Highway to Old County Home Road, Mr. Shuford said that a mobile home is located on that parcel. If that parcel becomes a transportation issue, then the mobile home might be able to be moved. It would put the City in a position of making that connection with a relatively minimal City expense. City Manager Westbrook also said that if a connection is needed in the future, it would be wise to preserve it at this time. In the future as costs increase for highways, the largest increments of costs now is purchasing right-of-way. If the right-of-way has to be purchased in the future to ensure some connection, it might not be financially feasible. The development taking place in that area clearly shows there will be a need for more connectivity.

Mayor Worley noted that there is no current intent to cut that alternate right-of-way through, but to reserve the option.

Mayor Worley closed the public hearing at 6:10 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved to permanently close a portion of an unopened section of Emma Road between Leicester Highway and Old County Home Road. This motion was seconded by Councilman Davis.

Councilwoman Bellamy felt additional time was necessary to discuss feasible ways to address this issue. We haven't determined how we will deal with the additional flow of traffic in the future.

Councilman Dunn spoke in support of connectivity, however, he was concerned that the development would not occur in that area if the portion of Emma Road was not closed. He felt the proposal was a good one and would support the closing.

Vice-Mayor Mumpower felt the red light is a safer access point on New Leicester Highway. The value of improving the road next to CVS Pharmacy now will benefit the neighbors in that community and the fact that Mr. Ledford is willing to help with that further supports the closing.

Councilman Newman felt the alternative right-of-way is a good concept, but wasn't sure if it would really work or not. However, he is reluctant to give up the existing right-of-way if it seems like there is an opportunity to gain an alternative right-of-way that could potentially work well for the community in the future.

Councilman Davis said that the area is becoming more commercial. He said that Mr. Ledford plans a good development and it won't happen unless the portion of Emma Road is closed.

Mayor Worley supported the closing the portion of Emma Road but also supported of the long range desires of the City to protect it's future needs and to do so in a way that tries to make it less expensive to the citizens of Asheville in the future. Since Mr. Ledford said there was room for compromise, he hoped that the compromise will continue with staff, including clarification of who will be doing what to the road next to CVS Pharmacy. Because this matter will require 5 affirmative votes to adopt the resolution and judging by Council's comments that there may be only 4 affirmative votes, it will require a second reading of the resolution which will occur on January 13, 2004.

City Engineer Cathy Ball said that if the motion passes, there was prior discussion about Mr. Ledford's willingness to widen Old County Home Road and she suggested that be included as part of the request. Secondly, when we were looking at this request we did try to take a look at what was the best for the citizens of Asheville. Currently the City has interest in property and to relinquish that seems like there should be something gained for the residents of the City of Asheville. The bigger picture is that we are faced with congestion management and needing to come up with ways to reduce congestion. While one place my have a traffic signal, sometimes traffic backs up more and causes more air pollution. These closings are coming up more and more frequently and staff will be taking a real close look at what we are relinquishing as a result of what we have to gain for the residents of the City of Asheville. We are looking to the future. In this situation, the ability to be able to keep a right-of-way may not mean that we build the road, it may mean that if a developer comes in adjacent to that it's a requirement that they extend it for a portion of the way. When we don't have options, and unfortunately in this community with the topography that we have, we often don't have a lot of options. The reason we requested the 50 foot right-of-way is because we knew there was a really good chance that we would have to put in some retaining walls in order to meet those grades as they came up to New Leicester Highway.

Mr. Ledford said that in his research of this particular parcel they were unable to find, nor was the City Attorney able to find, any dedication of this road, nor were we able to find any deeded right-of-way. We can't find its existence other than a plat on a tax map. So there is question about whether it even exists or if it is a right-of-way.

The motion made by Vice-Mayor Mumpower and seconded by Councilman Davis carried on a 4-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy and Councilman Newman voting "no." This matter will be considered on its second and final reading on January 13, 2004.

RESOLUTION BOOK NO. 28 – PAGE 73

B. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 60 CALEDONIA ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT

ORDINANCE NO. 3076 - ORDINANCE REZONING PROPERTY LOCATED AT 60 CALEDONIA ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3077 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 60 CALEDONIA ROAD TO ALLOW THE CONSTRUCTION OF 35 INDIVIDUAL GARAGE UNITS AND 10 ADDITIONAL PARKING SPACES

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:24 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Ms. Shannon Tuch, Urban Planner, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to conditionally rezone property located at 60 Caledonia Road from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use and a request to issue a conditional use permit to allow the construction of 35 individual garage units and 10 additional parking spaces.

Ms. Tuch said that the Asheville 2010 plans outlines the increasing need for high density housing in the urban center with access to retail/businesses, pedestrian amenities, public transportation, cultural activities and parks, and employment centers. This project's prime location, less than a half mile from Biltmore Ave, and Mission St. Joseph's Hospital, satisfies these standards with the added benefit of providing the residents the solitude and comfort of a single family neighborhood with significant historic and architectural character (City Exhibit 3 – Building Elevations). Although it is not the lot containing the residential units in need of the rezoning, it is important to consider improvement and rehabilitation to our existing residential neighborhoods as described in our City adopted Smart Growth Goals. In addition, the need to promote sustainable land development patterns is also listed as a goal and, as such, it becomes necessary to examine the long-term needs of the associated multi-family structure to keep it attractive and viable.

The applicant, E. Frank Howington, representing the owner Kenilworth Apt. LLC,, has requested a rezoning of .86 acres of RS-8 property to Institutional to allow for the new construction of 35 individual garage units on an existing 58 space surface parking lot. (City Exhibit 3 – Location Map). The Conditional Use component of this project will be a site master plan showing the proposed garage structures with some reconfigured parking. The project site is located within City limits on the northwest corner of Caledonia Road and Springdale Road, directly across from the rear of the newly renovated Kenilworth Inn. Apart from the Inn property currently zoned Institutional, the subject property is surrounded entirely by single family uses zoned RS-8. In addition to the proposed 35 garage units, an additional 10 surface parking spaces will be retained for a total of 45 spaces (City Exhibit 3 – Garage Units). This will result in a net loss of 13 spaces which, when totaled with the Inn's additional off-street parking, is still above the minimum parking requirement (City Exhibit 3 – Site Plan). The project will also retain the existing buffer vegetation which was required for the Inn's earlier renovations in 2001and will need to be maintained for the proposed development.

The site is a mildly sloping asphalt parking lot that will not be altered through the construction process. The individual garage units are intended to be constructed on top of the existing asphalt parking lot and will not result in any ground disturbing activity or increase in impervious surfaces. In addition, the existing entrances on Caledonia Road and Springdale Road will remain in use and will be unaltered.

The purpose of the RS-8 zoning district is to establish a high density single family district in areas where public infrastructure is sufficient to support such densities. The Institutional zoning district is to reserve land for the development of major educational facilities, medical facilities, and other complementary and supporting uses such as health related developments, office developments and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses and as such allows for the development of high density multi-family, to serve as a potential buffer between other institutional uses and single family areas.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project area is relatively flat and the proposed project will not require any grading or other ground disturbing activity

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed garages will be constructed as an amenity for the residents of the Kenilworth Inn and will be built, both in materials and architecture, to reflect the style and character of the historic landmark. As a condition of this project, the applicant has agreed to incorporate design recommendations from the Historic Resources Director to ensure that the garages enhance the historic property and neighboring homes. In addition, the garage units will be individual units and will not exceed, in height or depth, the scale of the smaller homes in the area. Lastly lighting on the site will be improved from existing conditions to minimize intrusion and the loss of spaces will result in a slightly lower traffic count.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The surrounding properties are primarily high density single family homes that are small to modest in scale. The proposed garages will not exceed the average home's height and depth proportions or exceed potential square foot coverage for a homes on a subdivided .86 acre lot. In addition, the garages will be designed to reflect the historic character of the Kenilworth Inn and adjacent homes in the neighborhood.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The Asheville 2010 plans outlines the increasing need for high density housing in the urban center with access to retail/businesses, pedestrian amenities, public transportation, cultural activities and parks, and employment centers. This project's prime location, less than a half mile from Biltmore Avenue and Mission St. Joseph's Hospital, satisfies these standards with the added benefit of providing the residents the solitude and comfort of a single family neighborhood with significant historic and architectural character. Although it is not the lot containing the residential units in need of the rezoning, it is important to consider improvement and rehabilitation to our existing residential neighborhoods as described in our City adopted Smart Growth Goals. In addition, the need to promote sustainable land development patterns is also listed as a goal and, as such, it becomes necessary to examine the long-term needs of the associated multi-family structure to keep it attractive and viable.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers. The proposed project will not require water or sewer service and preliminary review by other service providers has not revealed any problems for future service to the development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project will utilize the existing parking area and entrances, resulting in no real change to traffic flow and a slightly reduced traffic count due to the loss of parking spaces. In addition, the applicant is considering installing additional sidewalk along Caledonia Road (in place of 'fee in lieu of') which will provide additional pedestrian paths and refuge, reducing the potential for vehicle/pedestrian conflict.

Approval of this project will allow for the construction of small, individual garage units that will be residential in scale and character and should blend in with the surrounding architecture and homes. It is intended that the proposed development serve to help enhance and promote the living conditions of a notable local landmark that has invested significantly in Asheville and the Kenilworth neighborhood through the renovation and rehabilitation of the Kenilworth Inn into small, moderately affordable units.

At their November 5, 2003, meeting, the Planning and Zoning Commission reviewed the Conditional Use rezoning request and voted unanimously that the project be forwarded to City Council stipulating the following condition that the applicant shall meet all outstanding TRC conditions.

City staff recommends approval of the zoning change from RS-8 to Institutional and approval of the associated conditional use permit, as proposed by the applicant, subject to (1) all outstanding TRC conditions being met and (2) the applicant continues to work with the Historic Resources Commission Director on undecided architectural issues.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that two comments have been directed to her. One being in strong support of the project and the other had concerns primarily over the mass of the buildings.

Mr. Don Yelton questioned what measures are being taken to handle roof stormwater runoff. Ms. Tuch responded that this application will be reviewed for erosion control and stormwater measures under a separate cover through the City's Engineering Department.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:36 p.m.

Councilwoman Bellamy thanked the developer for taking a blighted piece of property and turning it into a livable space taking extra care in developing garages for the tenants.

Councilwoman Bellamy moved to adopt Ordinance No. 3076 to rezone property located at 60 Caledonia Road from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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Councilwoman Bellamy moved to adopt Ordinance No. 3077 to issue a conditional use permit to allow the construction of 35 individual garage units and 10 additional parking spaces, subject to the following conditions: (1) all outstanding TRC conditions being met and (2) the applicant continues to work with the Historic Resources Commission Director on undecided architectural issues. This motion was seconded by Councilman Dunn and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED ON POLE CREASMAN ROAD AND BREVARD ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3078- ORDINANCE TO REZONE TWO LOTS LOCATED ON POLE CREASMAN ROAD AND BREVARD ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 6:38 p.m.

Ms. Shannon Tuch, Urban Planner, said that this is the consideration of an ordinance to rezone two lots located on Pole Creasman Road and Brevard Road from RS-4 Residential Single-Family Medium Density District and RM-8 Residential Multi-Family Medium Density District to Community Business II District. This public hearing was advertised on November 14 and 21, 2003.

Ms. Tuch advised that a valid protest petition had been filed, however, at the meeting on November 25, 2003, the petitioner presented City Council with copies of a withdrawal of protest of proposed zoning amendment. It was determined by City Council that originals would be necessary to invalid the protest petition and thus the meeting was continued until this date. On December 1, 2003, the petitioner presented the City Attorney with the original withdrawals.

The applicant has requested a rezoning of two parcels from RS-4 Residential Single-Family Medium Density District and RM-8 Residential Multi-Family Medium Density District respectively to Community Business II (CB-II) to allow for further commercial development of the Brevard Road corridor. The subject property currently includes multiple single-family residences and is bordered by vacant land to the north, non-conforming commercial uses to the east, single family residences to the south, and single family residences and some vacant residentially zoned property to the west. There are some additional CB-II zoned properties further north along Brevard Rd. However, these uses, along with those to the east and southeast of the subject property, are predominantly non-conforming. The Community Business II district is established to provide business and service uses to medium/high density residential areas, serving several residential neighborhoods.

The purpose of the RS-4 zoning district is to establish a medium density for single family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living. The purpose of the RM-8 district is to provide medium density multi-family housing types along with single family detached and attached residences. This district is also intended to provide a transitional area between medium density single family dwellings and other higher density residential uses and/or uses of a heavier impact. The existing 2 acre RM-8 lot along with the vacant RM-8 property to the North serves to buffer the existing single family residences from encroaching commercial development and is some of the only multi-family zoned property in the area with direct access onto Brevard Rd.

At their August 6, 2003, meeting the Planning and Zoning Commission recommended a compromise zoning action where the two subject parcels would be split zoned with the front half of both parcels (fronting on Brevard Road) being rezoned to CB-II while the back halves would remain under the RS-4 zoning designation. At the time, the owner's representative, Mr. Gerald Green, supported the compromise and the Commission voted 5-1 in favor of the new alternative. Later, once the project had been advertised and the public hearing scheduled, the owner of the property changed his support and the project was remanded back to the Planning and Zoning Commission. At their November 5, 2003, meeting the Commission again heard the case and ultimately recommended denial of the request in a 3-3 vote, primarily citing concerns over loss of well positioned multi-family zoned property and adverse impacts to the adjacent single family neighbors.

The southwest area is currently one of the City's fastest growing residential areas where rents and housing prices remain modest. The subject property is felt to be well positioned for a multi-family development that would be in close proximity to employment centers and necessary services. In addition, the existing CB-II properties located near or adjacent to the subject properties are almost all non-conforming and underutilized. It would be preferable to preserve the opportunity for multi-family and single family development while encouraging turnover or renovation of existing non-conforming CB-II properties. Of particular concern are the existing site conditions for the RS-4 parcel where maximizing commercial development on this site would result in significant earth moving and vegetation removal, effectively eliminating the existing buffer between the single family neighborhood and the encroaching commercial uses. In addition, concern over the almost certain commercial access onto the exclusively residential road could result in a substantial adverse impact to the residents living along Pole Creasman Rd. Lastly, whenever a road is being widened it is the preference of the N. C. Dept. of Transportation (NC DOT) and other groups that the intensity of uses along the corridor not be altered significantly because the purpose of the widening is to facilitate the movement of the existing traffic. As soon as you start increasing that intensity of the use then you begin to undo the benefit of the widening and the investment of the public money.

Staff does clearly understand the interest in rezoning the property and tried to approach the applicant with a variety of compromises, none of which he supported.

At their November 5, 2003 meeting the Commission again heard the case and ultimately recommended denial of the request in a 3-3 vote, primarily citing concerns over loss of well positioned multi-family zoned property and adverse impacts to the adjacent single family neighbors.

Planning staff recommends denial of the rezoning request as submitted.

There was a brief discussion about the huge power lines in the back of the property that almost serve as a buffer from the rest of the neighborhood.

Upon inquiry of Councilman Newman about all the uses allowed in the CB-11 District, Ms. Tuch explained that the type of use is not the greatest concern, but the scale of use and the impact of the site.

Mr. Gerald Green, representing the petitioner, spoke in support of the rezoning and agreed that there is a number of underutilized commercial properties along Brevard Road. However, he anticipated that what the widening of Brevard Road the pace of redevelopment and new development along Brevard Road will increase significantly. The rezoning and development of this property under the CB-II District will provide a model for that redevelopment. The CB-II standards are much stricter than the standards under which the existing development could occur. He then addressed each reason of staff's concern. Basically, the City's zoning and landscaping ordinance provides for significant buffering based on the type of use and the change in intensity of uses so the buffers would remain. He felt the power lines do serve as a good buffer between this property and the adjacent residential properties. Another issue was grading and removal of vegetation if the property were rezoned. Regardless of the type of development on that property, grading will occur and the landscaping will be removed. He explained that if the property remained RM-8 it would probably result in as much, if not more, grading and landscape removal than any commercial zoning. He explained that the traffic that would be generated by the commercial development on this property would have access at a traffic signal either coming off Pole Creasman Road or near that traffic signal coming onto Brevard Road. There are still some questions on whether the NC DOT will permit access onto Brevard Road that close to a traffic signal and the City has some access standards as well. Regarding the compromises, the owner doesn't know what type of uses will go on the property and because of the topography and access limitation the petitioner did not accept any of the compromises.

Mr. Carr Swicegood, property owner, spoke in support of the rezoning. He felt that the CB-II zoning fits better because of the power lines. He explained that the property is pretty much surrounded by commercial property.

Mr. Fred English felt the City should not rezone any more residential property for business.

Mr. Alan Ditmore felt the property should be developed as mixed-use with commercial and residential.

Mr. Herman Langford, resident on Pole Creasman Road, spoke in opposition of the rezoning request. Any commercial development on that property will increase traffic on Pole Creasman Road and create less buffer than there is now.

Mr. Andy Reed spoke in opposition to the rezoning noting that Pole Creasman Road is a dangerous road already and doesn't need any more increased traffic on it.

Mr. Mike Fryar supported the rezoning stating that most of the area is commercial already.

Mayor Worley closed the public hearing at 7:12 p.m.

When Councilman Davis asked if he would have a conflict of interest since he served as Planning & Zoning Commission Chair at their August meeting when this matter was heard, City Attorney Oast said that this is a different proposal and there would be no conflict.

City Attorney Oast reminded Council that if the property is rezoned, it can be used for any use allowed in the CB-II district.

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Councilman Davis asked if there was anyway of mitigating traffic on Pole Creasman Road. City Attorney Oast said that the development will have to go through the site plan review process and issues like traffic will come up then. City Manager Westbrook also noted that Pole Creasman Road and Brevard Road are both state maintained roads.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that staff's control is limited in the development review process and not all concerns discussed today can be addressed through that process.

When Councilman Newman asked if there were any other rezoning issues in the area, Planning & Development Director Scott Shuford said that Council has directed him to look at a zoning plan for the Brevard Road corridor, however, it would not affect this project since the application was already submitted. That plan should be before Council in February or March. He said that should Council chose to accept this rezoning, they will assume Council's vision for this area is this is a node of commercial and they will accommodate that in their planning process.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Dunn moved to adopt Ordinance No. 3078. This motion was seconded by Councilman Davis.

Vice-Mayor Mumpower personally felt the weakest argument is the nature of the residential area surrounding the property. He felt it is more of a transitional area. Weighing all the information, he felt the petitioner has satisfied his immediate neighbors to the point they withdrew their protest petition, and he would support the motion to rezone.

Councilwoman Bellamy said that she would support the motion to rezone but asked City staff to address anyway they could the access on Pole Creasman Road as well as the buffering concerns.

The motion made by Councilman Dunn and seconded by Councilman Davis carried on a 5-1 vote, with Councilman Newman voting "no."

At 7:25 p.m., Mayor Worley announced a short break.

ORDINANCE BOOK NO. 21 – PAGE 33

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 03-208 - RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT FOR MANAGEMENT OF PUBLIC ACCESS CHANNEL

RESOLUTION NO. 03-209 - RESOLUTION RECEIVING REPORT OF PUBLIC ACCESS CHANNEL COMMISSION

ORDINANCE NO. 3079 - ORDINANCE DISSOLVING THE PUBLIC ACCESS CHANNEL COMMISSION

Public Access Channel Commission Chair Beth Lazer said that this is the consideration of an ordinance to dissolve the Public Access Channel Commission (PACC) and provide direction as to the City's support of URTV, Inc., as the non-profit corporation responsible for policy and operational oversight of a public access cable channel pursuant to the terms of a Management Agreement with URTV, Inc. and the City of Asheville.

On October 28, 2003, City Council voted unanimously to allow the Mayor to enter into an Interlocal Agreement with Buncombe County government for the purpose of funding a Countywide public access television operation and facility. At that time, the PACC Chair Beth Lazer outlined future steps necessary toward the formation of URTV, Inc. as the oversight corporation of public access television for Asheville and all non-incorporated areas of Buncombe County. Those steps include: 1) adoption of an ordinance dissolving PACC, 2) direction as to Board of Director selection process of URTV, Inc.; and 3) Once the URTV, Inc. Board of Directors is formed, the City of Asheville negotiate and enter into a Management Agreement with URTV, Inc.

The PACC has recommended that both Asheville City Council and Buncombe County Commissioners each receive one initial URTV Board of Director appointment. In addition, all five current PACC members have agreed to serve an initial term during this upcoming transition. Then, those seven inaugural board members would appoint the remaining four board members, for a total of eleven board members. The recommendation of one appointment each from the City and County is based on the following factors: (1) consultant's recommendation based on other Public Access Channel non-profit boards; (2) the desire of Council to distance itself from any liability issues pertaining to the operation of the Channel; (3) also the more appointments Council has, the more the organization will appear less like an independent member organization and more like a City commission; (4) the fewer appointments by Council, they feel they have a better chance of getting a 501 (c) (3) designation from the IRS; and (5) the more distance we have from the governing bodies, the easier it will be for them to raise funds from other sources, such as foundations.

Several City Council members requested data from other North Carolina cities that would outline the non-profit Board appointment process. The following cities were contacted and subsequent information collected:

Town of Chapel Hill/ The People's Channel: Private-non-profit public access channel since 1996. The Board of Directors consists of ten members, all of which are appointed by the Board itself. Current budget: $133,392. Of that amount, $110,341 is provided by the City through cable fees.

City of Greensboro/Greensboro Community Television: Private non-profit public access channel since 1995. The Board of Directors consists of eighteen members. Three members are appointed by the City of Greensboro and the remaining fifteen are appointed by the Board. Current budget: $225,000. Of that amount, $120,000 is provided by the City through cable fees.

City of Winston-Salem/Community Access Television (CATTV): Private non-profit public access channel since 1994. The Board of Directors consists of fourteen members, seven of which are currently vacant. Several board seats are held by member representatives; several seats are held by community organizations, such as the N.C. School of the Arts. No seats are appointed by the City of Winston-Salem.

City of Raleigh/Community Television: The City of Raleigh does not have a private non-profit organization to oversee its public access channel. The Public Affairs Department oversees the division responsible for government access, public access, and religion access television. These divisions are staffed with City employees. The Raleigh City Council appoints the Raleigh Telecommunications Commission, who has responsibility for policy oversight of Community Television.

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City of Wilmington: The City of Wilmington does not have a public access television station. Time-Warner Cable Company does provide a channel for community access, accepting locally produced tapes for consideration. There is no City involvement, to include money and Board oversight at this time. The City does have the ability through its Cable Franchise Agreement to set up a public access channel in the future if it determines it necessary.

As you can see, there is a wide continuum of how other cities in our region have addressed public access channel programming oversight responsibility.

Staff recommends Council adopt the ordinance dissolving the Public Access Channel Commission and determine a method to appoint URTV, Inc. Board of Directors. Once the board is named, the City Manager shall negotiate, on behalf of the City, a management agreement subject to the City Council final approval.

In addition, at Council's worksession on December 9, 2003, discussion of this matter, the following issues were raised as follows:

1. Composition as non-profit board. The composition of the board of URTV, Inc. or any independent agency that will operate the public access channel, was an issue for several Council members. One way that this can be influenced appears to be by Council authorizing the negotiation of a management agreement with an independent non-profit corporation (if that is Council's desire), but to limit that authorization to non-profits whose bylaws provide for a certain number of City/County appointments.

2. Management Agreement. The draft management agreement is only an example of what such an agreement might contain. The Manager may be instructed to insist on certain terms to ensure as much as possible that the public access channel is operated in an appropriate and responsible manner, subject of course to legal considerations regarding public forums and censorship.

3. Recommendation of PACC. City Council should receive the report of the PACC, without necessarily adopting or endorsing its recommendations. This will signify that PACC has completed its work (with the thanks of Council), and that Council is free to act on the recommendations of the report.

4. Ordinance dissolving PACC. If Council wishes to retain PACC or a similar organization to act in an on-going advisory capacity, appropriate action can be taken for that as well.

The City staff will proceed with negotiations on the management of the public access channel in accordance with Council's wishes. The resolution containing that authorization may be revised accordingly, but it is recommended that it be adopted in some form.

Mr. Chad Nesbitt, owner of High Impact Productions Inc., asked if any taxpayer money being used for this channel, will religious and political programming be allowed on the channel, and will the non-profit board open their books for audits.

Mr. Fred English was not satisfied with the board's make-up and felt the channel should not be paid with taxpayer's money.

Mr. Mark Goldstein, member of the PACC, spoke in support of the board's suggested make-up and how it would be fully inclusive process for board appointments.

Mr. Peter Dawes felt that the current PACC has not been inclusive with the entire community to date noting that the existing talent has not been used, even after being offered. He felt the City and County should have more than one representative on the non-profit board.

Mr. Don Yelton said that the City cannot give up their legal liability to any Board that Council forms. He felt any Public, Educational and Government (PEG) money should go to the UNC-Asheville studio rather than build a new studio. He wanted the PEG money to go to coordinate an effort with A-B Technical Community College (A-B Tech) to train people how to fix videos. He questioned if UNC-Asheville even wanted to participate in this program. He felt we needed to maximize our money. He fully supported public access television, but not if it creates another layer of bureaucracy.

Mr. Bill Fishburne said that there are standards of what can and cannot be shown on the public access channel. He felt there should be a termination clause in the agreement after a period of time. He also felt the subscribers should have a chance to opt out and not be forced to have this on their basic cable service. Lastly, he felt there should be an independent survey done to see if anyone is watching the channel.

Mr. J.R. Yarnell, Asheville resident, spoke in support of the public access channel.

Mayor Worley and Ms. Lazer responded to comments and questions raised by the public.

Upon inquiry of Councilman Newman, Ms. Lazer outlined how they envision the future non-profit board and it's membership.

Vice-Mayor Mumpower was comfortable with the existing PACC being the core of the non-profit board, but felt that the City needed a stronger external representation because it does involve citizens' money and it's not voluntary participation. He explained how he felt some balanced oversight is appropriate and advocated the City appoint two members (instead of one) to the non-profit board.

Councilman Newman felt that if the City and Council each had two representatives on the board, that would 1/3 of the board made up of people primarily watch-dogging the non-profit board, rather than going out and working hard to raise the private sector funding necessary to make this project work and to get the community involved. We do have every opportunity to build mechanisms in the agreement that will provide the accountability and regular oversight. Regarding accountability, he didn't feel that City Council gains that much more control based on the number of people we appoint to the board. He pointed out that City Council could appoint the entire board, but once we appoint citizens to serve, they do what they think is the right thing to do at the time, which may or may not coincide with what City Council thinks at any given time. He supported the suggestion by Councilwoman Bellamy to appoint a liaison which will be a good way to keep the lines of communication open.

Ms. Lazer agreed that a City Council liaison would be a good idea.

Councilman Dunn felt that this board is different from other boards because they will be dealing with taxpayer money. He explained why he felt we needed more than one member on the Board.

Upon inquiry of Councilman Newman, Ms. Lazer said that UNC-Asheville and A-B Tech are partners with the Education Access Channel and that is where their programming has been focused and sent. On the other hand, we have been working with the multi-media department at UNC-Asheville in our partnership with the Multi-Media Arts Project. They are looking for a venue where students who are studying multi-media can come and produce programming and then have a venue for that work. We would be more than happy to work with UNC-Asheville and A-B Tech in that endeavor.

When Councilman Newman asked if there was a way to evaluate the number of people watching the channel, City Attorney Oast said that he will ask Charter Communications.

Upon inquiry of Councilman Davis of the PEG funds, Ms. Lazer said that the County Commissioners are receiving money from Charter based on their own franchise agreement. Their collected money is waiting for distribution until we go to them and work on a management agreement. Then they will figure out how they are going to be dividing the money they are collecting. Their money can be used for operating, capital or equipment and the City's money can only be used for capital and equipment.

Upon inquiry of Councilman Davis, Ms. Lazer said that Asheville City Schools, UNC-Asheville and A-B Tech are providing their own funding for the Education Channel.

Councilwoman Bellamy said that with our PEG fees we should do it on a percentage basis and give some to the Educational Access Channel, thinking about the fact that City and County schools, A-B Tech and UNC-Asheville have been paying the bill for the last few years. Previously the Educational Access Channel Commission has come to Council asking for a portion of PEG fees because basically Asheville City Schools does a lot of the programming and ensuring that the channel stays on the air. Since it serves the majority of the City of Asheville, she felt it was important to give a portion of the PEG fees to them. Ms. Lazer said another alternative might be to share equipment and facilities as best we can to avoid duplication.

Vice-Mayor Mumpower said that it has been suggested that once we get beyond this that we might look at all of our public channels and see if there are ways to do all of that better.

Councilman Davis felt that we are looking at a fairly costly, ambitious project. We have money set aside for the initial start-up, but we really need to be looking at the management agreement once we get past the dissolution of the current board.

Vice-Mayor Mumpower said that the Educational Access Channel Commission is tentatively interested in coming to a Council worksession and making a presentation of their structure and interest. He also noted that the Government Channel has funding weaknesses as well.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and ordinance and they would not be read.

Vice-Mayor Mumpower moved to adopt Resolution No. 03-208. This motion was seconded by Councilwoman Bellamy. City Attorney Oast noted that the number of members to be appointed by the City and County needed to be inserted in the resolution prior to adoption.

After discussion initiated by Councilwoman Bellamy on whether there should be prior consultation with the County Commissioners about the number of members, Vice-Mayor Mumpower moved to adopt Resolution No. 03-208 providing that the by-laws of the URTV, Inc. provide that the City Council and Buncombe County Commissioners shall each appoint two members to the board of directors of URTV, Inc. and that said appointment power be perpetual for the life of URTV, Inc. and that the total membership of said board not exceed eleven. Said motion was made with the understanding that some discussion and negotiation with Buncombe County is going to have to occur and that number of members can be modified at a later point. This motion was seconded by Councilman Dunn.

Councilman Newman moved to amend the motion that the City and County appoint only 1 member each to said URTV, Inc. This motion was seconded by Mayor Worley.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that he would include a provision in the management contract that City Council appoint a liaison to the URTV, Inc.

The motion to amend failed on a 3-3 vote, with Mayor Worley, Councilman Davis and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

The original motion appointing 2 members to URTV, Inc., carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 75

Councilman Newman moved to adopt Resolution No. 03-209 receiving the report of the PACC and thanking them for their service. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 76

Vice-Mayor Mumpower moved to adopt Ordinance No. 3079 dissolving the PACC. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 35

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of November 14-December 4, 2003: JoAnn Watley (Streets), Jesse Turner (Streets), Mary Juanita Theobald (Streets), Diane Douglas (Fire), BellSouth (Water), Arthur Graham (Sanitation) and Denise Hollifield (Water).

The following claims were received during December 5-11, 2003: Jerry Queen (Water), Toni Pisani (Water), Joanne Allison (Water), Richard Pierce (Streets) and Max L. Morgan (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English felt that City Council should not bother the pushcart owner located at the County Courthouse for driving over the curb to put the pushcart on the sidewalk when other vehicles drive over the curbs for various reasons.

Mr. Roy Harris praised City Council for the professional way they handle themselves during Council meetings.

Mr. Don Yelton encouraged City Council to address the PACC questions put before them today.

Mr. Mike Fryar presented City Council with Ordinance No. 3035 annexing his property on Smoky Park Highway and a map of the property alleging that the description in the ordinance does not accurately correspond with the map. He asked City Council to either rescind the ordinance or waive the 60-day time period within which to appeal the ordinance.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that he was not aware of a process in the statute by which we can rescind an annexation. He believed that requires legislative action.

Based on information Mr. Fryar has brought before Council, Vice-Mayor Mumpower asked if Council has the authority to extend the period of appeal. City Attorney Oast replied no and that he felt it was a jurisdictional issue. Regarding the accuracy, City Attorney Oast said the City operated within reasonable parameters of accuracy.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:25 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 6, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Joseph C. Dunn

CONSENT:

Support for Statewide Passenger Rail Service

Summary: The consideration of a resolution supporting statewide passenger rail service.

Since 1999, a group called the Western Carolina Rail Corridor Committee has been meeting and working to advocate and generate momentum for getting passenger rail service from Salisbury to Asheville. The Committee consists of representatives from each of the nine locations along the route where a depot either currently exists or, in the case of Asheville, is proposed. Following this example, a similar 'Committee' has recently formed around a similar movement for passenger rail service between Raleigh and Wilmington/or Morehead City. Now, both groups are collaborating to promote a statewide passenger rail system across North Carolina. To that end, they are asking all affected units of local government, local business organizations, and other groups for their support by adoption of a resolution of support. Their plan is to present the collective resolutions to the NC General Assembly during the upcoming session as a demonstration of wide support for the service.

Staff recommends Council approve the resolution supporting statewide passenger rail service.

New Street Name of "Gabrielle Lane"

Summary: The consideration of a resolution accepting the new proposed street name "Gabrielle Lane."

Gashes Creek Ridge LLC, owner of lots off of Gashes Creek Road, has petitioned the City of Asheville to accept the street name " Gabrielle Lane."
The new street will begin at Gashes Creek Road and end at the cul-de-sac on Gabrielle Lane.

City staff recommends adoption of the resolution accepting the new street name "Gabrielle Lane."

Budget Amendment for NC DOT TEA 21 Enhancement Grants

Summary: The consideration of a budget amendment for three municipal agreements with the N. C. Dept. of Transportation (NCDOT) for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

On October 11, 2003, City Council authorized the City Manager to sign three municipal agreements with the NCDOT accepting the award of TEA 21 Enhancement grants for the three aforementioned sidewalk and pedestrian projects. The NCDOT will disburse TEA 21 funds for all three projects directly to the City; however, the City is responsible for only the New Haw Creek

Road/Avon project and is required to provide a local cash match. The City will distribute the other TEA 21 grant funds to the Pack Square Conservancy, who is responsible for managing the Pack Square Pedestrian Improvement project, and to Mountain Housing Opportunities, who will manage the West End/Clingman Project. Because all funds will initially be issued to the City for subsequent disbursement, a budget amendment authorizing the use of these funds is required.

The specific amounts of the grants are as follows:

(1) New Haw Creek Road/Avon Road Sidewalk – The TEA-21 grant award for this project is $172,132. The State is matching this grant with $150,000 from its Small Urban Fund Grant. Additional matches include $5,000 from the Haw Creek Community Association, and $40,000 from the City, which is already budgeted in the City's fee-in-lieu of sidewalks account.

(2) Pack Square Pedestrian Improvements – The amount of the grant is $140,000. Pack Square Conservancy will provide the match for the project.

(3) West End/Clingman Pedestrian Improvements – The amount of the grant is $172,131. The match for the project will be made by Mountain Housing Opportunities.

Staff recommends that a budget amendment for three municipal agreements with NCDOT for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

City Engineer responded to various questions from Councilman Newman about sidewalk priorities.

City Engineer Cathy Ball responded to questions from Councilman Newman regarding sidewalks.

Budget Amendment for Fair Housing Assistance Program Grant

Summary: The consideration of a budget ordinance, in the amount of $172,700, for the Fair Housing Assistance Program (FHAP) for Fiscal Year 2003-04.

The City has been carrying out its Fair Housing Program under contract with the Asheville-Buncombe Community Relations Council (ABCRC) and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

We have received notification of the grant awarded to the City for the federal fiscal year of 10/1/02-9/30/03. Staff has submitted the necessary paperwork to HUD. It is characteristic of this grant program that we receive notification of the grant amount at the end of the program year.

A budget ordinance amendment is required in order to receive these funds and subgrant them to ABCRC.

Community Development staff recommends adoption of the ordinance.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

URBAN RIVERFRONT MASTER PLAN

Planning & Development Director Scott Shuford said that several years ago, the City contracted with RiverLink for the preparation of a master plan for the urban areas of the French Broad and Swannanoa rivers. Later, the scope for this plan was broadened to include what is now called the Wilma Dykeman Riverway concept.

Working with a large, broad-based group of citizens and with City staff, RiverLink has completed a draft Urban Riverfront Master Plan that envisions nodes of relatively dense urban development in a scenic riverfront setting. The plan capably marries land use, transportation, water quality, and economic development goals in a manner that implements City Sustainable Economic Development Task Force and Smart Growth objectives. Under the plan, the main road linking the two rivers will become a unified transportation corridor; economic development opportunities and strategies are identified and mapped out; and a land use pattern consistent with traditional development design throughout the City is encouraged. Additionally, environmentally sensitive restoration of the rivers to promote public access, recreation, and commerce is to be accomplished.

While there has been considerable public involvement to date, RiverLink continues to seek public input on the Urban Riverfront Master Plan and wants to receive preliminary feedback from City Council concerning the direction of the plan and any additional public input deemed appropriate by Council.

Ms. Karen Cragnolin, Executive Director of RiverLink, updated City Council on the Urban Riverfront Master Plan. The goal of this plan is to create the vision, direction and foundation that will excite and motivate many people to place their bets in the riverway corridor. She explained the public process, identified facts of the French Broad River Watershed, and showed maps identifying the growth in the Swannanoa River Subwatershed. The Plan is for balance, economic development, transportation, health, environment, recreation and education. She showed the boundaries of the riverway project. The Riverway will be divided up into seven districts: the Buncombe County Turnpike District, Cotton Mill District, River Arts District, Tannery District, Roundhouse District, Biltmore Village District, Donald Ross District, and WNC Nature Center District. She explained the market and economic development feasibility study that was performed. The estimated cost of the 17 mile plan is $34 Million. Ms. Cragnolin then explained the economic and community impacts. She said that after additional public input, she will be bringing this Master Plan back to City Council for consideration of approval.

Ms. Cragnolin responded to various questions/comments from Council, some being, but are not limited to: how does this plan coincide with the West End/Clingman Avenue Area Plan; has contact been made with the Housing Authority regarding Hillcrest Apartments; has the Transportation Advisory Commission been involved in this plan; and is it realistic that this plan can be implemented.

On behalf of City Council, Mayor Worley thanked Ms. Cragnolin for her excellent presentation.

ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that this is the presentation of the City of Asheville annual audit report for the Fiscal Year Ended June 30, 2003.

City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, N.C., to perform an audit of the City of Asheville for the fiscal year ended June 30, 2003, as required by North Carolina General Statute 159-34. The auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City is not modified by reservations or restrictions.)

Mr. Brian Broom, Director of Crisp, Hughes Evans LLP, gave a brief presentation of their findings. He said their report for the 2003 audit expresses and unqualified opinion (clean) on the fair representation of the general purpose financial statements in all material respects, in conformity with generally accepted accounting principles. This year the City was required to implement Government Accounting Standards Board Statement No. 34. As a result, the format of the financial statement has significantly changed. He then summarized some of the more significant changes. The Local Government Commission recommends governmental entities maintain, at a minimum fund balance equal to 8% of annual expenditures in the General Fund. The City's fund balance for 2003 is about 19%.

Mr. Broom and Mr. Schaefer answered various questions from Council regarding the financial report.

Councilwoman Jones asked for some way to monitor the budget, understanding why a mid-year report would not be accurate due to various reasons.

At 5:06 p.m., Vice-Mayor Mumpower left the meeting to attend the Buncombe County Commissioners meeting regarding Memorial Stadium.

At 5:15 p.m., Mayor Worley announced a short recess.

UDO AMENDMENT REVIEW

City Attorney Oast said that this Unified Development Ordinance amendment is being brought before City Council in order that staff may respond to questions Council may have prior to the public hearing, which has been scheduled on January 13, 2004. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Add duplex uses as a use by right subject to special requirements in all single family districts, to eliminate this use as a conditional use in the same zoning districts, and to provide for revised parking requirements for triplex and quadraplex uses in single family zoning districts.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to add duplex uses as a use by right subject to special requirements in all single family districts, to eliminate this use as a conditional use in the same zoning districts, and to provide for revised parking requirements for triplex and quadraplex uses in single family zoning districts.

This code amendment provides for administrative (staff) approval of duplex uses in all single family zoning districts. This code amendment has been under development for some time and City Council has asked staff to expedite its completion. Under the proposed amendment, duplex uses would go from being conditional uses to uses by right subject to special requirements. This amendment was originally proposed to include triplex and quadraplex uses as well, but meetings with a focus group of developer and neighborhood members resulted in this staff-recommended compromise. The following development standards would have to be met in order for staff to approve a duplex use:

- Separation requirements of 150 feet or 300 feet between such uses (depending on the zoning district), subject to block size provisions.

- Minimum lot size requirements.
- Parking in the rear of the site, except in certain circumstances.
- Architectural design standards to ensure that duplex structures resemble single family homes in the neighborhoods in which they are located, including: door and window placement requirements; structure height limits; roof design, pitch and materials requirements; setback limits; and siding requirements.
- Infrastructure sufficiency determination.
- Property maintenance standards.

Duplex uses in single family zoning districts help promote the infill development and affordable housing goals of the City, while providing financial incentives for the development of infill lots. Going from a conditional use permit process that requires a minimum of two public hearings to a staff-administered design review process would greatly reduce the amount of time necessary for obtaining permits for construction of these uses, reducing development costs and uncertainty about approval.

This code amendment also provides for revised parking requirements for triplex and quadraplex uses in single family zoning districts. Council has directed staff to prepare an amendment to the code to provide parking flexibility for duplex, triplex and quadraplex uses in single family zoning districts. This has been accomplished in the proposed administrative standards for duplexes but an additional amendment is necessary for triplexes and quadraplexes.

The amendment has been routed to CREIA, the Affordable Housing Task Force of Asheville and Buncombe County, Coalition of Asheville Neighborhoods and Council of Independent Business Owners for review and comment.

On December 3, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment.

Councilwoman Bellamy was concerned that we may be putting too many standards on the duplexes that they might not be affordable.

Discussion occurred about whether triplexes should be included in this amendment; on-street parking; the option of a petitioner going through this administrative process or going through the conditional use process, concern of distance between units and the way it is measured; reporting back to City Council in one year to see if the amendment is a good planning tool; whether the suggestions should go back to the focus group that worked on this amendment; whether some of the suggestions would need to be remanded back to the Planning & Zoning Commission; and to make sure that the requirements for a conditional use permit do not conflict with these requirements.

It was the consensus to place this public hearing on the January 13, 2004, formal City Council agenda.

ANNEXATION UPDATE

Planning & Development Director Scott Shuford said that this is the consideration of resolutions stating the intent of the City to annex the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Sand Hill/Oakview area, the Ashwood Area, the Heathbrook area, and the Sweeten Creek Road area.

It is now time for the City to initiate the next phase of annexations for 2004. Our annexation strategy has been to (1) select areas that are clearly developed; (2) include areas where water and sewer have been extended; (3) improve city limits by eliminating pockets and clarifying boundaries; and (4) disperse areas geographically. Staff has identified seven areas: Heritage Business Park, Honey Drive, Enka Park, Sand Hill/Oakview, Ashwood, Heathbrook, and Sweeten Creek Road with potential for being annexed. Under State law the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, and fix dates for a public informational meeting and a public hearing on the question of annexation. State law does allow simultaneous annexation of multiple non-adjacent areas.

Heritage Business Park – This area contains commercial and vacant lots. This contains nine lots totaling 12.63 acres. There is no estimated population. If the property is annexed, it would bring in $7,591 in annual property tax revenue.

Honey Drive area – This area contains single-family residential. This contains seven lots totaling 4.4 acres. There is an estimated population of 13. If the property is annexed, it would bring in $6,037 in annual property tax revenue.

Enka Park area – This area contains single-family residential and industrial. This contains 89 lot totaling 30.27 acres. The estimated population is 170. If the property is annexed, it would bring in $39,257 in annual property tax revenue.

Sand Hill Road/Oakview Road – This area contains single-family residential and condominiums. This contains 340 lots totaling 173.86 acres. The estimated population is 621. If the property is annexed, it would bring in $195,761 in annual property tax revenue.

Ashwood Area – This area contains single-family residential and mobile homes. This contains 56 lots totaling 14.35 acres. The estimated population is 113. If the property is annexed, it would bring in $30,681 in annual property tax revenue.

Heathbrook Area – This area contains single-family residential. This contains 23 lots totaling 4.43 acres. The estimated population is 47. If the property is annexed, it would bring in $27,956 in annual property tax revenue.

Sweeten Creek Road Area – This area contains single-family residential, condominiums and multi-family residential, and commercial. This contains 190 lots totaling 74.86 acres. The estimated population is 545. If the property is annexed, it would bring in $140,303 in annual property tax revenue.

The following steps and dates meet the process required by State law:

Council Adoption of Resolutions of Intent	January 13, 2004
Council Adoption of Plans of Services	January 27, 2004
Staff-Sponsored Public Informational Meeting	March 4, 2004
City Council Public Hearings	March 23, 2004
Council Adoption of Annexation Ordinances	April 13, 2004
Effective Date of Annexations	June 30, 2004

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Sand Hill/Oakview area, the Ashwood area, Heathbrook area, and the Sweeten Creek Road area.

Mr. Pettibone responded to questions from Council about industrial sites and why the City doesn't annex to the north of Colony Drive.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda

SETTING PUBLIC HEARING ON FEBRUARY 10, 2004, TO CLOSE A PORTION OF AN UNOPENED ALLEY OFF FOREST STREET

Assistant Public Works Director David Cole said that this is the consideration of a resolution of intent to close a portion of an unopened unnamed alley off Forest Street and setting a public hearing on February 10, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened unnamed alley off Forest Street, the entry of which is located approximately 165 feet east of the intersection of Forest Street and Hendersonville Road (US Hwy 25).

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are three lots that abut this portion of the unnamed alley. They are identified by PIN Nos. 9647.20-90-3952; 9647.20-90-5910; and 9647.20-91-4067.

The developer has agreed to preserve a 17-foot easement to connect future utilities.

City staff recommends that City Council adopt the resolution of intent setting a public hearing for February 10, 2004 to close a portion of an unopened unnamed alley off Forest Street.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

OTHER BUSINESS

Councilwoman Jones said that a new radio station (WRES-FM) will broadcast information for minority and low-income communities in and around the downtown area of the City. They will offer programming relating to homeownership, employment, credit establishment, entrepreneurship, and other subjects that will enhance the quality of life for those who listen. She felt that this would be an excellent tool for reaching out to people who many not be reached through our mainstream communications. They have raised $15,500 and have a good solid diverse base of funders. She felt the City of Asheville should be a part of the success story of the radio station and asked City Council to consider funding $4,500 as a one-time start-up cost to WRES-FM to cover the cost of a remote unit and console.

Although Vice-Mayor Mumpower felt this was a good concept, he felt this should be referred to the Outside Agency Committee for their recommendation. Personally he didn't think the City should be investing our tax dollars to fund an effort of this nature and that it would be setting a precedent.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 6:26 p.m., Councilman Davis moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G. S. 143-318.11 (a) (4). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 6:50 p.m., Councilwoman Bellamy moved to go out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 6:50 p.m.

Magdalene Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 13, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Retired Air Force Veteran Mick Dove led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda "D" be removed from the Consent Agenda for an individual vote.

Vice-Mayor Mumpower asked that Consent Agenda "B" be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 16, 2003, AND THE WORKSESSION HELD ON JANUARY 6, 2004

B. RESOLUTION SUPPORTING STATEWIDE PASSENGER RAIL SERVICE

This item was removed from the Consent Agenda for individual discussion.

C. RESOLUTION NO. 04-1 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "GABRIELLE LANE"

Summary: The consideration of a resolution accepting the new proposed street name "Gabrielle Lane."

Gashes Creek Ridge LLC, owner of lots off of Gashes Creek Road, has petitioned the *City of Asheville to accept the street name " Gabrielle Lane." The new street will begin at Gashes* Creek Road and end at the cul-de-sac on Gabrielle Lane.

City staff recommends adoption of the resolution accepting the new street name "Gabrielle Lane."

RESOLUTION BOOK NO. 28 – PAGE 77

D. BUDGET AMENDMENT FOR N.C. DEPT. OF TRANSPORTATION TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS, AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS

This item was removed from the Consent Agenda for an individual vote.

E. ORDINANCE NO. 3080 - BUDGET AMENDMENT FOR FAIR HOUSING ASSISTANCE PROGRAM GRANT

Summary: The consideration of a budget ordinance, in the amount of $172,700, for the Fair Housing Assistance Program (FHAP) for Fiscal Year 2003-04.

The City has been carrying out its Fair Housing Program under contract with the Asheville-Buncombe Community Relations Council (ABCRC) and Fair Housing Commission since January 1988, using HUD FHAP funds. The City's Community Development Division serves as Lead Entity and monitors the program.

We have received notification of the grant awarded to the City for the federal fiscal year of 10/1/02-9/30/03. Staff has submitted the necessary paperwork to HUD. It is characteristic of this grant program that we receive notification of the grant amount at the end of the program year.

A budget ordinance amendment is required in order to receive these funds and subgrant them to ABCRC.

Community Development staff recommends adoption of the ordinance.

ORDINANCE BOOK NO. 21 - PAGE 36

F. RESOLUTION NO. 04-2 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON FEBRUARY 10, 2004, TO CONSIDER THE CLOSING OF A PORTION OF AN UNOPENED UNNAMED ALLEY OFF FOREST STREET

Summary: The consideration of a resolution of intent to close a portion of an unopened unnamed alley off Forest Street and setting a public hearing on February 10, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened unnamed alley off Forest Street, the entry of which is located approximately 165 feet east of the intersection of Forest Street and Hendersonville Road (US Hwy 25).

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are three lots that abut this portion of the unnamed alley. They are identified by PIN Nos. 9647.20-90-3952; 9647.20-90-5910; and 9647.20-91-4067.

The developer has agreed to preserve a 17-foot easement to connect future utilities.

City staff recommends that City Council adopt the resolution of intent setting a public hearing for February 10, 2004 to close a portion of an unopened unnamed alley off Forest Street.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

RESOLUTION NO. 04-3 - RESOLUTION SUPPORTING STATEWIDE PASSENGER RAIL SERVICE

Summary: The consideration of a resolution supporting statewide passenger rail service.

Since 1999, a group called the Western Carolina Rail Corridor Committee has been meeting and working to advocate and generate momentum for getting passenger rail service from Salisbury to Asheville. The Committee consists of representatives from each of the nine locations along the route where a depot either currently exists or, in the case of Asheville, is proposed. Following this example, a similar 'Committee' has recently formed around a similar movement for passenger rail service between Raleigh and Wilmington/or Morehead City. Now, both groups are collaborating to promote a statewide passenger rail system across North Carolina. To that end, they are asking all affected units of local government, local business organizations, and other groups for their support by adoption of a resolution of support. Their plan is to present the collective resolutions to the NC General Assembly during the upcoming session as a demonstration of wide support for the service.

Staff recommends Council approve the resolution supporting statewide passenger rail service.

Vice-Mayor Mumpower asked what the cost estimate was for the entire statewide service. Director of Economic Development Mac Williams said that he doesn't have that estimate, however, just the western portion from Salisbury to Asheville will be approximately $130 Million for track upgrade that will accommodate both passenger and freight trains. There will be additional expenses for equipment, operations for the station upgrades, etc. A 2001 estimate for the equipment was approximately $12 Million.

Mr. Williams then answered numerous questions/comments from Council, some being, but are not limited to: do we have a site for a station in Asheville and are there any estimates for the purchase of the site; what are the projected daily ridership numbers; are there any statistics on interstate travel east and west; there should be adequate parking at the station; have there been any studies on the economic impact of Asheville if rail service did come; and what is the state's projected budget for this system.

Councilman Dunn said that this rail service might not be cost effective because there are only two light rail systems in the United States that have made money. He didn't feel there is a need for this service in Asheville.

When Councilman Dunn asked if the rail service had potential to make money for our taxpayers, Mr. Williams said that the western corridor service was estimated to be a subsidized service.

City Manager Westbrook said that the money will be coming from the federal government. If the largest city in WNC doesn't support this in some way, it won't support the message that says we want part of those funds.

Mr. Williams explained that the resolution is being advocated so that we can keep the statewide passenger rail service effort alive to do the necessary studies and integrate passenger rail service into the transportation system as an option. He said that 70 jurisdictions (including Buncombe County, the Land-of-Sky Regional Council, and the French Broad Metropolitan Planning Organization) have supported the resolution.

Councilman Newman said that he has heard that Asheville is the most requested Amtrak destination in the country that is not currently served by rail service. Mr. Williams said that the Asheville Chamber of Commerce said that Amtrak has reported that to them.

Councilman Newman said that this is a lot of money but all parts of our transportation structure costs a lot of money. The Airport will never pay for itself, but it's still important to our economy and to our infrastructure.

Vice-Mayor Mumpower said this should be researched prior to Asheville's support. He felt that Asheville doesn't approach the density requirements to support the system.

Mr. Don Yelton felt that the idea of rail is good, however, he encouraged Council to revise the resolution to encourage the legislators to come up with hard figures.

Mr. Fred English felt Asheville did not need this rail service and we should use the money for street maintenance.

Ms. Judy Calvert Ray, Chair of the WNC Rail Corridor Committee, said they are not requesting the City to support passenger rail service at this point in time. They are only asking Council to support the initiative to develop a statewide rail system as an alternative mode of transportation for the state.

Councilman Newman said that he is sympathetic to the concerns raised, however, he understands how difficult it is to move projects like this forward in the legislature. He wondered if it would diminish the value of the resolution if Council spoke with a somewhat different voice than other towns and cities are saying. Ms. Calvert Ray said they worded the resolution as carefully as they could stating that it is an initiative to develop and support a statewide rail system. She would like for council to adopt the resolution as is, but if changes need to be made, she did not know how much impact it would have.

Mr. Alan Ditmore, Leicester resident, felt this was something good for Asheville. He felt that trains are more efficient than airplanes. He suggested reallocating the Airport money towards the rail system.

Ms. Judy Marshall spoke in favor of riding a train to Raleigh.

Councilwoman Jones felt that it is important for Asheville to be a regional player and the counties surrounding Asheville felt this will benefit us all. Therefore, she moved adoption of Resolution No. 04-3 with the understanding that our Transit Director will follow the progress, ask the hard questions and get data as it comes forward. This motion was seconded by Councilman Newman.

Mayor Worley supported the resolution and felt this was the right direction for Asheville to head. He did note that the state has a lot of studies to do in order to move forward.

Councilwoman Bellamy said that she is Vice-Chair of the N. C. League of Municipalities Community and Economic Development Committee. They have been briefed on the light rail system initiative and the desire for other municipalities across the state to see this go forward. The Committee found that if we study this issue and accumulate more data, we could get more support in the legislature so that is why as a Committee we supported this initiative.

Councilman Dunn felt the Council should have experts come in and tell us what their experience is with light rail.

The motion made by Councilwoman Jones and seconded by Councilman Brownie carried on a 4-3 vote, with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 79

ORDINANCE NO. 3081 - BUDGET AMENDMENT FOR N.C. DEPT. OF TRANSPORTATION TEA 21 ENHANCEMENT GRANTS FOR NEW HAW CREEK ROAD/AVON ROAD SIDEWALKS, PACK SQUARE PEDESTRIAN IMPROVEMENTS, AND WEST END/CLINGMAN PEDESTRIAN IMPROVEMENTS

At the request of Councilwoman Bellamy, Councilwoman Jones moved Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Summary: The consideration of a budget amendment for three municipal agreements with the N. C. Dept. of Transportation (NCDOT) for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

On October 11, 2003, City Council authorized the City Manager to sign three municipal agreements with the NCDOT accepting the award of TEA 21 Enhancement grants for the three aforementioned sidewalk and pedestrian projects. The NCDOT will disburse TEA 21 funds for all three projects directly to the City; however, the City is responsible for only the New Haw Creek Road/Avon project and is required to provide a local cash match. The City will distribute the other TEA 21 grant funds to the Pack Square Conservancy, who is responsible for managing the Pack Square Pedestrian Improvement project, and to Mountain Housing Opportunities, who will manage the West End/Clingman Project. Because all funds will initially be issued to the City for subsequent disbursement, a budget amendment authorizing the use of these funds is required.

The specific amounts of the grants are as follows:

(1) New Haw Creek Road/Avon Road Sidewalk – The TEA-21 grant award for this project is $172,132. The State is matching this grant with $150,000 from it's Small Urban Fund Grant. Additional matches include $5,000 from the Haw Creek Community Association, and $40,000 from the City, which is already budgeted in the City's fee-in-lieu of sidewalks account.

(2) Pack Square Pedestrian Improvements – The amount of the grant is $140,000. Pack Square Conservancy will provide the match for the project.

(3) West End/Clingman Pedestrian Improvements – The amount of the grant is $172,131. The match for the project will be made by Mountain Housing Opportunities.

Staff recommends that a budget amendment for three municipal agreements with NCDOT for TEA 21 Enhancement Grants for (1) New Haw Creek Road/Avon Road Sidewalks; (2) Pack Square Pedestrian Improvements; and (3) West End/Clingman Pedestrian Improvements.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3081. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 38

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT SAND HILL ROAD (HABITAT FOR HUMANITY) FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED 61 LOT SUBDIVISION

ORDINANCE NO. 3082 - ORDINANCE REZONING PROPERTY LOCATED AT SAND HILL ROAD (HABITAT FOR HUMANITY) FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:47 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Carter Pettibone, Urban Planner, said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

Mr. Pettibone submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a request to rezone property located at Sand Hill Road (Habitat for Humanity) from RS-2 Residential Single Family Low Density District and RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single Family High Density District/Conditional Use; and a request to issue a conditional use permit for a proposed 61 lot subdivision. The applicant has revised his application for a 60 lot subdivision.

He said that the project accommodates infill development on an underutilized site and supports efforts to increase the supply of affordable housing, two goals of the 2025 Asheville City Development Plan.

Asheville Habitat for Humanity, the applicant, had submitted a petition for a regular rezoning to RS-8 last year. The Planning and Zoning Commission recommended denial and the applicant did not appeal.

The applicant wishes to conditionally rezone the properties in order to develop a 61-lot single-family residential subdivision (City Exhibit 3 – Location Map). The intent of the RS-8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development.

The properties are located just outside the City limits in the extraterritorial jurisdiction area on the north side of Sand Hill Road. There is a mix of zoning districts in the area, with Commercial Industrial, RM-6, and RS-4 to the east, RS-2 and RS-4 to the north, and RS-2 directly to the west and south. Land uses include primarily single-family residential to the east with a small commercial property directly northeast on Sand Hill Road, recreational uses to the north and vacant property to the west.

The development, as proposed in the conditional use plan, would be accessed from Sand Hill Road and consist of one main road, three cul-de-sac streets to serve the 61 lots, and a stub street to the north (City Exhibit 3 – Copy of Site Plan for 60 lot subdivision). While not required due to the proposed density of the subdivision, the applicant has proposed an undisturbed buffer along its boundary with the Captain's Drive development to the north and east. The applicant has also proposed reservation of other undeveloped open spaces within the development, including an area around the cemetery located on the site. The property owner and applicant would also like to propose a condition that, if approved, the properties would revert back to the original RS-2 and RS-4 zoning if for some reason the applicant does not take possession of the property.

The Technical Review Committee (TRC) reviewed this request at its November 17, 2003, meeting and recommended approval with a number of conditions. Chief among these conditions was an Engineering Department requirement that the applicant provide another access to the development or a stub to adjoining property. Unable to provide a street connection to Captain's Drive due to a narrow strip of property between the development and Captain's Drive, and after discussion with the TRC, the applicant had agreed to pursue a stub street to the Buncombe County recreational property to the north and explore other possible connections or stubs.

The Planning and Zoning Commission held a public hearing for this petition on December 3, 2003, and voted to recommend approval with the conditions identified by the TRC and an added condition that the applicant augment the proposed undisturbed buffer to maintain at least a 25' wide "C" type landscape buffer along the portion of the site that adjoins the Captain's Drive subdivision to the north and east.

The applicant has revised the site plan to address most of the TRC and Planning and Zoning Commission conditions. Conditions still outstanding include augmenting the proposed buffer between the site and the Captain's Drive subdivision with plantings to achieve at least a "C" type buffer and increasing the cul-de-sac diameter width from 70' to 90' or some alternative width

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The applicant has revised the site plan to address most of the TRC and Planning and Zoning Commission conditions. Conditions still outstanding include augmenting the proposed buffer between the site and the Captain's Drive subdivision with plantings to achieve at least a "C" type buffer and increasing the cul-de-sac diameter width from 70' to 90' or some alternative width as approved by the City's Engineering Department. With the revised site plan, the applicant has also increased the width of the proposed buffer between the site and Captain's Drive from 25' to 30' along Captain's Drive and increased the amount of open space above the minimum required by the Unified Development Ordinance (UDO).

The City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

Final approval for the development of the site would need to receive technical approval from the Water Resources Department, MSD, Engineering, and other City and County Departments as part of a subdivision review. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

Any development on the site must comply with all City standards in regards to clearing and grading, erosion control, and maximum slope. Extensive grading is not expected. The applicants have also received preliminary approval for the location of the entrance road relative to the floodplain of nearby Hominy Creek.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The applicant plans to present evidence that the proposed development will have minimal, if any, negative impact on values of abutting or adjoining properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

There appears to be no clear development pattern or character in the general area of the proposed site, as there exist a wide variety of lot sizes, zoning districts and land uses nearby. While the nearest residential subdivision, Captain's Drive, is built to a lower density, other residential developments in close proximity like the Biltmore Commons Condominium development directly southeast across Sand Hill Road and the Biltmore Grove subdivision to the east of Captain's Drive are developed at a similar or even greater density than the proposed site.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

Any proposed development on the site would be required to comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The proposed plan also addresses some of the goals and objectives of the 2025 City Development Plan and Smart Growth Policies, including accommodating infill development on underutilized sites and supporting efforts to increase the supply of affordable housing.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

Any development of the site would need to receive technical approval from applicable City and County Departments, which include representatives of the Water Resources Department, MSD, Engineering, and County Fire and Building Safety Departments.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

During TRC review, the City's Engineering department did not identify significant issues regarding traffic congestion or safety. No undue traffic congestion or traffic hazards are anticipated as a result of this development.

Rezoning the properties to RS-8/Conditional Use Zoning would allow the applicant the opportunity to develop the property for 61 single-family residences and appears to be consistent with the intent and purpose of the UDO and goals of the City's smart growth policy and 2025 City Development Plan.

The Planning and Zoning Commission voted 5-1 to recommend approval with the conditions identified by the TRC and an additional condition that the applicant would augment the existing vegetation to achieve a "C" type buffer in the area along the portion of the site that adjoins the Captain's Drive subdivision.

Since there are still outstanding conditions, staff recommends approval of the conditional use permit portion of the request subject to the following conditions:

- The buffer between the development and Captain's Drive is supplemented to achieve at least a "C" type landscape buffer.
- The diameter width for each cul-de-sac is increased to 90' or to an alternative width as determined by the City's Engineering Department.
- The location of the fence line surrounding the cemetery that abuts the Captain's Drive development is moved back to accommodate a "C" type buffer but still contain the graves located within the cemetery.
- All other outstanding TRC conditions are addressed.
- If the applicant does not take possession of the properties, the zoning of the properties will revert back to the original RS-2 and RS-4 zoning (requested by applicant).

When Councilman Newman asked if the schools are notified of the projects, Mr. Pettibone said that TRC agenda and the Planning & Zoning Commission agendas are sent to the schools. We have not heard anything about school capacity problems resulting from this project.

Upon inquiry of Councilman Davis, Mr. Pettibone said that there is no more property in this tract that is developable because of the floodplain.

Councilman Davis asked if this property were to be developed under it's current zoning how many units could be built, given the floodplain and slope. Mr. Pettibone said that they have not done an analysis of that, however, it would be somewhere from 40-50 units.

Mr. Gerald Green, representing Habitat for Humanity, spoke in favor of the conditional use zoning and conditional use permit. He explained that Habitat provides housing for the working people in our community and expounded on the services Habitat performs. The Habitat communities add to, not detract, from the surrounding properties. There is no evidence of adverse impact of values of the surrounding properties. Since homes are appraised often on a square foot basis, what we found is that the square foot appraised value of Habitat homes is equal to many of the homes in the surrounding areas on a square foot basis. Those homes are often a bit larger so there is a chance that those homes will be valued more, but on a square foot basis the cost is approximately the same. Some advantages of the site is it's proximity to schools and to the Buncombe County soccer complex, which the stub street will provide access to. The site has easy access to interstates and a range of transportation networks. There is also growing employment opportunities in the area with the development of Biltmore Lake, the industrial park that is being developed, Southeastern Container and the other industrial complexes along Sardis Road and the Sand Hill Road area. The infrastructure is adequate. This is a 60-lot single-family subdivision. The current zoning would permit 47 single-family homes, given the existing topography. We are requesting an addition of only 13 lots over the current zoning on 17.33 acres. The average density will be 3.5 units per acre. Taking out for the street system and amount of open space (which is in excess of what is required by the City), the density will actually be 5 homes per acre. Landscaping will be provided to enhance the appearance of the community. He said that no buffer is required by the City but Habitat has proposed a 25' buffer. Following the Planning & Zoning Commission meeting, Habitat agreed to extend the buffer from 25' to 30' at the northern top. The advantage of this conditional use zoning is that City Council can place additional conditions on the zoning of the property to assure that this development will fit in with the neighborhood and not have an adverse impact on the surrounding property owners. A stub street has been added since the Planning & Zoning Commission going to the County's property. At this point the County said that they have no plans to build any street or to allow a street to be built on this property. At this point the street will go nowhere, but it will have a sidewalk along it and will be a good place for the community to access the County's recreational facilities. He then reviewed their responses of the City's seven conditional use standards (City Exhibit 3 – Applicant's Findings of Fact). Benefits of the project include providing housing to meet the needs of the community; infill development; meets the goals of the City by providing affordable housing and infill development; and it is in an excellent location. He urged City Council to vote in favor of the conditional use zoning and permit.

Mr. Gordon Greenwood, President of the Board of Directors for Habitat for Humanity, said that since 1983 they have built 183 homes in our community. Improvements from land to houses to date exceed $9.5 Million. Property taxes paid by Habitat homeowners in 2003 exceeded $108,000. The new subdivision will increase the tax base by $7.5 million. Habitat homes have been appraising from $112,000. It is anticipated that the homes in this project will be appraised from $120-125,000. He gave other statistics about Habitat's homes. They would like to start construction in the summer of 2005 and be concluded in 2009. A family of four with an income of $15,600 to $34,720 could quality from an income standpoint for a Habitat house with monthly payments as low as $365, which would include taxes and insurance. He felt this was a good project and asked for Council's support.

Ms. Lynette Sills, Realtor in Buncombe County for 8 years and member of the Board for Habitat for Humanity, reviewed with Council information from the Buncombe County tax records and from the Asheville Board of Realtors Multiple Listing Service. With the exception of 2 lots, all of the lots on Captain's Drive range from .24 acres to .45 acres. The two exceptions are one lot at .51 acres and another at 1.69 acres. With the exception of the home with 1.69 acres on it, the selling prices for homes on Captain's Drive in the past four years have ranged from $125-166,500. The list prices have ranged from $129-189,900. The square footage of these homes ranges from a little over 1,700 heated square feet to a little over 2,000 heated square feet. The price per square foot ranges from a little over $71 to a high of $100 with an average resale of $84 per square foot. The tax records show that these houses are valued for tax purposes between $138-196,400. She gave similar statistics about the homes on Garden Grove. Te homes Habitat proposes to build on the property are 2-4 bedroom homes and the heated square footage ranges from 900-1,300 square feet. The most recent homes appraised by Habitat appraised at $112,900. She pointed out that their price per square foot is comparable to price per square foot in Biltmore Grove and to Captain's Drive and to comparable properties selling in West Asheville.

Upon inquiry of Mr. Steve Barden, attorney representing some residents on Captain's Drive, Mayor Worley explained that when dealing with a conditional use zoning and permit, Council does consider the proposed use because if approved, it is restricted to that use only. For a normal rezoning, City Council would not be able to consider the proposed use of that property but would have to consider all the uses under that district.

Mr. Barden said that the rezoning request to RS-8 could allow up to 138 lots in this 17 acre area. There are no other RS-8 districts in that general vicinity. Rezoning this property to RS-8 would basically spot this particular area isolated from other areas of like zoning density. The residents of Captain's Drive bought their property with a reasonable expectation that this area would be low density. He felt this development will directly affect the property owners and their property values. He doesn't think the pattern of Habitat's previous projects has been in such a low density area. On Captain's Drive the average lot size is .49 acres, which is a far cry from the proposed zoning use of RS-8. It's their position that the current zoning of 40-50 I should be enough. He urged Council to deny the conditional use zoning.

The following individuals (who supported Habitat and it's efforts) spoke in opposition to the proposed conditional use zoning for some reasons, some being, but are not limited to: the wildlife will be destroyed in the beautiful woods along Captain's Drive; adding 100 or more cars in area will add to the already congested street system; RS-8 will crowd families to close together which will create conflict between neighbors; a home on .2 lots or less won't give those homeowners a chance to improve their home like adding garage, shrubs, flowers, trees, carport, etc. that other homes in the area have; homes and lots will be smaller than the surrounding area; homes will not be close to the value of the surrounding area homes; RS-8 zoning is out of character with Captain's Drive; this will allow a high density population in a low density community; no public transportation to that area and no plans for the bus service to come to that area; since the development is in the County the homeowners will have an added expense of garbage collection; the development can only be made legal by the exception to the existing regulations; the cemetery and surrounding area deserves special attention because of it's historical value; the lots, not the homes, are not compatible; adjoining property values will be decreased; there will be additional significant traffic congestion; residents have been waiting for 25 years for Sardis Road to be widened and 10 years for a longer exit lane at Exit 44; City has recognized traffic concerns by requiring a second road access but there is only a stub street; property damage collisions have increased 50% on Sand Hill Road; property damage collisions have increased 91.6% on Sardis Road; there will be no public access to the cemetery; trees will be cut; environment will be destroyed; school capacity not addressed; homes should be built to current zoning; stub street will be a safety hazard for children at the soccer complex; applicant has not worked with the community to find a common ground; tax figures by applicant do not reflect basement square footage; no sidewalks on Sand Hill Road; dangerous intersection at proposed project and Biltmore Commons; who will maintain cemetery; a home on 1/8 acre will not equal monetary value of a home on ½ acre; Habitat home will average 1,100 square feet whereas home on Captain's Drive averages 1,852 square feet (68% larger); average Habitat home will be on .20 acre whereas home on Captain's Drive averages on .48 acre (2.5 times larger); no published 2025 Plan; 350 single-family homes being built on Oakview Road, 400 proposed homes in Biltmore Lake; new apartment complex behind school with 48 homes, 250 apartments at Biltmore Commons – all with no school or road upgrading; and Sand Hill School Road is too narrow to allow a school bus and a full-size SUV to pass:

Ms. Sandra Bailey, resident on Captain's Drive
Mr. Steve Ayala, resident on Captain's Drive
Mr. Fred English, resident in Haw Creek
Ms. Kathleen Bailey, resident on Captain's Drive (Neighborhood Exhibit 1)
Mr. Scott Bailey, resident on Captain's Drive
Ms. Dawn Treadway, resident on Sand Hill Road

Mr. Roger Cook, resident on Captain's Drive
Ms. Julie Case, resident on Sand Hill Road
Mr. John Owen, resident on Captain's Drive
Ms. Carol Tracy, resident on Captain's Drive
Ms. Gail Crawford, resident on Captain's Drive
Mr. Joe Treadway, resident on Sand Hill Road (City Exhibit 3 – Arial Photo and Neighborhood Exhibit 2)
Mr. Tom Rogers, resident in Sand Hill Road area
Mr. Tommy Plemmons, resident on Sand Hill Road
Ms. C. Russell, resident on Captain's Drive
Mr. Kevin Varner, resident on Captain's Drive
Mr. Russ Tracy, resident on Captain's Drive

Mr. Alan Ditmore, resident in Leicester, spoke in favor of the proposed development.

Mr. Martin Lewis, partner with Fletcher Partners, supported the proposed development. His company is proposing to build an industrial center adjoining the property which will have a tremendous economic impact in Buncombe County with jobs and state/local tax revenues and they would be happy to have the view of the Habitat community.

Mr. Green responded to the various comments voicing opposition to the proposed development. He said that Habitat will consider voluntary annexation into the City after the homes are constructed. The lots are similar in size to the size of the lots in Biltmore Grove Subdivision located on the other side of Captain's Drive and that development has not adversely impacted the property values on Captain's Drive. The second access was required for future road construction because of the length of the street. They will work with the residents on Captain's Drive to provide public access to the cemetery. They are trying to protect the environment by minimizing tree clearance and providing a large open area around the cemetery and other open spaces, as well as the undisturbed 30' buffer along Captain's Drive which will be enhanced. They are preserving a much larger area around the cemetery to assure there is no disturbance of the cemetery or any of the unmarked or poorly marked graves. Regarding contact with the schools, Ms. Welsh with Habitat contacted Mr. Marshall Roberts who is the Facility Director of Buncombe County Schools. He stated that Enka High School is projected to be 37 over capacity this year. Enka Middle School is near capacity and Sand Hill Venable Elementary School is in good shape. He said that Mr. Roberts further stated that while the Enka district has seen steady growth over the past 8 years he doesn't believe the community should perceive school overpopulation to be a problem.

Mr. Barden said that the average of the 17 lots on Captain's Drive is .48 acres. He doesn't think the fact that one lot over one acre really skews those figures. Regarding the stub street, the applicant has given no evidence if they can ever get right-of-way out of that through the County property. And, there is no evidence they can ever get legal right-of-way out of the cemetery property into Captain's Drive. They feel the developer is asking for a large zoning change and the residents in the surrounding area are entitled to the same kind of protection that anyone else in the County has. Changing zoning to increase the density is a very serious step and he urged City Council to protect the rights of the property owners.

Mayor Worley closed the public hearing at 7:40 p.m.

Mayor Worley then announced a short break.

Mr. Pettibone then responded to various questions/comments from Council that arose out of the public hearing, some being, but are not limited to: describe the buffer planned; where is the buffering planned; can City Council increase the buffering; and was the second access an issue of concern.

Upon inquiry of Councilwoman Bellamy, Mr. Anthony Butzek, the City's Traffic Engineer, said that the need for the second access point is dictated by the length of the cul-de-sac. The City typically does not allow cul-de-sacs that exceed 1,000 feet in length (based on the Fire Code). When that situation does occur we require a second connection to be made. In this case, the first possibility we looked at was connecting to Captain's Drive, however, that was determined to not be feasible. With the floodplain on the opposite side of the project that was also infeasible. The only connection that had any feasibility was the connection to the Buncombe County parcel. It is true that connecting a street through there is unlikely, at least in the near future, but we hope to get is a sidewalk or greenway connection to the park.

Vice-Mayor Mumpower asked what the recommendation would be been if there was no other access. Mr. Butzek said that if the cul-de-sac length exceeded 1,000 feet and there were no other solutions and traffic were not a concern, we would probably permit it with the condition that it does meet this particular standard and let City Council make that determination.

Ms. Butzek and Mr. Pettibone answered various questions from Council, some being, but are not limited to, why a traffic impact study was not required; what the level of service is on area roads; why can't the other access be on Captain's Drive; why doesn't the City like to approve cul-de-sacs; are they required to provide fire hydrants along the street; and the pattern of development in the area (City Exhibit 4).

There was considerable discussion about the stub street and it's function.

Vice-Mayor Mumpower was concerned that Standard No. 3 has not been met. He felt there would be a impact. If there is not an impact, it's going to be because property values in Asheville are going up and compensate for changes in neighborhood. But if property values weren't going up he wondered if this project wouldn't have a negative impact. He was also concerned that Standard No. 4 has not been met. He said that the area seems to compile about every zoning district Asheville has. Their most immediate neighbors are RS-2 and RS-4 and Biltmore Commons is really a significant distance from this property.

Councilman Davis said that Biltmore Grove changed the pattern of development in the area. He did note that it is built out much more densely than when it came before the Planning & Zoning Commission a couple of years ago. Therefore, he had some concerns when we start comparing what that neighborhood really looks like to what it looked like before Biltmore Grove.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that the consideration of school overcrowding is not one of the factors that is listed in the ordinance. He noted that Council received information going to both sides of that issue.

Planning & Development Director Scott Shuford addressed Councilman Dunn's concern that Standard No. 4 was not met because the development in the surrounding area is not in the "neighborhood in which it is located."

Upon inquiry of Councilman Davis, Mr. Lou Kraus, representing Habitat for Humanity, said that they had a preliminary meeting with the neighborhood before the Planning & Zoning Commission and TRC meetings. They invited neighbors in the surrounding area to A-B Tech, showed them their proposed plan (which at the time was 64-units), heard their concerns and took those comments into their consideration regarding the buffering and reduction of some units.

Upon inquiry of Councilman Davis, Mr. Kraus said that a 13-lot loss would probably put them out of the market for affordable housing on the property.

Councilman Davis was not sure that Standard No. 4 has been met. He does think there may be some compromise if a few units were dropped off. Mr. Kraus said that they have reduced the number of units from 64 to 60 already.

Councilman Dunn pointed out that we all want affordable housing, however the density and scale doesn't seem it fit Standard No. 4. He hoped there was a way to scale the project down.

Councilman Davis felt there should be a provision for maintenance of the cemetery due to it's historic nature. Mr. Kraus said that if the project moves forward, there would be a homeowners association that would be responsible for all of the common land and property in that area. Part of that would be their responsibility to maintain the cemetery.

Upon inquiry of Mayor Worley, City Attorney Oast said that to the extent that the cemetery is included in the site plan then it's consideration is relevant.

Upon inquiry of Councilman Newman regarding property values, City Attorney Oast explained the courts have interpreted similar provisions in other ordinances is the showing must be that the property values will be lower if the project goes in than they are if the project doesn't.

Discussion occurred regarding the ability to adopt the conditional use zoning and then continue the conditional use permit part to give the parties an opportunity for discussion to see what might be amended in the site plan.

When Councilwoman Jones asked if there were a less dense development would the stub street be required. Mr. Butzek responded that the stub street is based entirely upon the length of the cul-de-sac exceeding 1,000 feet. It is the general policy of the City to encourage connectivity among streets. The Fire Code also limits the maximum length of the cul-de-sac to 1,000 feet without another connection.

Councilman Davis noted that for all practical purposes the stub street doesn't really do anything. Mr. Butzek said that the applicant is meeting the intent of the ordinance by making every effort to achieve the connection to allow for a future connection in a most likely spot possible. Mr. Shuford also responded to not discount the stub street as just a paper way to meet the requirement. The Buncombe County soccer facility is very well attended and having a secondary access point to that facility, through this neighborhood, might be something the County would be very interested in.

Mr. Shuford said that the best secondary connection would be to Captain's Drive, however, the subdivider of the property put a 1-foot strip to keep the adjoining property owner from every being able to access Captain's Drive. Therefore, there needs to be some flexibility if this property is to be developed regardless of how many homes are placed on it. There have been efforts by the applicant to try to meet both the spirit and intent of those standards. The City's Traffic Engineer and the City's Fire Marshal are satisfied that those standards have been met.

In response to Vice-Mayor Mumpower, Mr. Kraus said that on an area such as this, they would clear all rights-of-way that would be needed for roads and utilities. They do not go in and clear-cut an area, grade it and then begin their house construction. They clear each individual lot at a time, cutting out the necessary house seat and the area around it. If there are trees that will have root damage when the house seat is cut in, we have found from experience that it's best to go ahead and take some of those trees out immediately rather than go back in when they die and pay a high cost to take the trees down. They have every intent of preserving the wooded integrity and the look of this area. They have a landscaping budget for each house. These sorts of amenities can be done and still keep our housing costs more affordable than in giving up another 3-5 lots in a subdivision.

At 9:01 p.m., Mayor Worley re-opened the public hearing in order to hear from the public regarding the following new information received: traffic access, connectivity, stub street, neighborhood/developer meeting, density necessary for the project to work financially, and buffer width.

Upon inquiry of Councilman Dunn, Mr. Kraus said that they have already reduced the project by five lots and probably a sixth one with the stub street. All of this represents dollars in terms of affordable housing. We do not want to see this project fall apart. In addition to what we have given up already, if Habitat needed to forfeit another 2-3 lots maximum we will take that under consideration without saying this project is dead. If we are going beyond that then these developed land costs are out of the realm of affordable housing.

When Councilman Dunn asked about selling prices, Mr. Kraus said that the selling prices, on no interest loans, will be for the appraised value, but the amount that the homeowner will pay back to Habitat (money reinvested back into their program) will be approximately $85-95,000.

Mr. Barden said there is confusion on the legal access of the stub street. Obviously there is no foreseeable access through the Buncombe County property so the stub street is basically useless. It is his understanding that there has been no substantial meeting between the developer and the property owners since June of 2003. Regardless of the trees, the density is high and you have to cut down a lot of trees in order to fit a 1,100 square foot house on lots that small.

Mr. Joe Treadway said that the TRC meeting on November 17, 2003, discussed the stub street and the minutes reflect that the developer needs the secondary access.

Mr. Don Yelton suggested Council exempt this development from having the stub street. He also suggested Council add a condition that no cars be parked on the cul-de-sacs in the subdivision.

Ms. Gail Crawford said that the applicant did meet with neighborhood in June of 2003. At the July 22, 2003, Planning & Zoning Commission meeting, the Commission highly recommended the developer meet again with the neighborhood, but they have not.

Mayor Worley closed the public hearing at 9:15 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Kraus said that they would be happy to lose the stub street because it is a one-lot loss. Regarding meetings with the neighborhood, Mr. Kraus also said that there have been a lot of public meetings, 2 Planning & Zoning Commission public hearings, TRC meeting and this City Council public hearing.

Councilwoman Bellamy moved to adopt Ordinance No. 3082 to rezone property located at Sand Hill Road (Habitat for Humanity) from RS-2 Residential Single Family Low Density District and RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single Family High Density District/Conditional Use. This motion was seconded by Councilwoman Jones.

Mayor Worley said that he would be willing to continue the conditional use aspect in order to give the participants an opportunity to explore whether there is some reduction possible. He explained how the two biggest concerns surrounded impact on property values and harmony with the existing neighborhood. He felt the objections brought up don't hold up when you really look at it closely and look at the surrounding neighborhood in total and at the density of the proposed project compared to the allowable density immediately surrounding it.

Vice-Mayor Mumpower felt the neighborhood has legitimate concerns. He hoped that when the parties meet that considerations be given to deleting the stub street and giving us something tangible that will have more impact on our future than the dead-end, a community path to access the soccer field, and holding onto trees to mitigate visual impact. He encouraged the developer and neighborhood to meet and not get into token reduction of lot size.

City Attorney Oast said that since there are two different considerations to be made. The first issue is the rezoning. The question Council needs to be considering is whether the requested zoning classification is appropriate for this site if the use is conditioned and not necessarily get into the specifics of the proposal which is fluid and subject to change before Council considers the conditional use permit.

Councilwoman Jones said that the County-City Housing Task Force has just presented their report that notes that the number one barrier for affordable housing is zoning. She felt Habitat is a reputable developer that delivers quality projects and she appreciated the voluntary annexation openness. She believed that many of the concern raised, Council will be able to protect with the rezoning because of the buffer. We can't enforce the buffer unless we have a conditional use.

City Attorney Oast reminded Council that this is not a vote on who the applicant is, but what is happening on the property.

Councilman Dunn pointed out that we do need affordable housing, however, we also need to consider the people that are currently living in the area. He was not sure whether this development would hurt property values in the long run, but it may in the short term. He hoped the developer would be amenable to decrease the lot sizes.

Councilman Davis said that we are not really changing the complexion of that area because that has been done already. He believed that if this was a straight rezoning and the developer was going to build 45 units, the neighborhood would probably be just as upset. He hoped that in the conditional use permit, Council consider perhaps a little more buffer than 30 feet. He would support the rezoning part since the area has already changed, but with reluctance.

Councilwoman Bellamy felt that the site plan helps our community. She urged the developer and neighborhood to come together because there are more commonalities than you think. She felt the RS-2 zoning abutting the property is misleading.

The motion made by Councilwoman Bellamy and seconded by Councilwoman Jones carried unanimously.

Councilwoman Bellamy then moved to continue consideration of the conditional use permit until February 24, 2004, in order for the developer and neighborhood to meet to discuss the stub street, additional buffer, fewer lots, and/or other things that might make the development more attractive or palatable. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

At 9:43 p.m., Mayor Worley announced a short recess.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES IN SINGLE-FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES IN SINGLE-FAMILY ZONING DISTRICTS, AND TO REVISE THE ADDITIONAL CONDITIONAL USE STANDARDS FOR PARKING ASSOCIATED WITH TRIPLEXES, AND QUADRAPLEXES IN SINGLE-FAMILY ZONING DISTRICTS

ORDINANCE NO. 3083 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO REVISE THE REVIEW AND APPROVAL PROCESS FOR DUPLEXES IN SINGLE-FAMILY ZONING DISTRICTS AND TO ESTABLISH NEW DEVELOPMENT STANDARDS FOR THESE USES IN SINGLE-FAMILY ZONING DISTRICTS, AND TO REVISE THE ADDITIONAL CONDITIONAL USE STANDARDS FOR PARKING ASSOCIATED WITH TRIPLEXES, AND QUADRAPLEXES IN SINGLE-FAMILY ZONING DISTRICTS

Mayor Worley opened the public hearing at 9:55 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to Chapter 7 of the Code of Ordinances of the City of Asheville (Unified Development Ordinance) to revise the review and approval process for duplexes in single-family zoning districts and to establish new development standards for these uses in single-family zoning districts, and to revise the additional conditional use standards for parking associated with triplexes, and quadraplexes in single-family zoning districts. This public hearing was advertised on January 2 and 9, 2004.

This code amendment provides for administrative (staff) approval of duplex uses in all single family zoning districts. This code amendment has been under development for some time and City Council has asked staff to expedite its completion. Under the proposed amendment, duplex uses would go from being conditional uses to uses by right subject to special requirements. This amendment was originally proposed to include triplex and quadraplex uses as well, but meetings with a focus group of developer and neighborhood members resulted in this staff-recommended compromise. As of December 3, 2003, the following development standards would have to be met in order for staff to approve a duplex use:

- Separation requirements of 150 feet or 300 feet between such uses (depending on the zoning district), subject to block size provisions.
- Minimum lot size requirements.
- Parking in the rear of the site, except in certain circumstances.
- Architectural design standards to ensure that duplex structures resemble single family homes in the neighborhoods in which they are located, including: door and window placement requirements; structure height limits; roof design, pitch and materials requirements; setback limits; and siding requirements.
- Infrastructure sufficiency determination.
- Property maintenance standards.

Duplex uses in single family zoning districts help promote the infill development and affordable housing goals of the City, while providing financial incentives for the development of infill lots. Going from a conditional use permit process that requires a minimum of two public hearings to a staff-administered design review process would greatly reduce the amount of time necessary for obtaining permits for construction of these uses, reducing development costs and uncertainty about approval.

This code amendment also provides for revised parking requirements for triplex and quadraplex uses in single family zoning districts. Council has directed staff to prepare an amendment to the code to provide parking flexibility for duplex, triplex and quadraplex uses in single family zoning districts. This has been accomplished in the proposed administrative standards for duplexes but an additional amendment is necessary for triplexes and quadraplexes.

The amendment has been routed to CREIA, the Affordable Housing Task Force of Asheville and Buncombe County, the Coalition of Asheville Neighborhoods and the Council of Independent Business Owners for review and comment.

At the January 6, 2004, City Council worksession, Council directed the amendment to be revised as follows:

- Reflect a linear, blockface measurement for the separation requirement.
- Maintain a conditional use permit option for developers of duplex uses not wishing to meet the use by right subject to special requirements conditions.
- Provide for on-street parking.
- Increase the number of parking spaces allowed in the front yard from two to three.

City staff will need to return to Council with a separate code amendment that makes the separation standards for these uses consistent with the conditional use permit requirements.

On December 3, 2003, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment.

Ms. Barber Melton, President of the Coalition of Asheville Neighborhoods, explained why they would not be supportive of the changes City Council directed staff to make at their January 6, 2004, worksession. She urged City Council to adopt the ordinance which was unanimously adopted by the Planning & Zoning Commission stressing there was consensus of many organizations on that proposed ordinance.

Ms. Norma Baynes, representing the Shiloh Community Association, also urged City Council to adopt the original proposed ordinance and explained why.

Mr. C.D. Williams, representing the Jackson Park/Woolsey Neighborhood, asked City Council to adopt the original proposed ordinance because there was consensus reached by many groups.

Mr. Scott Dedman, member of the County-City Housing Task Force, felt the ordinance, with amendments by City Council on January 6, 2003, was a modest step in the right direction.

Mayor Worley closed the public hearing at 10:15 p.m.

Councilman Newman felt it was good to integrate attractive small scale multi-family homes into residential areas in the City, if we have design standards that are going to allow them to fit in well with the character of those neighborhoods. He thinks that this ordinance is a good step in the right direction for doing that. He would be comfortable with the idea that, if we have good design standards, that the small scale multi-family, including the quadraplexes and smaller, be allowed in the residential areas without distance requirements. He felt the development standards are very strong and believes there are opportunities to make them a little more simple and easy to understand. He felt that if we are going to have the strong design standards and not allow triplexes or quadraplexes, he would be comfortable in having an ordinance that duplexes would be allowed without a distance requirement.

Councilman Dunn would not support the ordinance amendment because we are giving City Council's authority to staff.

Councilman Davis would not be supportive of revising the design standards at this point because they were given good thought from the focus group and they gave us their best recommendation. He felt that we have taken a lot of the ability of a neighborhood to be heard away.

Mayor Worley stated that it is the general agreement of City Council to revisit this matter in one year to see if we are having construction occur.

Councilwoman Bellamy felt that the ordinance is asking a lot but is willing to give it a try for a year. She pointed out that committee recommendations are not etched in stone and even though they are very helpful to Council, City Council will revise any recommendation if they feel it is for the best for the entire City.

Councilman Newman felt there are issues about fairness to neighborhoods. We need policies so that we are treating different neighborhoods with the same kinds of standards that we treat other neighborhoods. The reality is that the historic pattern of development that we have in Asheville is that there were small scale multi-family dwellings built in all of the older neighborhoods. His perspective on this is that we have some neighborhoods in Asheville which are zoned multi-family where developers can built anything they want with no design standards. Whereas in other neighborhoods you can't build any multi-family homes at all even though there are multi-family homes integrated throughout them. That is a fundamental fairness issue we need to talk about. This step is a step in the right direction.

City Attorney Oast responded to a question from Councilman Dunn about restrictive covenants.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved to adopt Ordinance No. 3083, with the changes outlined by Mr. Shuford resulting from the January 6, 2003, worksession. This motion was seconded by Councilman Davis.

Councilman Newman moved to amend the motion that there not be a distance requirement as it applies to duplexes with the design standards outlined in the ordinance. This motion was seconded by Councilwoman Jones and failed on a 3-4 vote, with Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Vice-Mayor Mumpower believed that there is a natural order to development patterns and Council can nudge those but he believes it's naive and arrogant that City Council can control them.

The original motion made by Councilwoman Jones and seconded by Councilman Davis carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

ORDINANCE BOOK NO. 21 – PAGE 42

IV. UNFINISHED BUSINESS:

A. SECOND READING OF RESOLUTION NO. 03-207 – RESOLUTION PERMANENTLY CLOSING AN UNOPENED SECTION OF EMMA ROAD BETWEEN LEICESTER HIGHWAY AND OLD COUNTY HOME ROAD

Mayor Worley said that the public hearing and first reading of this resolution occurred on December 16, 2003. Due to the vote, a second reading was required.

Mayor Worley announced that the applicant has worked with the City and worked out alternates thus changing City staff's recommendation to approve the closing.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 03-207. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 73

V. NEW BUSINESS:

A. ORDINANCE NO. 3084 - BUDGET AMENDMENT TO ALLOCATE FUNDS TO WRES-FM

Councilwoman Jones said that a new radio station (WRES-FM) will broadcast information for minority and low-income communities in and around the downtown area of the City. They will offer programming relating to homeownership, employment, credit establishment, entrepreneurship, and other subjects that will enhance the quality of life for those who listen. She felt that this would be an excellent tool for reaching out to people who many not be reached through our mainstream communications. They have raised $15,500 and have a good solid diverse base of funders. She felt the City of Asheville should be a part of the success story of the radio station and asked City Council to consider funding $4,500 as a one-time start-up cost to WRES-FM to cover the cost of a remote unit and console.

Mr. John Hayes, President and CEO of the Empowerment Resource Center, spoke in support of the radio station and the requested budget allocation. Buncombe County has allocated them $5,000.

Mr. Fred English, Haw Creek resident, spoke in opposition of using tax dollars for this purpose.

Mr. Don Yelton spoke against this allocation and requested information on non-profits opening up their books for the public to review.

Mr. Scott Dedman, Board member of the Empowerment Resource Center, spoke in support of the allocation to the radio station for equipment.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved to approve Ordinance No. 3084. This motion was seconded by Councilwoman Jones.

Councilman Dunn explained why he would not support public dollars for this kind of issue.

Councilwoman Bellamy said this is a one-time allocation and she would support it.

Vice-Mayor Mumpower was opposed to City tax dollars being used for this purpose, however, he was supportive of the concept.

Councilman Davis supported the one-time allocation for better communication.

Mayor Worley supported the request, however, was concerned about the timing of the request and the process itself.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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Councilwoman Bellamy asked the City Manager if there was anyway to provide education on the tax system and non-profits and how they relate.

At 11:11 p.m., Mayor Worley announced a short recess.

B. RESOLUTIONS OF INTENT TO ANNEX THE HERITAGE BUSINESS PARK AREA, THE HONEY DRIVE AREA, THE ENKA PARK AREA, THE ASHWOOD AREA, THE HEATHBROOK AREA, AND THE SWEETEN CREEK ROAD AREA AND SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Urban Planner Carter Pettibone said that this is the consideration of resolutions stating the intent of the City to annex the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood Area, the Heathbrook area, and the Sweeten Creek Road area.

He said that the State of North Carolina enables cities to grow by annexation of areas that meet certain statutory requirements. This state legislation is based on the proposition that strong cities are the basis of a strong state economy and essential to the continued economic development of the state, and that cities are the best units of government to meet the needs of urban areas. The state's intent is often summed up as "what is urban should be municipal."

North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population.

The City of Asheville has initiated annexations for the past four years – six areas in 2001, five areas in 2002 and seven areas in 2003 and five in 2004. These recent annexations, like the ones being presented are designed to include: areas that are clearly urban, areas surrounded by the City but not within the City of Asheville and can only be accessed through the City; areas that will create a more logical City boundary; and areas with at least some existing water and sewer service.

It is now time for the City to initiate the next phase of annexations for 2004. Staff has identified six areas: Heritage Business Park, Honey Drive, Enka Park, Heathbrook, Ashwood, and Sweeten Creek Road with potential for being annexed. Another area, the Sand Hill/Oakview area, was initially identified as a seventh candidate for annexation, but after further review, staff has determined some technical issues that would affect the area's ability to be annexed and be appropriately served by City services. We are not recommending the City pursue annexation of this area until these issues have been further studied and addressed.

The following steps and dates meet the process required by State law:

Council Adoption of Resolutions of Intent	January 13, 2004
Council Adoption of Plans of Services	January 27, 2004
Staff-Sponsored Public Informational Meeting	March 4, 2004
City Council Public Hearings	March 23, 2004
Council Adoption of Annexation Ordinances	April 13, 2004
Effective Date of Annexations	June 30, 2004

City staff recommends that City Council adopt the resolutions of intent stating the City's intent to annex the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, Heathbrook area, and the Sweeten Creek Road area.

Mr. Pettibone stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 4th day of March, 2004, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 23rd day of March, 2004, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

Our annexation strategy has been to (1) select areas that are clearly developed; (2) include areas where water and sewer have been extended; (3) improve city limits by eliminating pockets and clarifying boundaries; and (4) disperse areas geographically.

Heritage Business Park – This area contains commercial and vacant lots (existing business park, some properties split by the City limits and New Leicester Highway area). This contains 11 lots totaling 12.85 acres. There is no estimated population. If the property is annexed, it would bring in $7,953 in annual property tax revenue.

Honey Drive area – This area contains residential and vacant lots (single-family subdivision located in Chunn's Cove area). This contains 9 lots totaling 4.5 acres. There is an estimated population of 13. If the property is annexed, it would bring in $5,909 in annual property tax revenue.

Enka Park area – This area contains residential and commercial (densely developed older subdivision, large commercial building, Enka area). This contains 89 lot totaling 30.27 acres. The estimated population is 170. If the property is annexed, it would bring in $45,258 in annual property tax revenue.

Ashwood Area – This area contains residential and vacant lots (single-family subdivision and single-family and mobile homes on West Chapel Road/School Road). This contains 58 lots totaling 14.42 acres. The estimated population is 117. If the property is annexed, it would bring in $29,955 in annual property tax revenue.

Heathbrook Area – This area contains residential and vacant lots (single-family residential section of Biltmore Park development in Long Shoals Road area). This contains 24 lots totaling 4.43 acres. The estimated population is 47. If the property is annexed, it would bring in $27,117 in annual property tax revenue.

Sweeten Creek Road Area – This area contains residential, commercial and vacant lots (large area, single-family, condominiums, multi-family residential, small commercial portion between Sweeten Creek Road and Hendersonville Road). This contains 190 lots totaling 74.86 acres. The estimated population is 545. If the property is annexed, it would bring in $136,561 in annual property tax revenue.

Upon inquiry of Councilman Newman, Mr. Pettibone explained the resolution of consideration annexation approach.

Councilman Dunn asked for a list of small and large businesses in the area.

Mr. Mike Fryar alleged a discrepancy in what City staff said was built directly across from Enka Village and what is actually there.

Mr. Alan Ditmore asked why the City doesn't annex the Biltmore Estate and how does annexation affect zoning.

Mr. Don Yelton suggested, as City Council annexes, that they review the density and the history of Asheville.

City Attorney Oast said that City Council members have received the written descriptions of each area, along with a correction sheet, and asked that they be incorporated into the resolutions of intent.

Vice-Mayor Mumpower always had the difficulty of forced annexation but has viewed it as a necessary evil because we don't have control over our water and sewer resources and that is what compels people to voluntary annex. There is an issue of fairness. If you live near the City, drive on City roads, benefit from being near a population center, and if you look like the City, then you should help share the costs of running the City. However, he doesn't think our tax structure is fair. We should explore issues like room tax which has the potential to take some of the direct tax burden off property owners. Also explore the issues of prepared food and beverage taxes and user fees. We have a large percentage of our City taken by non-profits and other organizations that don't pay taxes. This is a state issue, but it's time for us to reach toward the state and ask that they explore about these groups beginning to carry some of their share of law enforcement costs, fire protection, etc. He also has serious concerns about annexing manufacturing industries. This is a high risk time for those jobs and the City shouldn't be a part of helping to nudge people away.

Councilman Dunn felt that annexation throughout our state is hurting our economy. Asheville is No. 2 in sales tax expenses already. He fells that one of the reasons why North Carolina has the highest unemployment in the south is partly due to aggressive annexation. He hoped Council would open their minds up to other ways. The number one issue is cutting government spending and lowering taxes. We cannot keep taxing people.

Councilwoman Jones asked that the state data be followed up on regarding the correlation between annexation and unemployment in Asheville. She is not pleased with annexation, however, it does need to get started and then Council can look deeper at the service plans.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 04-4 - RESOLUTION OF INTENT TO ANNEX THE HERITAGE BUSINESS PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-4. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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RESOLUTION NO. 04-5 - RESOLUTION OF INTENT TO ANNEX THE HONEY DRIVE AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-5. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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RESOLUTION NO. 04-6 - RESOLUTION OF INTENT TO ANNEX THE ENKA PARK AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-6. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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RESOLUTION NO. 04-7 - RESOLUTION OF INTENT TO ANNEX THE ASHWOOD AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-7. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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RESOLUTION NO. 04-8 - RESOLUTION OF INTENT TO ANNEX THE HEATHBROOK AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-8. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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RESOLUTION NO. 04-9 - RESOLUTION OF INTENT TO ANNEX THE SWEETEN CREEK ROAD AREA, SETTING A PUBLIC INFORMATION MEETING ON MARCH 4, 2004, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MARCH 23, 2004, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-9. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 101

C. REQUEST BY PACK SQUARE CONSERVANCY

Ms. Carol King, Chair of the Pack Square Conservancy Board of Trustees, asked City Council to (1) move from consideration any proposal now or in the future for the construction of a "high rise" building on the land known as Site "A" which was formerly under consideration by the Grove Park Inn; (2) delay by City Council on any sale or development activity on that City-owned site; (3) allow the Pack Square Conservancy time to develop alternate plans for Site "A" that will help enhance the park; and (4) approval of the concept of moving forward with an easement activity between the City of Asheville and the Conservancy for the park area.

Vice-Mayor Mumpower asked how much time the Conservancy might need before they can report back to Council. Ms. King said their design team will be back in town in a couple of weeks. They will work with them and look at putting together a design workshop following the process that they have used all along to develop the design on the park. It would take approximately two months to get back to City Council.

Councilwoman Bellamy asked that in their process they have at least two public meetings and that the meetings be advertised in different media outlets. She suggested we put the meetings in the City's eNews so we can address the issue of the public not being informed. Ms. King said that they would be happy to do that.

Ms. Julie Brandt, representing Asheville People Advocating Real Conservancy, supports the Conservancy's request to rule out any high rise building at the corner of College and Market Streets and to enact a moratorium on sale or development. However, she asked specifically that the City designate the entire parcel of land known as Site "A" as park land in perpetuity. She asked for some legal documentation that the park is preserved for the people and that only park enhancements would be permitted, not building-type development. In addition, the Conservancy has stated that they want to ask the public to help decide what goes on the property and to move ahead with the park renovation project. She requested the Conservancy formulate and publicize in a timely fashion a policy and process of how they will integrate that public input into the park renovation plans. She asked City Council to require that the Pack Square Conservancy business, meetings and minutes be open to the public on order to make this a truly, inclusive public process.

Councilwoman Bellamy appreciated the Conservancy's support regarding the easement.

Vice-Mayor Mumpower moved to approve the Conservancy's request with the caveat of sixty days. This motion was seconded by Councilman Dunn and carried unanimously.

VI. OTHER BUSINESS:

ABC Board

Councilman Dunn reported that Mayor Worley and he met with the Chair of the ABC Board. He outlined several questions directed to the Board and they agreed to all of them. He was concerned, however, that since that meeting he has asked for several more pieces of information and have not received them yet. He felt the ABC Board does need to be more responsive.

Claims

The following claims were received by the City of Asheville during the period of December 12-31, 2003: Amanda H. Sadler (Police), BellSouth (Water), Suzette M. Roberts

(Police); Beverly Bryan (Civic Center), Kenneth Hamlin (Water), Donald Lamb (Parks & Recreation); Chamin W. Meadows (Transit Services) and Jeanne Murphy (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English didn't appreciate someone disputing his remarks at the conditional use zoning held earlier in the meeting.

Mr. Don Yelton invited City Council to a citizens speak meeting on January 14, 2003, at which time they will prioritizing people's needs, wants and wishes and developing a system in Buncombe County to keep people informed.

Mr. Mike Fryar submitted to council a list of questions and asked for response. Councilman Dunn asked Attorney Martin Reidinger the following three questions, after which Mr. Reidinger responded: in what way does the City's annexation ordinance not comply with the annexation statutes, can City Council repeal an annexation ordinance; and can City Council waive the 60-day limitation within which to appeal an annexation. After hearing thu responses, Councilman Dunn asked for guidance from Council. Councilwoman Bellamy said that this should be a matter for a closed session in order to receive advise from our attorney.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:17 a.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 20, 2004 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson
Absent:	City Manager James L. Westbrook Jr.

CONSENT:

Broadway at Five Points Sanitary Sewer Rehabilitation Project Easement with the Metropolitan Sewerage District

Summary: The consideration of a resolution authorizing the Mayor to execute a permanent easement for Metropolitan Sewerage District (MSD) to make improvements on a sanitary sewer line and associated manholes within portions of the Reed Creek Greenway.

During the past year the Metropolitan Sewerage District has been working with the City of Asheville regarding a sanitary sewer project proposed within the Reed Creek Greenway corridor. City staff, along with the Metropolitan Sewerage District, would like to improve this important line that is in disrepair with minimum impact to municipal property. MSD staff has worked closely with City of Asheville staff regarding an appropriate design and implementation strategy that will enable project improvement while retaining the integrity of the proposed greenway and its natural resources.

The Parks and Recreation staff recommends the approval of the improvements as proposed by the Metropolitan District in the Broadway at Five Points Sanitary Sewer Rehabilitation Project along with the associated permanent easement for the new line of pipe.

Broadway Avenue Sanitary Sewer Rehabilitation Project Easement with the Metropolitan Sewerage District

Summary: The consideration of a resolution authorizing the Mayor to execute a permanent easement for Metropolitan Sewerage District (MSD) to make improvements on a sanitary sewer line and associated manholes within portions of the Reed Creek Greenway

During the past year the Metropolitan Sewerage District has been working with the City of Asheville regarding a sanitary sewer project proposed within the Reed Creek Greenway corridor. City staff, along with the Metropolitan Sewerage District, would like to improve this important line that is in disrepair with minimum impact to municipal property. MSD staff has worked closely with City of Asheville staff regarding an appropriate design and implementation strategy that will enable project improvement while retaining the integrity of the proposed greenway and its natural resources.

The Parks and Recreation staff recommends the approval of the improvements as proposed by the Metropolitan District in the Broadway Avenue Sanitary Sewer Rehabilitation Project along with the associated permanent easement for the new line of pipe.

Merrimon Avenue Project Easement with the Metropolitan Sewerage District

Summary: The consideration of a resolution authorizing the Mayor to execute a permanent easement for Metropolitan Sewerage District (MSD) to make improvements on a sanitary sewer line and associated manholes within Weaver Park.

During the past year the Metropolitan Sewerage District has been working with the City of Asheville regarding a sanitary sewer project proposed within Weaver Park. The Metropolitan Sewerage District would like to improve this line that presently is in need of repair. The current line is located within the center of the park and it will be moved to the northern edge of the property to minimize current and future impact on the park. MSD staff has worked closely with City of Asheville staff regarding a sensitive engineering solution that will include the replacement of a substantially deteriorated parking lot and basketball court at no cost to the Parks & Recreation Department.

The Parks and Recreation staff recommends the approval of the improvements as proposed by the Metropolitan District in Weaver Park along with the associated permanent easement for the new line of pipe.

Grant Application and Budget Amendment for Memorial Stadium Renovations

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the N.C. Parks and Recreation Trust Fund, to assist with the renovations to Memorial Stadium, and an associated budget amendment, in the amount of $550,000.

The renovation of Memorial Stadium has been identified as a high priority with the Parks and Recreation Department and the community. The Stadium was originally constructed in the late 1920's and dedicated in the early 1930's as a memorial for veterans who served and died in WWI. The Stadium was dedicated again to WWI and WWII veterans in the 1940's. However, a true memorial to the men and women who gave the ultimate sacrifice to our country was never properly constructed.

In addition, Memorial Stadium was for years the home of both Lee Edwards/Asheville High Cougars and the Stephens-Lee Bears. Today, a number of youth sports groups including the Asheville Youth Sports, Asheville Grizzlies, WNC Bears, Asheville Assault, Asheville Splash, Asheville-Buncombe Youth Soccer Association, and a number of other groups currently call Memorial Stadium home.

The Stadium is in desperate need of repairs to a number of features including the lights, press box and Stadium seating. More importantly, a proper recognition to our war dead as originally planned still needs to be constructed at this site. A plan has been developed by the Parks and Recreation staff to incorporate these issues into a conceptual design for the Stadium. This plan will address a number of funding options that include local civic club contributions, veterans groups, grants and foundation funding, and sponsorships. It is anticipated that the cost for the renovations and upgrades will total $2 million. This conceptual plan was approved by City Council in November, 2003. An Action Committee has been formed and is working with the Parks and Recreation Department to aggressively secure funding through grants, foundations and sponsorships, as well as the Capital Improvement Plan for the City of Asheville.

The Parks and Recreation Department is requesting $250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund, which requires a dollar-for-dollar cash match. The cash match is available through a partnership with the Eblen Children Charities and through grass root fundraising efforts with a number of individuals and groups. Funds from the grant will be used to renovate the playground, build new basketball courts, construct a new picnic shelter, add and renovate a new walking trail, and create a new public event plaza area recognizing those who served our country.

In addition, staff is requesting approval of a budget amendment totaling $550,000 that incorporates the contribution of Eblen Children Charities and individual donations.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund to assist with the renovations to Memorial Stadium and to adopt the associated budget amendment in the amount of $550,000.

Mr. Irby Brinson, Director of Parks & Recreation, responded to various questions from Council, some being, but are not limited to, detail of the site plan; how does it fit into the long-range Parks & Recreation goals; why was this an elevation in the Master Plan prioritization given the overall needs; why is the Eblen Children Charities going outside their mission on this project; what other projects did Parks & Recreation consider for the grant funds; where does the $550,000 matching funds come from; is there room to add other conflicts to the Park; and how much was the conceptual plan..

Vice-Mayor Mumpower said that there are three driving forces for this Park: it is an area that needs attention, we need to honor the memorial, and we need to enhance the utility of that resource.

2004/2005 Budget Schedule

Summary: The consideration of a motion approving the Fiscal Year 2004/2005 budget schedule.

The proposed Fiscal Year 2004/2005 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Key phases of the budget process include the City Council Annual Retreat, presentation of the proposed budget to City Council, a public hearing and formal adoption. This year's schedule includes five scheduled budget worksessions, allowing City Council sufficient time for effective budget deliberations. Adoption of the Fiscal Year 2004/2005 budget is scheduled for June 22, 2004.

City staff recommends City Council to adopt the Fiscal Year 2004/2005 budget schedule.

Budget Director Ben Durant answered various questions from Council, some being, but are not limited to, what are some changes from last year's schedule; will there be an opportunity at each worksession to make changes; what is the process for Council to add an item to the Capital Improvement Program; and when does Council get to discuss their initiatives with the budget needs.

Assistant City Manager Richardson said that prior to the retreat ending the facilitator will make it clear what the next steps will be.

Scheduling Public Hearing for February 10, 2004, to Consider an Economic Development Incentive Grant for Dave Steel Company

Summary: The consideration of a resolution setting a public hearing on February 10, 2004, for an economic development incentive grant for Dave Steel Company.

Dave Steel Company, a local fabricator of structural steel, is adding new production equipment valued at $600,000. This equipment diversifies the company's capabilities allowing them to expand into new markets. This, in turn, will help stabilize employment for the current workforce and lead to the creation of 25 new jobs in 2004. The project qualifies for a Level 1 grant under the City Economic Development Incentive Policy.

City staff recommends Council approve the resolution setting a public hearing on February 10, 2004, for an economic development incentive grant for Dave Steel Company.

Budget Amendment for Reimbursement for Hazardous Materials Response

Summary: The consideration of a budget amendment, in the amount of $31,836, for reimbursement from the North Carolina Department of Crime Control and Public Safety, Emergency Management Division, for hazardous materials response as a result of the Beacon Manufacturing fire.

The City of Asheville Fire and Rescue Department responded to the Beacon fire in two capacities. One was mutual aid for fire suppression. The other was a request by North Carolina Emergency Management due to a spill of hazardous materials as a result of the fire. An extreme amount of equipment and resources was required that exceeded the Fire and Rescue Department's inventory. Therefore, a private contractor was contacted to assist the Asheville Fire and Rescue Department. These funds will replace equipment supplied by the Fire and Rescue Department used at multiple locations to contain the spill and replace funds used to pay for the resources from the private contractor.

City staff recommends City Council approve the budget amendment to receive the reimbursement from the N. C. Department of Crime Control and Public Safety, Emergency Management Division.

Budget Amendment for Grant from U.S. Department of Homeland Security

Summary: The consideration of a budget amendment, in the amount of $174,578, to receive grant money from the U.S. Department of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) FY 03 Assistance to Firefighter's Grant Program, for procurement of replacement self contained breathing apparatus (air packs) and replacement portable radios (walkie-talkies).

The City of Asheville Fire and Rescue Department with endorsement of the Asheville City Council in March, 2003 requested $122,205 from the U.S. Department of Homeland Security to replace 44 of the department's self contained breathing apparatus (air packs) and 24 of the department's VHF portable radios (walkie-talkies). The Federal grant was for 70% of the costs with the City to match 30%, or $52,373 from our contingency account. Staff was successful in obtaining those Federal funds.

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Air packs and walkie-talkies are daily use equipment by firefighters and are used on virtually every emergency that occurs within the city.

Fire and Rescue staff plans to request funds in the Fiscal Year 2004 Assistance to Firefighter's Grant Program to complete replacement of the department's self contained breathing apparatus (air packs).

City staff recommends City Council approve the budget amendment to receive grant money from the U.S. Department of Homeland Security.

Upon inquiry of Councilman Dunn, Fire Chief Greg Grayson said that these replacement radios are compatible with Buncombe County's system.

West Annexation, Phase IV, Sanitary Sewer System Improvements Contract

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Wheeler Construction Company Inc., for West Area Annexation - Phase IV- Sanitary Sewer System Improvements.

This project is the last Phase of the West Annexation Area. It is called the West Area Annexation - Phase IV- Sanitary Sewer System Improvements and consists of the installation of approximately 2,105 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened six (6) bids on Thursday, January 8, 2004, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wheeler Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $ 218,434.50.

Project will be financed with moneys generated by General Obligation Bonds Series 2000 of December, 2000.

Wheeler Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory way.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt a resolution awarding the bid for West Area Annexation - Phase IV- Sanitary Sewer System Improvements to Wheeler Construction Company, Inc., the responsible low bidder.

Budget Amendment for 2003-04 Senior Center General Purpose Funding

Summary: The consideration of a budget amendment, in the amount of $14,519, for the annual appropriation from the N.C. Dept. of Health and Human Services, Division on Aging, for the Harvest House and Senior Opportunity Center.

Funds will be used at Harvest House to purchase equipment and supplies, improve landscaping and to assist with special needs transportation. Funds will be used at Senior Opportunity Center to purchase equipment and supplies, replace the heating and air conditioning unit and make improvements in the sewer lines.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $14,519, to establish a budget for the projects at Harvest House and Senior Opportunity Center.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place these items on the next formal City Council agenda.

WATER SYSTEM ASSET MANAGEMENT PROGRAM UPDATE

Interim Water Resources Director David Hanks said that the engineering firm of Brown & Caldwell, along with City staff, has taken a comprehensive look at all aspects of the water system operations, including water treatment plants, distribution system, leak detection, meter accuracy, financial, and administration.

The Regional Water Authority of Asheville, Buncombe and Henderson contracted with Brown & Caldwell to study the water treatment requirements to meet current and future Environmental Protection Agency (EPA) standards for turbidity in the water. The study also included looking at the asset management of the water system to help determine replacement and refurbishment cost, including distribution lines, pump stations, valves and meters. An asset management team was established consisting of Water Resources and Finance Department staff along with representatives of Brown and Caldwell. The team looked at how the water system is currently being managed, assets of the water system including age of the assets and original costs. A replacement model was created to determine annual funding requirements needed to make necessary improvements to the water infrastructure.

Mr. Richard Stahr, representing Brown and Caldwell, presented a comprehensive presentation on the water system including meeting current and future turbidity standards, asset management and replacement and refurbishment requirements of the water system and funding requirements to make needed improvements.

In summary, the implementation of the Asset Management Program is underway; the Business case analysis is being used for decision-making resulting in cost savings; replacement cost of infrastructure is ~$0.75 billion; and increased funding for R&R will be necessary to sustain the infrastructure.

Mr. Stahr responded to various questions from Council regarding the program, noting that any information he was not able to respond to he would supply to Council.

COUNTY-CITY HOUSING TASK FORCE FINAL REPORT

Ms. Janet Moore, Chair of the County-City Housing Task Force said that the County-City Housing Task Force was created in November, 2002 to bring together individuals in the community who were concerned about housing in Asheville and Buncombe County.

According to the resolution adopted by the County and City, the purpose of the Task Force shall be to "provide the Buncombe County Commissioners and the Asheville City Council with information on current housing needs and programs, including the potential for a joint Housing Trust Fund, recommend changes to current housing policies, and help raise awareness and support throughout the community for housing issues."

The Task Force was appointed by the Buncombe County Board of Commissioners and Asheville City Council. The Task Force is a diverse group—representing housing providers, private developers, housing advocates, and real estate, financial, & construction professionals.

After meeting for approximately eleven months, the Task Force has had the opportunity to discuss affordable housing challenges in the community in considerable detail. The Task Force believes that this was an important part of the mission with which they were charged, to bring together knowledgeable experts to discuss the issues and propose solutions to the challenges at hand.

Eight recommendations were discussed and voted on by the Task Force. In almost every case, the vote on these recommendations was unanimous.

The Task Force believes that bold actions by elected officials to relax cumbersome and costly regulations, reduce fees, and remove subjective decision-making would encourage more private investment in affordable housing. With regard to their specific recommendations, zoning is the most extensive topic.

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1) Housing Trust Fund - The Task Force recommends that Buncombe County create a County Housing Trust Fund which will be initially capitalized with the equivalent of one cent per $100 of property tax value, or approximately $1.7 million. The Task Force recommends that the Trust Fund be made effective in Buncombe County's next fiscal year budget, fiscal year 2004-05.

2) Fees and Permits - The Task Force recommends that the City and the County develop a plan to reduce fees and permits on homes that are 1500 square feet or less, with greater reductions for even smaller homes.

The recommendation for fee and permit reductions for smaller homes should also be implemented with the Metropolitan Sewerage District and the Asheville-Buncombe Water Authority, similar to the reduced fee plan currently in place for affordable housing. These incentives are not intended to replace or eliminate the current reduced fees for development of homes which are guaranteed to remain affordable by the developer.

3) Duplex, Triplex and Quadraplex Development - Duplex, Triplex, and quadraplex development in areas zoned single family should be permitted and should be a use by right. We request two changes to the Duplex, Triplex, & Quadraplex policy as originally proposed by the City of Asheville and these are as follows: 1) design standards must be clearly defined and limited; and 2) there should be no parking requirements.

4) Density Bonuses – Density bonuses should be permitted for affordable housing. The Task Force recommends that density bonuses be provided as a use by right, instead of a conditional use in the UDO.

5) Multi-Family Housing - The City of Asheville should increase the amount of land that allows multifamily housing development as a use by right. In 1997, the UDO rezoned approximately 50% of the existing multifamily land to single family zoning. Much of this multifamily land was zoned 16 multifamily units per acre and is now zoned single family and much less dense. The Task Force recommends that enough land currently zoned single family should be rezoned to multifamily so that the same percent of Asheville land is zoned multifamily as it was before the UDO was passed in 1997.

6) Lot Size – Lot size is a factor in that it influences the full development of parcels for maximum density, therefore maximum affordability. This recommendation has already been considered and approved by City Council. The Task Force recommended that the City of Asheville decrease minimum lot sizes so that additional acreage would be free to develop entry roads, provide set-backs, and allow for development standard flexibility.

7) Not In My Backyard (Nimbyism) – Nimbyism was cited by the Task Force as a huge factor in preventing affordable housing development. The Task Force recommends that City staff seek to reduce public hearing requirements considerably, and to significantly limit the types of developments that are subject to a vote of City Council and developments that are subject to petitions requiring a "super majority" vote of City Council.

8) Review Thresholds - More permitting decisions should be made by the Technical Review Committee and planning staff, rather than elected officials. Permit applications not denied within 90 days should be deemed approved.

The cost of housing in Asheville is a problem for all but the wealthiest homebuyers, and it is an embarrassment for our community. The Task Force focused on the cost component of this equation. Any long term solution to the problem of housing affordability, however, must address the wage factor. That jobs rests with the City of Asheville, Buncombe County, and other publicly funded economic development entities.

The Task Force thanked the Buncombe County Board of Commissioners and Asheville City Council for taking the issue of affordable housing seriously.

The Task Force recognizes that many of these recommendations may not be politically popular. However, this Task Force was charged with advising local government about the facts as we see them regarding affordable housing in our community. Making the tough decisions about implementing these recommendations is a proper role of elected officials.

The Task Force sincerely hopes that these recommendations are incorporated by Buncombe County and the City of Asheville both in existing policies as well as future proposals that involve residential development in our community.

Mayor Worley said we need to keep on going on the direction we are moving because there is a collective consensus to help affordable housing and further along other economic development needs.

Ms. Moore and City Development Director Charlotte Caplan responded to various questions from Council regarding the Task Force's recommendations.

Councilman Newman felt that a study should be compiled regarding how the City ranks with affordable housing in the rental market.

On behalf of City Council, Mayor Worley thanked the Task Force members for their hard work on this very difficult task.

CLEAN AIR COMMUNITY TRUST PROGRESS REPORT

Dr. Richard Maas, Chair of the Clean Air Community Trust (CACT) Board, updated City Council on the actions of the Clean Air Community Trust. He reviewed with Council the history of CACT and shared with Council their draft vision statement. He updated Council on current and future programs, along with potential programs. He then outlined their short-term goals.

Dr. Maas requested $5,000 from the City of Asheville and $5,000 from Buncombe County within which to buy 5,000 compact fluorescent light bulbs. They will make them available at cost to other community groups and at a reasonable price to individuals. Thus, they will create a self-perpetuating program that ties citizens actions to energy efficiency and air pollution reduction.

Vice-Mayor Mumpower, liaison to the CACT Board, spoke in favor of this effort because it is a partnership opportunity with Buncombe County. He felt we should refer this to our Outside Agency Committee for review. This is a positive real way to educate the public on clean air.

Councilwoman Jones spoke in support of the program noting it was one of Council's strategic goals to improve air quality. She suggested the CACT bring forward future programs to the Outside Agency Committee as well.

Dr. Maas and Ms. Margie Mears, Executive Director of the CACT, responded to various questions from Council regarding the light bulb program.

Councilman Davis was somewhat bothered about the City being in the light bulb business when we might be competing with people who are making a living selling light bulbs.

Councilman Dunn said our job is to maximize use of taxpayer dollars and he wasn't sure if this program is doing that. Vice-Mayor Mumpower pointed out that this agency was put together by the City and the County.

On behalf of City Council, Mayor Worley thanked Dr. Maas the Board for their hard work.

Councilman Newman felt that perhaps at the City Council retreat City Council could discuss different things that Council can do to address air quality issues.

It was the consensus of Council to refer this program to the Outside Agency Committee for review.

At 5:25 p.m., Mayor Worley announced a short break.

FEDERAL LOBBYING UPDATE REPORT

Mr. Sean Dalton, representing Ball Janik, LLP, updated City Council on the federal lobbying efforts. He reviewed with Council the status of each of the City's appropriations and legislative agenda. Because so many of the annual appropriations bills have not yet been enacted, several items remain "on hold."

1. The Digital Platform Upgrades for Police and Fire Communications – They were unsuccessful in securing a Fiscal Year 2004-directed earmark for the City's police and fire digital platform upgrades. In drafting its initial bill, the House CJSJ Appropriations Subcommittee chose to provide no funding whatsoever for the communications or interoperability needs of first responders. Such funding, the subcommittee stated, would henceforth fall under the jurisdiction of the newly-created Homeland Security Appropriations Subcommittee. The Senate CJSJ Subcommittee disagreed, reserving jurisdiction over such interoperability program earmarks within its bill. The final CJSJ subcommittee conference report followed the Senate's lead, funding several communications and interoperability programs for first responders through individual earmarks. Unfortunately, the City of Asheville was not among those local governments chosen to receive such an earmark. Given the level of education that has already taken place among the WNC Congressional delegation offices about this need, however, the City may wish to include it as an item on its Fiscal Year 2005 appropriations agenda.

2. Traffic Signal System Upgrades – The pending omnibus appropriations bill contains an earmark of $2 million for the City's Traffic Signal System Upgrade program. The House passed this legislation on December 8, 2003 by a vote of 242 to 176. The Senate has not yet voted upon it.

3. City Transit System Fleet Replacement – The pending omnibus appropriations bill contains an earmark of $300,000 for the City's bus fleet replacement. This funding is in addition to an earmark of $6,250,000 for statewide bus and bus facilities, from which the City might also receive funds for transit fleet replacement.

4. WNC Hazardous Response Coordination Center – The Fiscal Year 2004 Homeland Security Appropriations bill included no Congressionally-directed earmarks of any kind; thus, we were unsuccessful in securing an earmark for the Hazardous Response Coordination Center this year. According to the chairmen of the House and Senate subcommittees, it was the preference of Congress to allow the newly-created Department of Homeland Security to fully complete the organization of its program and internal command structure. The absence of earmarked appropriations would provide the Department maximum flexibility in doing so. It is unclear whether the House and Senate will continue with its "no earmarks" policy in the Fiscal Year 2005 Homeland Security Appropriations bill. The City may wish to consider the inclusion of the Hazardous Response Coordination Center as an item on its Fiscal Year 2005 appropriations agenda.

5. Azalea Road Park and Next Generation Project – While the Azalea Road Park proposal was not officially included as part of the City of Asheville's Fiscal Year 2004 appropriations agenda, the offices of each of WNC's Congressional delegation members expressed interest in lending support to this project. The pending omnibus appropriations bill contains a "soft" earmark for this project, meaning that no specific dollar amount has been designated for it. Rather, language in the CJSJ Appropriations section of the bill states: "Juvenile Justice Programs – State Formula Grants – The conference agreement includes $84,000,000 for the Part B – State Formula grants. The conferees ask Governors and relevant State and local officials to review the following proposals and provide grants if warranted . . ." The City's Parks and Recreation Department has previously sought funding for the project through the N.C. Parks & Recreation Trust Fund. With this earmark, Congress has commended the project to the State of North Carolina for potential funding as a juvenile justice program, as well.

6. Effect of Urbanized Area Census Designation on Transit Funding – A six-year reauthorization of TEA-21 – the massive federal law governing spending on highway and transit projects – was due in 2003, and provided the most logical legislative vehicle by which to address the "200,000 Population" issue. Due to policy debates centering upon transportation funding mechanisms, however, only a short-term, five-month extension bill was enacted prior to the end of last year's Congressional session. Through the efforts of Congressman Taylor and Senator Dole, this legislation included an additional "grace period" for newly-urbanized areas over 200,000 in population, allowing Asheville and other cities to use Section 5307 funds for operating expenses through February 29, 2004. While this additional five-month extension provides some breathing room to the Asheville Transit System, we continue to work with the WNC Congressional delegation to seek a longer-term solution to the transit funding flexibility problem. Representatives of the House Transportation and Infrastructure Committee have repeatedly voiced support for Asheville and other cities whose transit funding was adversely affected by the 2000 Census. Staff members of the Senate Banking Committee, however – under whose jurisdiction transit issues fall in that capacity – have continually resisted any additional extensions of the Senate 5307 flexibility. Senator Dole's office has been especially helpful in making Asheville's case to these Senate Banking staff members. In late November, the House unveiled its draft TEA-21 reauthorization bill, which would allow an extension of Section 5307 flexibility through Fiscal Years 2004 and 2005. In joining with a coalition of other municipalities likewise pushed into a "200,000 Population" urbanized area by the 2000 Census, we continue to advocate such an extension to the Senate Banking Committee staff, as well.

Mr. Dalton then gave an outlook for the Omnibus appropriations bill.

Mr. Dalton responded to various questions from Council noting that wherever there is an opportunity to seek funding, they are looking for it.

Upon inquiry of Mayor Worley, Mr. Dalton explained how this process has worked with our congressional delegation to help them be successful in bringing our requests forward.

Upon inquiry of Councilman Newman, Mr. Dalton said attending the U.S. Conference of Mayor's Conference in Washington, D.C., is an opportunity for City Council to become more actively involved in advancing not only Asheville's agenda, but all the cities agendas across the country. Another way for City Council to become more involved is local visits to Raleigh to build face-to-face relationships.

BANNER POLICY

This item has been removed from Council consideration today.

HOUSING TRUST FUND ALLOCATIONS

Community Development Director Charlotte Caplan said that this is the consideration of a resolution allocating $730,000 in Housing Trust Fund loans for affordable housing development

This is the fourth annual allocation of funds from the City's Housing Trust Fund (HTF). The 2004 budget included an appropriation of $600,000 for the HTF and $130,000 has accrued in loan repayments, making a total of $730,000 available for lending in this round. The application process was opened on October 15, 2003, and eight applications were received by the December 8 deadline, requesting a total of $1,275,000. All of the applications received this year were for rental projects.

The applications were evaluated by a panel of City staff and outside experts and then reviewed by the Housing and Community Development (HCD) Committee. The HCD Committee has recommended funding the following six projects:

Mountain Housing Opportunities - 50 units on Grove St.	$140,000(20 years at 2%)
Gateway Construction -100 units on Swannanoa River Rd.	$125,000(30 years at 0%)
Tim & Wendy Vorst - 2 units on Beaucatcher Rd	$ 50,000(30 years at 2%)
Spicewood Development - 42 units on Cedar Hill Rd	$185,000(30 years at 2%)
Thomas Yurchenko - 6 units on Campground Rd.	$150,000(30 years at 2%)
Paul Saylor - 2 units on West St.	$ 80,000(2 years at 2%)
Total (202 units)	$730,000

She summarized with Council all applications submitted and reported on the progress of prior years' projects.

Staff recommend approval of the HTF loans listed above.

Vice-Mayor Mumpower and Councilman Dunn voiced concern about the 0% interest loan for 30 years to Gateway Construction.

Mayor Worley felt the City should have some assurance that the rent will remain affordable for the term of the loan. He suggested a provision in the Note and Deed of Trust that makes the note callable if they don't meet some sort of formula.

Vice-Mayor Mumpower felt we should address the policy regarding future affordable rents in the next application process. Councilwoman Jones agreed and felt that the HCD Committee should look at this issue and report back to City Council in approximately six months.

Ms. Caplan responded to various questions from Council regarding the results of the panel scoring. Mayor Worley expressed concern with loaning money where the company rates a zero regarding affordability on the panel scoring. Councilwoman Bellamy suggested the HCD Committee place more emphasis on the affordability and long-term affordability aspects of the loans.

Councilwoman Bellamy noted that not only do non-profit organizations benefit from the Housing Trust Fund, but for-profit organizations are benefiting as well. She noted that five of the six projects recommended for funding are going to for-profit groups.

Mayor Worley asked for additional information from the applications that rated a zero on affordability from the panel scoring schedule.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY ON THE JOINT PLANNING AREA

City Attorney Bob Oast said that this is the consideration of interlocal agreement with Buncombe County for establishment and administration of Joint Planning Area.

At the request of the Buncombe County Commissioners and Asheville City Council, City and County planning and development staff have been meeting frequently to determine the area to be covered by the Joint Planning Area (JPA), and to develop the regulations to be applicable within the JPA.

When this idea first surfaced, it was thought that a joint planning arrangement would require special legislative authorization, but City and County legal staff have determined that joint planning area administration is possible under current law, and under a local act adopted in 1931 authorizing joint performance by the City and County of administrative functions.

The JPA regulations will consist of three main parts:

- the boundaries of the JPA
- regulations to be applicable within the JPA
- classification of land within the JPA

The details of these main features have been under fairly intense consideration by County and City staff for several months, and to a lesser extent by the planning commissions. The governing bodies have been kept updated on the JPA concept as it has evolved.

The interlocal agreement neither adopts the JPA nor any of the regulations to be applicable within it, but rather establishes a framework and administrative structure pursuant to which those actions may occur.

In essence, the interlocal agreement will provide for:

- the method of establishing the initial JPA, adopting initial regulations, and adopting initial land classifications
- the method for changing any of the regulations
- establishment of the joint planning agency
- definition of the role of County / City staff
- method of financing and allocation of expenses
- amendment, extension, termination of agreement

He reviews with Council an outline of the interlocal agreement to establish and implement the JPA. He explained that this outline will serve as the vehicle for discussion of certain details of administration of the JPA, and a vehicle for Council input. That information can then be incorporated in the interlocal agreement as appropriate, for final consideration as to adoption.

He asked for Council direction as to additional matters to be addressed in the agreement, or matters to be addressed differently or in more detail. He said that Council's comments and direction will be incorporated into an agreement to be presented for adoption.

Upon inquiry of Councilman Davis, Planning & Development Director explained who will do the mapping.

CITY COUNCIL LIAISON ASSIGNMENTS

City Council members were assigned various liaison and member positions on it's various boards and commissions.

At 7:55 p.m., Mayor Worley announced a recess.

BOARDS AND COMMISSIONS

It was the consensus of City Council to readvertise for vacancies on the Board of Adjustment.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Clara Jeter to the Asheville-Buncombe Community Relations Council.

It was the consensus of City Council to have the City Clerk arrange interviews for the Downtown Commission and prepare the proper paperwork to reappoint Andy Archie and Pater Alberice.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint David McConville to the Sustainable Economic Development Task Force.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to reappoint Bill Schaefer to the Firemen's Relief Fund.

It was the consensus of City Council to have the City Clerk arrange interviews for the Greenway Commission and prepare the proper paperwork to reappoint Jack Saye and Phyllis Stiles.

It was the consensus of City Council to appoint Councilwoman Terry Bellamy to the Metropolitan Sewerage District Board.

It was the consensus of City Council to have the City Clerk arrange interviews for the Public Art Board and prepare the proper paperwork to reappoint Barbara Cary and Tina McGuire.

It was the consensus of City Council to have the City Clerk arrange interviews for the Transit Commission.

It was the consensus of City Council to reappoint Monty Wooten and Robert Halliday to the Tree Commission.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:12 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – January 27, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Councilwoman Bellamy asked that Consent Agenda "X" be removed from the Consent Agenda for an individual vote.

Councilman Newman asked that Consent Agenda "A" be removed from the Consent Agenda to be discussed under "Other Business."

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 13, 2004, AND THE WORKSESSION HELD ON JANUARY 20, 2004

This item was removed from the Consent Agenda to be discussed under "Other Business"

B. RESOLUTION NO. 04-10 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PERMANENT EASEMENT FOR THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS AT BROADWAY AT FIVE POINTS

Summary: The consideration of a resolution authorizing the Mayor to execute a permanent easement for Metropolitan Sewerage District (MSD) to make improvements on a sanitary sewer line and associated manholes within portions of the Reed Creek Greenway.

During the past year the Metropolitan Sewerage District has been working with the City of Asheville regarding a sanitary sewer project proposed within the Reed Creek Greenway corridor. City staff, along with the Metropolitan Sewerage District, would like to improve this important line that is in disrepair with minimum impact to municipal property. MSD staff has worked closely with City of Asheville staff regarding an appropriate design and implementation strategy that will enable project improvement while retaining the integrity of the proposed greenway and its natural resources.

The Parks and Recreation staff recommends the approval of the improvements as proposed by the Metropolitan District in the Broadway at Five Points Sanitary Sewer Rehabilitation Project along with the associated permanent easement for the new line of pipe.

RESOLUTION BOOK NO. 28 – PAGE 106

C. RESOLUTION NO. 04-11 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PERMANENT EASEMENT FOR THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON BROADWAY AVENUE

Summary: The consideration of a resolution authorizing the Mayor to execute a permanent easement for Metropolitan Sewerage District (MSD) to make improvements on a sanitary sewer line and associated manholes within portions of the Reed Creek Greenway.

During the past year the Metropolitan Sewerage District has been working with the City of Asheville regarding a sanitary sewer project proposed within the Reed Creek Greenway corridor. City staff, along with the Metropolitan Sewerage District, would like to improve this important line that is in disrepair with minimum impact to municipal property. MSD staff has worked closely with City of Asheville staff regarding an appropriate design and implementation strategy that will enable project improvement while retaining the integrity of the proposed greenway and its natural resources.

The Parks and Recreation staff recommends the approval of the improvements as proposed by the Metropolitan District in the Broadway Avenue Sanitary Sewer Rehabilitation Project along with the associated permanent easement for the new line of pipe.

RESOLUTION BOOK NO. 28 – PAGE 107

D. RESOLUTION NO. 04-12 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PERMANENT EASEMENT FOR THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE WITHIN WEAVER PARK ON MERRIMON AVENUE

Summary: The consideration of a resolution authorizing the Mayor to execute a permanent easement for Metropolitan Sewerage District (MSD) to make improvements on a sanitary sewer line and associated manholes within Weaver Park.

During the past year the Metropolitan Sewerage District has been working with the City of Asheville regarding a sanitary sewer project proposed within Weaver Park. The Metropolitan Sewerage District would like to improve this line that presently is in need of repair. The current line is located within the center of the park and it will be moved to the northern edge of the property to minimize current and future impact on the park. MSD staff has worked closely with City of Asheville staff regarding a sensitive engineering solution that will include the replacement of a substantially deteriorated parking lot and basketball court at no cost to the Parks & Recreation Department.

The Parks and Recreation staff recommends the approval of the improvements as proposed by the Metropolitan District in Weaver Park along with the associated permanent easement for the new line of pipe.

RESOLUTION BOOK NO. 28 – PAGE 108

E. MOTION ADOPTING THE 2004-2005 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2004/2005 budget schedule.

The proposed Fiscal Year 2004/2005 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Key phases of the budget process include the City Council Annual Retreat, presentation of the proposed budget to City Council, a public hearing and formal adoption. This year's schedule includes five scheduled budget worksessions, allowing City Council sufficient time for effective budget deliberations. Adoption of the Fiscal Year 2004/2005 budget is scheduled for June 22, 2004.

City staff recommends City Council to adopt the Fiscal Year 2004/2005 budget schedule.

F. RESOLUTION NO. 04-13 - RESOLUTION SETTING A PUBLIC HEARING FOR FEBRUARY 10, 2004, TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR DAVE STEEL COMPANY

Summary: The consideration of a resolution setting a public hearing on February 10, 2004, for an economic development incentive grant for Dave Steel Company.

Dave Steel Company, a local fabricator of structural steel, is adding new production equipment valued at $600,000. This equipment diversifies the company's capabilities allowing them to expand into new markets. This, in turn, will help stabilize employment for the current workforce and lead to the creation of 25 new jobs in 2004. The project qualifies for a Level 1 grant under the City Economic Development Incentive Policy.

City staff recommends Council approve the resolution setting a public hearing on February 10, 2004, for an economic development incentive grant for Dave Steel Company.

RESOLUTION BOOK NO. 28 – PAGE 109

G. ORDINANCE NO. 3085 - BUDGET AMENDMENT FOR REIMBURSEMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY, EMERGENCY MANAGEMENT DIVISION, FOR HAZARDOUS MATERIALS RESPONSE AS A RESULT OF THE BEACON MANUFACTURING FIRE

Summary: The consideration of a budget amendment, in the amount of $31,836, for reimbursement from the North Carolina Department of Crime Control and Public Safety, Emergency Management Division, for hazardous materials response as a result of the Beacon Manufacturing fire.

The City of Asheville Fire and Rescue Department responded to the Beacon fire in two capacities. One was mutual aid for fire suppression. The other was a request by North Carolina Emergency Management due to a spill of hazardous materials as a result of the fire. An extreme amount of equipment and resources was required that exceeded the Fire and Rescue Department's inventory. Therefore, a private contractor was contacted to assist the Asheville Fire and Rescue Department. These funds will replace equipment supplied by the Fire and Rescue Department used at multiple locations to contain the spill and replace funds used to pay for the resources from the private contractor.

City staff recommends City Council approve the budget amendment to receive the reimbursement from the N. C. Department of Crime Control and Public Safety, Emergency Management Division.

ORDINANCE BOOK NO. 21 – PAGE 48

H. ORDINANCE NO. 3086 - BUDGET AMENDMENT TO RECEIVE GRANT MONEY FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR REPLACEMENT OF SELF-CONTAINED BREATHING APPARATUS AND REPLACEMENT OF PORTABLE RADIOS

Summary: The consideration of a budget amendment, in the amount of $174,578, to receive grant money from the U.S. Department of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) FY 03 Assistance to Firefighter's Grant Program, for procurement of replacement self contained breathing apparatus (air packs) and replacement portable radios (walkie-talkies).

The City of Asheville Fire and Rescue Department with endorsement of the Asheville City Council in March, 2003 requested $122,205 from the U.S. Department of Homeland Security to replace 44 of the department's self contained breathing apparatus (air packs) and 24 of the department's VHF portable radios (walkie-talkies). The Federal grant was for 70% of the costs with the City to match 30%, or $52,373 from our contingency account. Staff was successful in obtaining those Federal funds.

Air packs and walkie-talkies are daily use equipment by firefighters and are used on virtually every emergency that occurs within the city.

Fire and Rescue staff plans to request funds in the Fiscal Year 2004 Assistance to Firefighter's Grant Program to complete replacement of the department's self contained breathing apparatus (air packs).

City staff recommends City Council approve the budget amendment to receive grant money from the U.S. Department of Homeland Security.

ORDINANCE BOOK NO. 21 – PAGE 50

I. RESOLUTION NO. 04-14 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH WHEELER CONSTRUCTION COMPANY FOR WEST AREA ANNEXATION, PHASE IV, SANITARY SEWER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Wheeler Construction Company Inc., for West Area Annexation - Phase IV- Sanitary Sewer System Improvements.

This project is the last Phase of the West Annexation Area. It is called the West Area Annexation - Phase IV- Sanitary Sewer System Improvements and consists of the installation of approximately 2,105 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened six (6) bids on Thursday, January 8, 2004, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wheeler Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $ 218,434.50.

Project will be financed with moneys generated by General Obligation Bonds Series 2000 of December, 2000.

Wheeler Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory way.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Staff recommends that City Council adopt a resolution awarding the bid for West Area Annexation - Phase IV- Sanitary Sewer System Improvements to Wheeler Construction Company, Inc., the responsible low bidder.

RESOLUTION BOOK NO. 28 – PAGE 110

J. ORDINANCE NO. 3087 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES FOR THE HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $14,519, for the annual appropriation from the N.C. Dept. of Health and Human Services, Division on Aging, for the Harvest House and Senior Opportunity Center.

Funds will be used at Harvest House to purchase equipment and supplies, improve landscaping and to assist with special needs transportation. Funds will be used at Senior Opportunity Center to purchase equipment and supplies, replace the heating and air conditioning unit and make improvements in the sewer lines.

The Parks and Recreation Department recommends City Council approve the budget amendment, in the amount of $14,519, to establish a budget for the projects at Harvest House and Senior Opportunity Center.

ORDINANCE BOOK NO. 21 – PAGE 52

K. RESOLUTION NO. 04-15 - RESOLUTION CANCELING THE FEBRUARY 3, 2004, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 28 – PAGE 111

L. RESOLUTION NO. 04-16 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Summary: The term of Clara Jeter, as a member on the Asheville-Buncombe Community Relations Council, expired on December 31, 2003.

On January 20, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Ms. Jeter to serve an additional three year term, term to expire December 31, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 112

M. RESOLUTION NO. 04-17 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE

Summary: The consideration of a resolution appointing a member to the Sustainable Economic Development Implementation Task Force.

In June 2003, the Task Force, initially appointed in June 2000, was re-appointed. All original Task Force members were re-appointed except three who resigned at the end of the original three-year term. Three new members were appointed from a slate of six candidates submitted by the Task Force. One of those new members, Daniel Prevost, later resigned (due to unforeseen business related issues), after the official appointment was made, leaving a vacancy.

The Task Force is recommending David McConville, Founder, Black Box Studios, as the replacement for the vacancy created by Mr. Prevost's resignation. Mr. McConville was among those six candidates originally proposed by the Task Force in June 2003. Task Force Chairman, Jack Cecil, has contacted Mr. McConville and he (Mr. McConville) has agreed to serve if appointed.

RESOLUTION BOOK NO. 28 – PAGE 113

N. RESOLUTION NO. 04-18 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Bill Schaefer, as a member of the Firemen's Relief Fund, expired on January 1, 2004.

On January 20, 2004, it was the consensus of City Council to reappoint Bill Schaefer to serve an additional two year term, term to expire January 1, 2006, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 114

O. RESOLUTION NO. 04-19 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Barbara Field, as a member on the Metropolitan Sewerage District Board, expired on January 19, 2004.

On January 20, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to appoint Councilwoman Terry Bellamy to serve a three year term, term to expire January 19, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 115

P. RESOLUTION NO. 04-20 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Summary: The terms of Monty Wooten and Robert Halliday, as members on the Asheville Tree Commission, expired on December 31, 2003.

On January 20, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Monty Wooten and Robert Halliday to each serve an additional three year term respectively, terms to expire December 31, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 116

Q. RESOLUTION NO. 04-21 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COMMISSION

Summary: At the City Council worksession held on January 20, 2004, the City Clerk was instructed to prepare the proper paperwork to appoint Councilman Newman, as the City's representative to the Buncombe County Economic Development Commission, to serve according to the length of his office.

RESOLUTION BOOK NO. 28 – PAGE 117

R. RESOLUTION NO. 04-22 - RESOLUTION APPOINTING THE CHAIRMAN OF THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: At the City Council worksession held on January 20, 2004, the City Clerk was instructed to prepare the proper paperwork to appoint Vice-Mayor Mumpower as the Chairman to the Police Officers & Firefighters Disability Review Board to serve a term according to the length of his Vice-Mayor term of office.

RESOLUTION BOOK NO. 28 – PAGE 118

S. RESOLUTION NO. 04-23 - RESOLUTION APPOINTING A MEMBER TO THE DOWNTOWN COMMISSION

Summary: At the City Council worksession held on January 20, 2004, the City Clerk was instructed to prepare the proper paperwork to appoint Councilman Davis, as the City Council representative, to the Asheville Downtown Commission to serve according to the length of his office.

RESOLUTION BOOK NO. 28 – PAGE 119

T. RESOLUTION NO. 04-24 - RESOLUTION APPOINTING A MEMBER TO THE PACK SQUARE CONSERVANCY BOARD OF TRUSTEES

Summary: At the City Council worksession held on January 20, 2004, the City Clerk was instructed to prepare the proper paperwork to reappoint Mayor Worley, as the City Council representative, to the Pack Square Conservancy Board of Trustees, to serve a two-year term, term to expire January 1, 2006, or until his term of office expires, whichever occurs first.

RESOLUTION BOOK NO. 28 – PAGE 120

U. RESOLUTION NO. 04-25 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Summary: At the City Council worksession held on January 20, 2004, Mayor Charles Worley announced his resignation from the Regional Water Authority.

Also at the January 20, 2004, worksession, the City Clerk was instructed to prepare the proper paperwork to appoint Councilman Dunn to serve the unexpired term of Mayor Worley, term to expire September 30, 2004, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 121

V. RESOLUTION NO. 04-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENTAL & NATURAL RESOURCES DIVISION OF PARKS & RECREATION IN THE N.C. PARKS & RECREATION TRUST FUND, TO ASSIST WITH THE RENOVATIONS TO MEMORIAL STADIUM

Summary: The consideration of a resolution authorizing the City Manager to apply for and enter into an agreement with the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the N.C. Parks and Recreation Trust Fund, to assist with the renovations to Memorial Stadium, and an associated budget amendment, in the amount of $550,000.

The renovation of Memorial Stadium has been identified as a high priority with the Parks and Recreation Department and the community. The Stadium was originally constructed in the late 1920's and dedicated in the early 1930's as a memorial for veterans who served and died in WWI. The Stadium was dedicated again to WWI and WWII veterans in the 1940's. However, a true memorial to the men and women who gave the ultimate sacrifice to our country was never properly constructed.

In addition, Memorial Stadium was for years the home of both Lee Edwards/Asheville High Cougars and the Stephens-Lee Bears. Today, a number of youth sports groups including the Asheville Youth Sports, Asheville Grizzlies, WNC Bears, Asheville Assault, Asheville Splash, Asheville-Buncombe Youth Soccer Association, and a number of other groups currently call Memorial Stadium home.

The Stadium is in desperate need of repairs to a number of features including the lights, press box and Stadium seating. More importantly, a proper recognition to our war dead as originally planned still needs to be constructed at this site. A plan has been developed by the Parks and Recreation staff to incorporate these issues into a conceptual design for the Stadium. This plan will address a number of funding options that include local civic club contributions, veterans groups, grants and foundation funding, and sponsorships. It is anticipated that the cost for the renovations and upgrades will total $2 million. This conceptual plan was approved by City Council in November, 2003. An Action Committee has been formed and is working with the Parks and Recreation Department to aggressively secure funding through grants, foundations and sponsorships, as well as the Capital Improvement Plan for the City of Asheville.

The Parks and Recreation Department is requesting $250,000 in grant funds from the North Carolina Parks and Recreation Trust Fund, which requires a dollar-for-dollar cash match. The cash match is available through a partnership with the Eblen Children Charities and through grass root fundraising efforts with a number of individuals and groups. Funds from the grant will be used to renovate the playground, build new basketball courts, construct a new picnic shelter, add and renovate a new walking trail, and create a new public event plaza area recognizing those who served our country.

In addition, staff is requesting approval of a budget amendment totaling $550,000 that incorporates the contribution of Eblen Children Charities and individual donations.

The Parks and Recreation Department recommends the City of Asheville to apply for and enter into an agreement for grant funds through the North Carolina Parks and Recreation Trust Fund to assist with the renovations to Memorial Stadium and to adopt the associated budget amendment in the amount of $550,000.

Upon inquiry of Councilman Dunn, Parks & Recreation Director Irby Brinson explained the entire project. He said the Veterans Memorial and the enhancements to the stadium for the Memorial will be non-taxpayer dollars.

RESOLUTION BOOK NO. 28 – PAGE 122

W. ORDINANCE NO. 3088 - BUDGET AMENDMENT TO ALLOCATE FUNDS FROM THE EBLEN CHILDREN CHARITIES AND INDIVIDUAL DONATIONS TO THE MEMORIAL STADIUM RENOVATION PROJECT

Summary: See Consent Agenda Item "V" above.

ORDINANCE BOOK NO. 21 – PAGE 54

X. RESOLUTION ALLOCATING $730,000 IN HOUSING TRUST FUND LOANS FOR AFFORDABLE HOUSING DEVELOPMENT

This item was removed from the Consent Agenda for an individual vote.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

RESOLUTION NO. 04-27 - RESOLUTION ALLOCATING $730,000 IN HOUSING TRUST FUND LOANS FOR AFFORDABLE HOUSING DEVELOPMENT

Councilwoman Jones moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Summary: The consideration of a resolution allocating $730,000 in Housing Trust Fund loans for affordable housing development

This is the fourth annual allocation of funds from the City's Housing Trust Fund (HTF). The 2004 budget included an appropriation of $600,000 for the HTF and $130,000 has accrued in loan repayments, making a total of $730,000 available for lending in this round. The application process was opened on October 15, 2003, and eight applications were received by the December 8 deadline, requesting a total of $1,275,000. All of the applications received this year were for rental projects.

The applications were evaluated by a panel of City staff and outside experts and then reviewed by the Housing and Community Development (HCD) Committee. The HCD Committee has recommended funding the following six projects:

Mountain Housing Opportunities - 50 units on Grove St.	$140,000(20 years at 2%)
Gateway Construction -100 units on Swannanoa River Rd.	$125,000(30 years at 0%)
Tim & Wendy Vorst - 2 units on Beaucatcher Rd	$ 50,000(30 years at 2%)
Spicewood Development - 42 units on Cedar Hill Rd	$185,000(30 years at 2%)
Thomas Yurchenko - 6 units on Campground Rd.	$150,000(30 years at 2%)

Paul Saylor - 2 units on West St.	$ 80,000(2 years at 2%)
Total (202 units)	$730,000

She summarized with Council all applications submitted and reported on the progress of prior years' projects.

Staff recommends approval of the HTF loans listed above.

Councilwoman Jones moved for the adoption of Resolution No. 04-27. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 123

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. BUDGET AMENDMENT FOR THE SECTION 108 GUARANTEED LOAN AND ECONOMIC DEVELOPMENT GRANT

Planning & Development Director Scott Shuford said that this is the consideration of a budget amendment, in the amount of $1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative (EDI) grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square.

Prior staff reports have provided considerable information concerning this budget amendment request to allocate $800,000 of HUD Section 108 loan funds and $340,000 of EDI grant monies to the Eagle Market Streets Development Corporation (EMSDC) project that would, by itself, create 8,700 square feet of additional retail and office space, 14 residential units (market rents) and 17 garage parking spaces. The allocation would also leverage additional monies to be spent in a Mt. Zion Church project resulting in a total of over 12,000 square feet of retail and office space and a total of 47 residential units. Five historically significant buildings will be restored to Secretary of Interior standards and a new infill building will be constructed on vacant property if these two projects are realized.

This is an economic development project that will be funded through private investment using historic tax credits and conventional financing, along with the funding sources from this budget amendment. It is important to note that this project is not an affordable housing project, although the units will be affordable (renting at 95 cents a square foot) to service workers, City employees, and other people that make up our local workforce. This is a greatly underserved group in our downtown housing market.

Staff finds that the proposed project will be fully consistent with the South Pack Square Redevelopment Plan. In addition, the project is fully consistent with all applicable financial review criteria necessary for the City to carry out its responsibility in monitoring the allocation of federal funds and in securing the consequent City financial interest in the project.

Staff recommends that the City Council approve the budget amendment that allocates $800,000 of HUD Section 108 loan funds and $340,000 of EDI grant monies to the EMSDC project.

Mr. Shuford then said that the project has been a long time coming beginning in 1993. He reviewed the goals for the South Pack Square Redevelopment Plan and briefed Council on how the project will meet the Plan's goals. He then outlined for Council reasons to support the project.

Mr. Marvin Chambers, Assistant Treasurer of EMSDC, gave City Council a letter from Robert F. Barron, Jr., President and Chief Executive of Enterprise Real Estate Services dated January 26, 2004; a letter from Mr. Chambers dated January 27, 2004, and a petition (containing 500 signatures) which states "This community, as represented by the signatures listed and attached letters received, requests the Asheville City Council to approve the grant and loan funding for the Eagle, Market Streets Development Corporation Redevelopment Project Phase 1 in order for the renovation and construction to begin without delay. We the undersigned urge that Asheville City Council as our elected representatives move forward swiftly with this project. It is imperative that you hear our call for action to permit this community to fully participate in the asset-building, redevelopment and revitalization of the downtown and preservation of its African American heritage. We wholeheartedly support the work of the Eagle, Market Streets Development Corporation." He said that the EMSDC was established ten years ago to receive federal funding to resolve the blight on the Block. They have worked closely with the City of Asheville to eliminate crime in this part of the downtown and to create an atmosphere conducive to revitalized commerce and rebuilding of a residential neighborhood. They have applied for funding over the last 6 years in order to develop bricks and mortar projects that will encourage and sustain the investments made by other non-profits, private investors, businesses and individuals. The South Market District Project is designed to provide a framework on which to rebuild and stimulate the economic pulse of the historic African American commercial community. They have entered into annual contracts to attain specific goals with respect to the development and job program, and have therefore completed tasks, activities, acquisitions, designs and partnerships that we were asked to do. They need Council's continued support.

Mr. Chambers said that they have learned that (1) the work is difficult and expensive; (2) whatever accomplishment they achieved, they wish they could have done it better – including the creative process, the community involvement process, and in the timing of related events and activities; (3) they were fortunate in finding partners willing to go the extra mile; (4) the partnerships, carefully structured, are complicated; (5) in combining the project with Mt. Zion, they were able to attract a "best in the country" organization to assist Asheville, and draw a developer who is recognized across the state for completing community reinvestment projects and for historic rehabilitation that meets or exceeds the Department of Interior standards; (6) the work is complex and difficult to explain; (7) delay is costly – the $6.3 Million Redevelopment Plan of 1996 is presently $22 Million redevelopment that must be done in phases; (8) developers must be willing to invest personally and to put their reputations on the line; and (9) bringing a project to the point where it can be examined by interested and necessary reviewers means investing a considerable amount of capital. He explained that the advantage of the EMSDC owning property in the area is the assurance of long term community control. He explained why they asked the Enterprise Real Estate Services to provide technical assistance. He said that they have already been receiving calls asking when the apartments will be ready for occupancy. On their visits to neighborhoods in the Community Based Development Area served by the EMSDC, they have been asked by African Americans of all social and income backgrounds on what they can do to invest in the project. He said there is a waiting list of individuals wanting to work in the construction of this project.

Mr. Chambers said that if Council funds the project, (1) within 18 months the return in equity to the area property owners will be substantial; (2) local financial institutions will participate and project leverage will improve for others seeking loans in the area; and (3) African Americans living in Asheville will have tangible evidence that their federal dollars are returning to their community in a way that many have doubted could happen for the last 26 years. To not fund the project repeats an old pattern whereby government holds out the promise of funding but in the end does not The economic reality is that gentrification of Eagle and South Market Street is just around the corner, knocking at the door.

Mr. Chambers asked Council to help them complete the work that they were asked to start. They are humbled by the task and apologetic for those aspects that they have not handled perfectly or well. They have heard Council's concerns and have begun to address them in terms of community involvement and in terms of compliance with the Redevelopment Plan. He asked that City Council support Phase I and release the funds committed to the project.

The following individuals spoke in support of Council releasing the funds for this project for various reasons, some being, but are not limited to: this project is as close to perfect as we have ever come; if we are waiting for a perfect plan, we'll be still talking in 20 years; one can always find fault in a Plan; now is the time to facilitate the project so the community can move forward; the progress must not be held hostage any longer; it took a number of years to purchase the buildings to keep the heritage of the Block and in the hands of the African American community; even though EMSDC has not done everything correctly, they are learning through their mistakes; EMSDC continues to meet with outside groups to talk about the development; people in the area have waited a long time for development to happen; support this effort so that progress can start being made; and this project is a win/win situation – for the Block and for Asheville:

Ms. Althea Goode, concerned citizen
Ms. Andrea Wright, consultant with Eagle-Market Streets Development
The Reverend John Grant, Mt. Zion Missionary Baptist Church
Mr. James Geter, Board Chair and President of EMSDC
The Reverend Charles Mosley, Nazareth First Baptist Church
The Reverend L. C. Ray
Mr. Mike Morgan
Ms. Esther Hart
Mr. Samuel Camp (presented Council with newspaper articles)
Dr. Charles Blair

Mr. Jesse Plaster, representing the property owners, asked City Council to deny Eagle-Market Streets request for funding to continue this project. This is based on a number of arguments. There are a series of violations to the South Pack Square Redevelopment Plan adopted by City Council, with assistance from EMSDC. First are aspects of community involvement which are set forth in this Plan. The EMSDC Board is supposed to be comprised of community members and appointments from within the corporation but also property owners. When Rev. Grant was Chairman of the EMSDC, he told us that all property owners had a seat on that board. It's set forth in the Plan that that should be the composition of the Board. We feel like without a place in that decision-making body we have been left out of the process. Furthermore, community members, business owners and property owners should be updated monthly, as set forth in the Plan. There have been no updates in over three years. There were also supposed to be community design charettes to allow the community at large and any interested parties to participate in the development of the Eagle-Market Streets Plan. There has not been a community design charette in 10 years. A charette held in September of 2002 was a charette open to architects and that was sponsored by the local AIA, but it was not specifically a community charette. The Plan also addresses the involvement of local minority contractors in the redevelopment of the Block. That has not been addressed by the EMSDC. A question was asked, at a public meeting at the Public Works Facility, if the developer had any goals for minority contractor involvement. The developer's response was that they are not required by law to have such goals, and therefore, he does not. Another requirement of the Plan was the preservation of local property owners. As a last resort, EMSDC was given the authority to act on the City's behalf to purchase properties that would be demolished or taken out of the market place. It seems that they have acted in opposition to this requirement of the Plan. A final change to the Plan is the infill proposal. It is clearly laid out in the Plan that it is the intention for infill development but there is nothing in the maps or information documented in the Plan that shows the current site as a potential infill site. And furthermore, it's supposed to be put off until a further, later stage of redevelopment. The first stage of redevelopment is meant to be rehabilitation of existing properties. That is not what is being proposed. A question that keeps coming up about the Plan is the issue of trust. We are told we should trust the developer, even though the buy-back plans are not in place, the long-term agreements are to be held in trust, but our trust has been consistently met with misrepresentation and fabrication. Another issue is the idea of feasibility. This project was first presented as a renovation project of the Dr. Collette Building, the Campbell Building and 3 Wilson Alley. That was presented as a feasible project. EMSDC came back in 2003 and presented the project as infeasible without an infill building. Now the project is presented as infeasible without the inclusion of Mt. Zion, which really doesn't have any relevance in these hearings. That compromises the public trust in their abilities and in their stewardship of these City-owned properties. An important issue to the community is the long-term community control of the buildings. That is one of the reasons that EMSDC should be allowed to purchase properties to assure that they stay within the community and serve the greater good of the community. However, without buy-back agreements in place without a guarantee that the City or the EMSDC will maintain ownership of these properties, it is questionable, after five years, what will take place. A Charlotte-area developer will gain 50% control of the properties after five years and he will also receive 50% of the net proceeds of the properties during the five year period. At that point, the City is given the option of buying back the properties and it's not laid out as yet what that agreement should entail. The property owners are not alone in their opposition to the EMSDC's plans. Fourteen business owners have signed an agreement stating that the EMSDC has failed the community. If the property owners and businesses who are there on the Block now feel like the EMSDC has failed them, it asks serious questions about how they can proceed with the project under those circumstances. If EMSDC loses these funds, the money will not go away. There are a number of private investors who are interested in the area. These properties would have been renovated by now had the EMSDC not purchased them and held them for a number of years. They have owned the Campbell Building for over three years and they have owned the Dr. Collette Building for six months. Given the failures of the EMSDC (inadequate community involvement, numbers that don't agree, and a number of other failures), should they be given license to proceed?

Ms. Amy Plaster, co-owner of the Wilson Building, said that the project contains irregularities and lack of accountability in this public money. We deserve accountability and to see the money used for the community, not having people tell the community what is best for them. Many of us have talked about alternatives to having an infill building. A building is not necessarily progress. We would like to see a space that gives back to the community as well as generating income. We have drawn up some ideas of what that could be.

Upon inquiry of Vice-Mayor Mumpower, Mr. David Rogers, one of the developers on the project, responded to various questions. He explained that when they first looked at the project, it became obvious that tax credits was one of the things that could make the project happen. Since a non-profit cannot use the tax credit, they brought in a tax investor. The tax investor will own the project for five years. At the end of five years, in the agreement, there will be a buy-back procedure where we buy the tax investor out and then EMSDC can buy the developers out of the project. The developers have no desire to own this real estate long-term. His purpose is to get the project developed, active, successful and then turn it back over to the EMSDC. In order to buy us out, the EMSDC will be able to leverage the real estate as an asset to refinance the project. They should be able to borrow 75-80% of the value of the building at a very reasonable rate. Right now we are 50/50 partners with the EMSDC. During the five-year period, the majority of the cash flow will go to the tax credit investor and there will be little money to be shared

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between the EMSDC and the developer. The rates from the rental apartments will hopefully go up during the five year period of time and the existing loans will be paid down. They will be able to refinance the project and take over 100% control of the project. Mr. Rogers said that the buy-out procedure is in writing and waiting for their lender and tax credit investor to approve.

Upon inquiry of Vice-Mayor Mumpower, Mr. Rogers said that they did a market study on this project. In addition, the Enterprise Real Estate Services did a market study prior to their involvement. Also, they have had it appraised and their lender has checked the market as well.

Upon inquiry of Councilwoman Bellamy, Community Development Director Charlotte Caplan explained the difference between tax credit projects for low income housing and these tax credits, which are for historic rehabilitation. Mayor Worley further explained that if you use the historic tax credits, you are required to own that property for a minimum of five years. If you divest yourself of that property before the five years are up, you are subject to recapture of the income tax benefit that you gained by using those tax credits.

Upon inquiry of Councilwoman Bellamy, Mr. Rogers said the rent for the apartments will be range from approximately $600-850 a month, based on the number of bedrooms.

In response to Councilwoman Bellamy, Ms. Caplan said that there are no requirements on the rent for the EDI grant monies nor for the Section 108 monies because this is an economic development project and not an affordable housing project. These apartments are not required to be affordable by HUD regulations. It is the revitalization and the elimination of slum and blight as the national objective being achieved in HUD terms through this project.

Regarding the heritage of the Block, Councilwoman Bellamy asked how we can ensure that gentrification will not occur. Mr. Shuford said that this is an area that was traditionally not a residential area for the African American community but an area of commerce, retail, restaurants and other activity. That aspect would be covered by the fact that EMSDC will continue to coordinate and be involved in the retail, restaurant and office leases that occur as part of this project. There is no guarantee what the income range or the ethnic background of the people who will be living in the apartments will be, but the fact that the restaurant and retail aspect of it would remain under control of the EMSDC. Secondly, one of the most important parts of the heritage of this area is it's architectural heritage and the Campbell and Collette buildings will be preserved and brought back to their original stature as part of this project. One of the difficulties of doing something different, like a market-type situation, is that we would lose those two buildings as a result of a private sector involvement because there is not going to be an interest in trying to rehabilitate those functionally obsolete buildings. We have certainly learned from this project that renovating existing buildings to historic standards is a lot more expensive than new construction. As a result of that, we would tend to see the rents of any private sector development that would occur here would either not support the retention of the existing buildings or we would end up with a much higher rents as seen in other areas of downtown.

Upon inquiry of Councilwoman Bellamy, Ms. Caplan said that the release of the funds will based on the contract between the City and the EMSDC. We have no financial commitment to the Mt. Zion site of the project.

Councilwoman Bellamy was concerned about the public trust aspect. Ms. Caplan said that there have been imperfections in the public consultation process. Over the years, Eagle-Market Streets have had periods when it has been very active in seeking ideas and periods when it has been less active. However, they went public with these plans at the beginning of October of 2003 and have had 16 weeks of continuous, intense dialog since then. Public consultation does not always lead to 100% agreement by all stakeholders. In fact, over the years she has been involved with the Block, various proposals, not of such a major nature, have been made and in every case there has been opponents. It has not been an area in which it is easy to get 100% agreement. Everyone has different visions and interests in the area. We did advise EMSDC several years ago that they should not have on their Board property owners whose property they might wish, as part of the Redevelopment Plan, to purchase in the future. Obviously to purchase property from one of their own Board members would be a conflict of interest. They do have on their Board at least one property owner in that area, but not from South Market Street or Eagle Street.

In response to Councilwoman Bellamy about the 1993 by-laws regarding Board members, Ms. Caplan said that there was nothing in the Plan that stated how the EMSDC's Board should be composed or what its by-laws should be. It states that EMSDC's Board does contain property owners. That was a statement of fact. Mr. Shuford also noted that at the time the Redevelopment Plan started forward there was an active organization called the South Pack Square Association, which is now defunct. That was one of the key ways communication was to occur. We certainly have not been fully satisfied, up until October, with the performance of EMSDC in getting word out to people. But, at this point in time, everyone should know the specifics about this particular process. One other piece of advice is the process is always suspect when people are not happy with the outcome.

In response to Councilwoman Bellamy's concern about the process, Mr. Shuford said that there is a need for Council to balance different issues and Council needs to decide whether the process flaws outweigh the importance of this project to the community. In his opinion, he thinks that certainly since October when it became apparent that there was a lack of knowledge about the specifics, the EMSDC has been pretty responsive to that. Their Board has been working very hard to look for ways to be more inclusive. In fact, we have basically put them on notice that should we have another project, we will expect them to have a public involvement plan prior to the initiation of even the beginnings of the project. The people who seem most opposed to this have been able to avail themselves of vast amount of documents and other materials. There has been no attempt to hide any of that information. This is a public process but if Council decides that that is a fatal flaw, then that is part of the balancing act that City Council has to do.

Councilwoman Bellamy wondered if we can look through some of the information that was on the table, that didn't go anywhere, for possible compromises that can be developed going forward.

Ms. Elizabeth Russell, Executive Director of EMSDC, said that over the last month they have been trying to distribute Board membership applications. They subsequently went to all the businesses with correspondence to make sure that Board applications were out in order to get interested persons to respond. To date we have not received any completed Board applications. However, in order to keep the dialog continuing, we recently met with the YMI Cultural Center's Vice-Chairman and Executive Director and members of the Mt. Zion Community Development to try to see what we need to do to advance this. The outcome of that meeting was that the YMI and the EMSDC are to work together to send a letter to all the previously defined area property owners (going back to the Plan of 1996) to try to put out another call to the South Pack Square Association and make sure we have reached out to everyone who would like to provide input. In addition, at their Board meeting on January 15, the Board has put in place a Redevelopment Advisory Panel composed of property owners, business owners, and tenants in the area, to try to keep dialog open to the EMSDC Board. We are trying to address this on multiple levels.

Councilwoman Bellamy said that not only is she concerned about public trust and public input, but she's concerned about the financial issues as well.

Upon inquiry of Councilwoman Bellamy, Ms. Caplan said that the City will be making the $18,000 payment (because we have already drawn down the $800,000), noting that there will be that much less money to spend on the project. That interest was built in as a construction interest cost. She explained that if the project is further delayed, the City must repay the interest on that loan. That is a loan from HUD to the City, but the way that the project is structured, those loan repayments (principle and interest) will be made from the project revenues.

In response to Councilman Newman, Ms. Caplan said that if this project does not go forward, then the City will have to find another use for those monies that satisfies HUD's criteria. We will have to look around for other projects and get HUD's permission to use the Section 108 loan for these other projects instead. The EDI grant is more difficult. That was a competitive grant and HUD may not allow us to retain that. Most likely they will expect us to reapply for it for new projects and they will make us compete against all the people who got it the same year that we did. We will have to do at least as well as those other EDI recipients in order to retain the money; otherwise they will take it back.

Councilman Dunn asked why we started drawing on the grant without a plan in place. Ms. Caplan responded that we had the option in August of 2002 to take the loan or not. Our view was that its interest rates at that point were historically low and that it was in the City's interest to draw down the loan funds at that time. She consulted with the City's Finance Director and that decision was made by staff that it was a good financial decision to take the loan at that time because interest rates were so low. Mr. Shuford further explained that in 2001 City Council authorized staff to apply for the Section 108 and EDI funds. The City went to HUD and said we have a project that we would like to pursue, which included the infill building and renovation of a building. It was a similar project. It has taken EMSDC awhile to make final acquisition of the property. Again, with the help of our Finance Director, it was a decision made in August because of interest rates being so low. We did not anticipate the level of discord that we have had on this issue. If we have to allocate the money to a new project, we will do our best to make sure that new project reimburses us for the monies because it will still be at a very favorable interest rate.

Councilwoman Bellamy asked how we achieve one of the Plan's goals, which is to ensure that the implemented development is sensitive and responsive to the needs of the people who have traditionally inhabited and conducted business in the area. She wants to make sure that African American businesses have the opportunity to locate in the area. Mr. Shuford said that there are two things Council can physically ensure. The new infill building is going to have to meet the design standards and the five historic buildings will have their own separate standards. Ms. Caplan also responded that Council has heard from many people who did traditionally use and conduct business in this area. One thing we have committed to HUD is that the preponderance of businesses located in this area will be serving the local population, rather than for example high-end art galleries. Wherever possible tenants will be selected who provide goods and services needed by the people who live in the surrounding areas.

In responding to Councilwoman Bellamy, Mr. Geter said that we are living in a time now where we can't guarantee anyone that they will live anywhere or have a business anywhere, but we can ensure that these properties remain in this community and that the income from these properties will help the community. We are actively looking for African American businesses to come in now and get ahead of the curve. The EMSDC wants to continue to help them develop their business. He said they do have people on a waiting list for their businesses to open once the properties have been developed. Ms. Wright was pleased to note that they have nine African American businesses and other minorities ready to go – we just need the buildings.

When Councilwoman Bellamy asked why the project is for 17 parking spaces vs. more business space, Mr. Geter said that parking is at a premium downtown and they tried to keep the building within the same standards as the other buildings. Ms. Russell also responded that part of the parking will be for tenants living in the infill building and in the Del Cardo building, but their intent was to make sure that people utilizing those structures would not glut the traffic parking that was available for other businesses in the area.

Upon inquiry of Councilman Davis, Mr. Rogers said the rent on the commercial space will be $12.50 a square foot, but that provides all the improvements for the tenants. Regarding the size, they will be fitting the spaces to the tenants.

Vice-Mayor Mumpower said that the benefits the developer will reap are dramatic, but the point of balance concerns him. He questioned what would happen if they don't get the rent for the commercial space or if the apartments are not filled, noting that the Grove Arcade is struggling. Mr. Rogers responded that he has been doing this business for 30 years and they have never had a project go over budget nor have they ever had a project fail. They own extensive real estate in North Carolina. He said that most, if not all, of their projects are 100% leased. He then responded specifically to his part in the Grove Arcade pointing out that if the project is failing because of the marketing or how it was put together, he had nothing to do with that.

When Councilman Dunn asked what happens if the EMSDC can't buy the developers out, Mr. Rogers said that they would stay. Again, they are not long-term owners of this real estate. They have set up a three year period for everyone to try to buy us out. If after the 7th year period, we would seek another buyer for the project. But the project is put together as leases from EMSDC and Mt. Zion. Under no circumstances would they ever lose control of the property.

Upon inquiry of Councilman Dunn, Mr. Rogers explained how long the corporations nave been in existence and what the assets of his corporation are.

At the request of Councilman Newman, Mr. Rogers talked about the significance of the Enterprise Real Estate Services Inc., a for-profit developer set up by the Enterprise Foundation, in the project. He explained what their function will be and what they will bring to the table.

Upon inquiry of Councilman Davis, Mr. Rogers said that this phase of the project contains no affordable apartments. However, they are trying to earmark eight affordable apartments in the Mt. Zion project. In addition, the second and third phase of this project will have affordable housing. He said that Enterprise Real Estate Services Inc. would be involved in this phase of the project even if there was no affordable housing component in it.

Upon inquiry of Mayor Worley about there being no buy-back agreements in place, Mr. Rogers again said that the documentation is in the leases drawn up. The EMSDC and the developers have agreed to the documentation and have finalized that. What has not been done is the lender and the tax credit investor have not approved them. His lender is waiting for City Council's decision before they will give him a final commitment.

Councilwoman Jones said that she hasn't seen a recent audit of the EMSDC. She felt that a loan of this magnitude would require a completed audit and asked if that is a requirement for HUD. Ms. Caplan said that it is not a requirement for HUD until the agency receives more than $300,000 in one year. However, it is a requirement from the City and we are expecting to receive the 2002 audit very shortly, noting they been late in producing it.

Councilwoman Jones said she would like to see the most recent audit concerning EMSDC's financial capability before the City releases $1.1 Million.

Councilwoman Jones read that the EMSDC's by-laws, in terms of the Board's composition, and I have concerns of how it is being interpreted in terms of business, property owners and tenants and then trying to cross check with the current board list. Seems like the Board make-up is a huge stretch from their by-laws.

When Councilwoman Jones asked if HUD reviews whether or not organizations follow their by-laws. Ms. Caplan said that HUD will not look at in detail at whether an organization is following its by-laws, except in areas that affect HUD regulations. One of the key HUD regulations here is that EMSDC qualifies as a community-based development organization. They have changed their by-laws and have slightly amended their Board composition specifically in order to quality as such an organization. She did note that the City does monitor the compliance of the EMSDC's Board with the requirements of their status as a community-based development organization.

Councilwoman Jones said that in terms of the audit that we do have and the findings from the auditor, has City staff received documentation that makes them feel that they have addressed the concerns that the auditor found in the last audit. Ms. Caplan said that she has not recently looked at that audit. It has been a year since she has looked at that audit; however, she strongly suspects that they had comments in the audit about separation of duties because that is a constant issue for very small organizations.

Councilwoman Jones said she feels like Council is being put on the spot to make a decision that will either stop 25 years of progress or they will be asked to look the other way about the organizational capacity and public credibility of EMSDC. She wasn't sure if there would be a way to work closer down the road on some of Council's concerns, but that would be her plea.

Councilwoman Bellamy said she wants to see the Block redeveloped, but she has a concern regarding accountability. She wants to make sure that if Council moves ahead, that we they are doing it with the right fiscal responsibilities as well as with the neighbors of EMSDC.

Mayor Worley said that Council has heard that there are irregularities in terms of the process that has been followed and there is an acknowledgment that the process certainly could have been better. He asked if from a legal standpoint, not from a standpoint of is it the best process and what we would traditionally try and follow, are there irregularities that would preclude us from considering this or violate the terms of the Redevelopment Plan. City Attorney Oast responded that the process by which the Eagle-Market Streets Project, and in particular the infill development building was approved, did comply with the law in the Plan.

Upon inquiry of Mayor Worley, Ms. Caplan explained that several hundred thousand dollars, as well as property acquisition, has already gone into this project since 1993.

At 7:33 p.m., Mayor Worley announced a recess.

Mayor Worley said that this is a difficult decision and the process has a lot of flaws but they don't rise to the level of legal impediment. He said that for the EMSDC, the history of the project goes back over 10 years of efforts to revitalize and resurrect the Block. There have already been considerable funds expended in this process. He felt the project itself would do a good job for the Block. It would restore the Block and bring about economic development we have long desired in the Block. He asked that Council not halt the project because of process flaws because the end result will be what the City has long envisioned for the Block, with the developer and the other funding in place to bring that about. A very important question was raised about the 2002 audit and he has already expressed his concerns over the agreement process. However, he would support approval of the project, subject to the receipt of a satisfactory audit for 2002, with a deadline for that audit to be received, and subject to the drafting and execution of a document clearly setting forth the expectations of this City in terms of the processes to be followed by EMSDC for public input and public involvement going forward for the remainder of this project and for any other phases that might come down the road. He did think it was important for this City to move forward with the redevelopment of the Block and he thinks that turning this project down will bring about substantial additional delay in any substantive progress on the Block and in the desirability of returning the Block to what it was for the community and making it something for the community going forward.

Councilwoman Bellamy said that it was important that Council address the concerns going forward and not be misleading to say that we support you, but the only way we're going to support you is if you get this information together. She thinks that we should create that understanding and give it to them and say, this is what we want and when they present Council with the information, then move forward. Ms. Russell said that they are meeting with individuals and group members to resolve some of the issues, but that isn't working. She thinks City Council needs to get involved because we all want to see this happen. She felt Council should have a heavier hand in making the process occur, even if we have to hold their hands. We all need to be satisfied with the process and the project. We need to do whatever it takes to get people at the table, receive the audit, look at the performance, and to deal with those issues before we move forward. She suggested postponing the vote for four weeks because they need time to get together more than once. She said maybe a committee of Council could meet with the parties involved to make this process work and she would be happy to be available. If the parties involved don't want to meet or provide what Council has asked for - receipt of the 2002 audit, review of the pro forma, to look at the issues of sustainability - then that shows Council has done what they could to make the project work.

Councilman Dunn voiced concern over the fence was put up by EMSDC that divided the community. He said that the City has a lot of money invested and a fiduciary responsibility to use this money somewhere. If the parties can't come together, he is prepared to go somewhere else.

Councilman Davis said he was disappointed that we have some trust issues that haven't been dealt with. There is a fairly huge riff in the community because of this and there was hope that there was some progress being made. He too asked that they go to the table again to see if there can't be inclusiveness. He was not in a position to be able to vote on the project at this time.

When Mayor Worley asked what a delay would mean to EMSDC, Mr. Geter said that they have already waited for years to revitalize the Block. He asked for Council's decision at this time. He explained that it's wrong to think that an entire community needs to speak with one voice and you don't find that in any community. We are all individuals and don't think alike. If some people say yes and some no, that's a good thing because it tells us that we are all thinking. They have sent Council a plan for inclusion and their Vice-Chair has taken over that task to make sure that all of the property owners and business people on the Block have a voice. We already said that EMSDC, the YMI, the City and Mt. Zion have met and agree they need to look at a plan that is more inclusive. It was all of us because we don't know who the other players are but those are items that we sat down to discuss. It was then decided to have another meeting in February but in the meantime the Executive Directors from EMSDC and the YMI will meet and form these lists to bring back to the complete body. Then we can start to bring everyone else in. We are also working to be more inclusive by having an advisory committee made up of all the property owners and all of the business people on the Block to advise the EMSDC. We are doing the things we can do to be more inclusive.

Mr. Geter asked what would happen if after the four weeks are over and Council still doesn't have enough information. He wondered if Council will continue this until they don't have the backing of the developers. Vice-Mayor Mumpower said we want the matter continued until we find solutions and City Council is not convinced that we have exhausted that run yet. We feel like there is a little bit more room to work, talk and find some solutions.

Mayor Worley said that this Council is not asking EMSDC to come back with a consensus from the entire community. He sensed Council is asking for (1) receipt if the 2002 audit and time within which to review it; (2) time within which to review the pro forma; and (3) a signed memorandum of understanding setting forth the expectations of this City in terms of the processes to be followed by EMSDC for public input and public involvement going forward for the remainder of this project and for any other phases that might come down the road.

Mr. Geter asked for Council to vote on this issue tonight contingent upon EMSDC having certain things in place as outlined by Council, including City Council sitting down and talking with them.

Councilman Newman said that the audit is reasonable information to have. If the audit is received and it is a good audit, the infill building will still be a controversial issue. If the majority of the members of Council don't believe this infill building should be constructed, then we should just make that decision and move on. Or, if the audit can be supplied and it indicates that they are a sound financial operation, and based on that we do want to more forward, then we should. He doesn't think that any number of weeks the fundamental issues around the development will be any less controversial than they are right now.

City Attorney Oast said that the Community Development Block Grant Agreement that the City has entered into with EMSDC provides the framework for insisting on the provision of certain information. In fact, it provides that cause for suspension or termination of the Agreement is a failure to comply with the terms and conditions of the Agreement or submission to the City of reports that are incorrect or incomplete. The City has the authority, irrespective of what happens tonight to terminate our Agreement with the EMSDC for any material failure of that nature.

City Attorney Oast also noted that this is a budget ordinance amendment and even if it is voted down tonight, it can be brought up again in two weeks. Council is not prevented from reconsidering it at any time.

Councilman Dunn said that his decision will be based on other things – not solely the audit. He felt that the pro forma provided has problems.

Councilwoman Jones said that the infill building is not an issue with her, but her concerns are more of the organizational capacity and credibility. She will be looking at the audit in other places as well. She was, however, pleased that EMSDC has an organizational consultant working with them.

Councilman Newman said that it would be helpful for him to understand what information other members of Council feel like they need to make a decision. He feels like the audit is information that would be helpful for him. Other than that, he has the information he needs to make a decision.

Vice-Mayor Mumpower said that there was a meeting over a month ago at a worksession where a lot of the parties at the table felt like there was a plan in place, but it didn't happen. There was some opportunity there that he personally doesn't think was fulfilled. Subsequent to that, the organized opposition took out a lawsuit. He was still wondering if there is opportunity to get back to that table and try to find some more common ground. Secondly, he's not terribly concerned about the audit, but the pro forma is a big issue for him. EMSDC is initiating a new adventure in an area that has not thrived for a long time and to assume that level of performance that quickly to me steps beyond the balance of common sense. He needs more solid reassurance before he could feel comfortable with that.

Mr. Geter responded that they have asked for a number of banks to look at the pro forma and wondered what other kind of assurance is needed.

Councilman Davis said that the audit is probably the one tangible piece Council needs to make a decision, but the intangibles is what bothers him most of all. We have talked about getting people back to the table. To not consider some of the property owners in the area who have invested a lot of money is not a good thing. He would like to try to heal some of problems in the community. This is a very important project. When we get into the Block itself, that was a commercial place in nature. These people who have taken their private money and invested in it in order to develop it and attract other private developers down there, might do a better job of keeping the heritage of the Block. Again, he felt that the people who have already made an investment in that area should be brought back to the table. More than waiting for the audit, he wanted to try to get the people back together and see if we can't develop together a good project.

Mayor Worley felt that if Council is going to consider a delay then it should be for tangible reasons. Healing the problems in the community is an intangible, and he didn't see how we can quantify that over a 2 or 4 week period – that is a much longer process. Tangible reasons might include the receipt of the audit and any other specific documentation, and perhaps an agreement to provide for the inclusionary process. Questions about the pro forma are hard to quantify because you can have different people look at it and say different things about it. You can't quantify who is right and who is wrong on those.

Councilwoman Jones felt the trick with the tangible for the audit is it depends what it says. It should not say there are outstanding checks, the bank statements didn't reconcile, or that there are overdrafts. Those substantial issues and if they are in the audit, she will not feel good about releasing $1.1 Million to that organization. She would like to have a conversation about how the by-laws are being implemented and maybe they need to be revised a little bit, because she has some real issues about if they are being followed. A conversation with the organizational consultant would address some of her concerns. She also pointed out that there are no terms for board members. There are some organizational boring things that really matter. Another conversation that she would like to have is to spell out some of those capacity issues, because if we can deal with the capacity, then we can start moving toward the credibility. That is what we need to do to go forward. She also agreed that fleshing out the public involvement plan is needed as well.

Councilman Dunn moved to not allocate the $1,400,000 of Section 108 Guaranteed Loan and Economic Development Incentive Grant to EMSDC. This motion was seconded by Councilman Davis.

Vice-Mayor Mumpower felt that the intangibles should guide Council's decisions. He would like to see additional work done. He is not convinced that there aren't some solutions to more of our concerns.

Councilwoman Bellamy said that City Council has delayed other matters before them in order to give them an opportunity to meet with the neighborhoods and try to find some common ground. She felt a 4-week delay is necessary to make this project work.

Councilman Newman said he would support a delay if there was a sense that the neighborhood and developers were close together and if Council delayed action there might be some sort of agreement or compromise. However, he felt the infill development is the controversy in the community and a few weeks delay won't change anyone's view on that. His sense is that on the substance of this project, beyond the infill building, everyone is happy with the development. He hasn't heard anyone say to not rehabilitate these historic buildings. He has only heard objections to the infill building. He thinks the trust issues are also things that will not be solved in the short-term and he hoped they can be solved in the long run. If Council does approve this loan for this development, it would certainly be a prerequisite for him to provide any future support for public funding for redevelopment in that community to be 100% sure that there is a much better process in terms of inclusion and that the organizational capacity issues that have been brought up are addressed for any future development. His support would be contingent upon that. The substance of the infill building and the trust issues are not things that we can solve in the short-term.

The motion made by Councilman Dunn and seconded by Councilman Davis failed on a 3-4 vote, with Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no."

Councilwoman Jones moved to continue this matter until February 24, 2004, and based on documentation requested by Council at this meeting, Council will make a determination based on that additional information provided at the February 25, 2004, meeting. This motion was seconded by Councilwoman Bellamy.

Councilman Dunn asked Mr. Geter if EMSDC will consider the project dead or will they try to address Council's concerns in the time allotted. Mr. Geter said that he would take this back to the full EMSDC Board and let them make that decision.

Upon inquiry of Councilman Newman, Councilwoman Bellamy said that when Council approves or disapproves the funding, it's for support of the entire project as it stands. We are not voting up or down just on the infill building.

Mr. Geter said that in talking to the developer, one of the issues that they have is whether the investors will stay in this project. If in four weeks from now, after EMSDC provides Council the information requested, would a decision be made on that date? He said the developer and the investors won't stay here forever. Mayor Worley responded that it is the clear intent of City Council to make a decision on February 24, 2004. Mr. Geter replied then he thought the Board wouldn't have a problem with that.

The motion made by Councilwoman Jones and seconded by Councilwoman Bellamy carried unanimously.

Mayor Worley stated that on February 24, 2004, public comment would be limited only to the new information City Council requested at this meeting.

V. NEW BUSINESS:

A. REPORT SETTING FORTH PLANS TO PROVIDE SERVICES TO THE FOLLOWING SIX AREAS PROPOSED FOR ANNEXATION WHICH ARE GENERALLY KNOWN AS (1) THE HERITAGE BUSINESS PARK AREA; (2) THE HONEY DRIVE AREA; (3) THE ENKA VILLAGE AREA; (4) THE ASHWOOD SUBDIVISION AREA; (5) THE HEATHBROOK AREA; AND (6) THE SWEETEN CREEK ROAD AREA

Urban Planner Carter Pettibone said that the Annexation Services Plan is being submitted for Council's approval for the following areas: the Heritage Business Park area, the

Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area.

City Council approval of this document is the second step in the annexation process that began on January 13, 2004, when Council adopted the resolutions of intent to annex these six areas.

Upon review and approval by City Council, the Plan will be made available for public review. The follow steps will complete the annexation process.

Approval of Annexation Services Plan	January 27, 2004
Public information meeting	March 4, 2004
Public hearings	March 23, 2004
Adoption of annexation ordinances	April 13, 2004
Effective date of annexations	June 30, 2004

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major water and sewer lines, and any proposed extensions; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of N. C. Gen. Stat. sec. 160A-48 (basically contiguity and urbanization).

3) A statement setting forth the plans of the municipality for extending to the annexation area each major municipal service performed within the municipality. Specifically, (a) police protection, fire protection, solid waste collection and street maintenance on the date of annexation; and (b) extension of major trunk water mains and sewer outfall lines so that property owners in the area will be able to secure public water and sewer service according to the municipal policies in effect for extending such service to individuals lots or subdivisions.

4) The method under which the municipality plans to finance extension of services into the area to be annexed.

5) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed.

6) A statement showing how the proposed annexation will affect the City's finances and services, including City revenue change estimates.

He then reviewed with Council the specifics of how each area qualifies for annexation.

Mr. Pettibone then explained the Plan for extension of services, including police protection, fire protection, solid waste collection, street maintenance, water distribution and sewer collection.

Police protection: The additional land area, street mileage, dwelling units, businesses and improvements will require expansion of the Police Department. Extending service into the proposed annexation areas will require operational adjustment in two primary areas (1) configuration of patrol districts covering the proposed annexation areas so as to provide for effective manpower deployment and a balanced response time to calls for service; and (2) filling vacancies in sworn personnel positions to accommodate the anticipated increase in demand for police services. He explained how each area would be served by an expansion of a particular district. Two police officer positions have been approved at an annual cost of $70,000 plus associated capital costs for equipment on or before January 1, 2005, in the previous annexation. Based on the projected population increase at the time of annexation, it will be necessary to add one police officer to maintain the current ratio of one officer to 407 residents. The plan of services calls for the addition of this officer, at the annual cost of $35,000, on or before January 1, 2005.

Fire protection: A Deputy Fire Marshal position has been approved at an annual cost of $37,000 plus associated capital costs for equipment on or before January 1, 2005, in a previous annexation. The additional land area, street mileage, dwelling units, businesses and improvements in this annexation will require this position to be placed in service on July 1, 2004. The N.C. Gen. Statutes require the City to offer existing fire service entities contract opportunities, which allow for the continued service of annexed areas by existing rural fire departments. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the suburban fire department may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending fire protection; therefore, the City has developed a plan that incorporates alternative solutions to extending fire protection to annexed areas.

Solid waste collection: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Sanitation Division. The City is required to offer existing private service entities contract opportunities which allow for the continued service of annexed areas by existing companies. The City maintains the responsibility of assuring a level of service comparable to the service level within the existing incorporated areas. The involvement of the existing private companies may require the City to supplement service where contract service is not comparable to the municipal service. The City recognizes these circumstances and may affect its plan for extending solid waste collection services; therefore, the City has developed a plan that incorporates alternative solutions to extending solid waste collection services to annexed areas.

Street maintenance services: The additional land area, street mileage, dwelling units, businesses and improvements will not require immediate expansion of Public Works Department, Street Maintenance Division. Existing personnel and equipment are planned to serve the proposed additions to the City maintenance system; therefore, no specific personnel and equipment additions will be made.

Water distribution: On the effective date of annexation, all residents, businesses and property owners within the proposed six annexation areas that are adjacent to existing water facilities will receive service on a basis substantially equal to all current portions of the City. The following four areas require no water line improvements: Heritage Business Park area, Enka Park area, Ashwood area and Heathbrook area. In the Honey Drive area, there is a lack of fire protection coverage. Therefore, there is a need to upgrade the existing two-inch water line to bring fire protection coverage to the same level as other parts of the City. Approximately 1,225 linear feet of six-inch ductile iron water line, 2 fire hydrants and all related appurtenances shall be installed along Honey Drive. All existing water service connections shall be reconnected to the proposed six-inch water line and the existing two-inch water line shall be abandoned. In the Sweeten Creek Road area, there is a lack of fire protection coverage in the northern section. Therefore, there is a need to upgrade the existing two-inch water line along Cedar Lane to bring fire protection coverage to the same level as other parts of the City. Approximately 1,035 linear feet of six-inch ductile iron water line, 1 fire hydrant and all related appurtenances shall be installed along Cedar Lane. The proposed water line shall connect to the existing six-inch water line on Sweeten Creek Road at the intersection of Cedar Lane and Sweeten Creek Road. All existing water service connections shall be reconnected to the proposed six-inch water line and the existing two-inch water line shall be abandoned. All water system improvements are planned for completion by June 30, 2006.

Sewer collection: The following five areas require no sanitary sewer system improvements: Heritage Business Park area, Honey Drive area, Enka Park area, Ashwood area and Heathbrook area. In the Sweeten Creek Road area, major sanitary sewer trunk lines and interceptors are currently in place for the majority of this area; however, upgrades will be required to the existing sanitary sewer infrastructure in order to bring this area to substantially the same level as other parts of the City. Approximately 400 linear feet of eight-inch sanitary sewer line and all related appurtenances shall be installed along Sweeten Creek Road, beginning approximately 460 feet north of the intersection of Sweeten Creek Road and Weston Road. All sanitary sewer system improvements are planned for completion by June 30, 2006.

Administrative and other municipal services: The City provides a full range of services. Basically key professional and department directors specializing in public works, police protection, fire protection, urban land use planning and zoning, building code enforcement, legal matters, parks and reaction and various other municipal activities and functions. The City is active in minimum housing code and State building code administration, zoning and subdivision ordinance administration, recreational programs and parks administration, community revitalization and affordable housing grants administration, economic development efforts and many other planning and related activities.

Financial Impact:

Revenue: Total ad valorem property tax revenue - $254,055; Total state utility tax revenue - $22,742; Total local option sales tax - $91,799; Total Powell Bill allocation - $21,276; and Total fees, permits, licenses and charges for services - $38,845. Total revenue - $424,717.

Annual recurring expenditures: Police (one additional officer) - $35,000; Fire (rural fire department contracts expected to be in place for at least 5 years. Additionally, there is a general annual expenditure not associated with a particular area of $17,000 to reflect a portion of the cost for the hiring of a Deputy Fire Marshal. This position will be hired effective January 1, 2005) - $62,446; Solid waste - $13,827; Recycling - $3,922; and Street lighting - $101. Total recurring expenditures - $115,296.

Annual capital expenditures: Water lines - $135,020; Sewer lines - $31,200; Solid waste (cost equals potential economic loss compensation for private solid waste haulers) - $60,839; Rollout containers - $16,760; Street signs - $2,100; Street repair - $39,500; Sidewalks - $232,000. Total annual capital expenditure - $517,419.

Mr. Pettibone asked City Council to adopt the resolutions approving the report of plans for the six annexation areas.

Councilwoman Bellamy asked if we were looking for any issues regarding traffic calming measures in these areas so we can include them in the revenue and capital expenditures. Planning & Development Scott Shuford said that every year City Council provides a certain funding for traffic calming. The projects are picked based upon the neighborhood desires it and then a process is followed. But, there is also a priority effort to do outreach to the different neighborhoods. What we would typically do in a neighborhood that we are annexing and we do

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not have a known traffic calming issue, would be to evaluate the annexed areas and add them on the list of priorities. This is done just as we do with street paving and other issues so we would not be showing newly annexed areas favoritism over existing areas.

Councilwoman Bellamy suggested City Council consider addressing traffic calming now in our capital expenditures so as we take the annexed areas into the City they don't have to wait.

City Attorney Oast said that traffic calming is one of the services that these areas will become entitled to once they come into the City. It is not one of the services that we are by law required to extend into these areas. He would be hesitant to include a service that we are not required to account for in our Annexation Services Plan.

Mr. Shuford said that perhaps a different way to address Councilwoman Bellamy's issue is that if Council desires, they could direct staff to treat annexed areas with a higher priority than areas that have not been annexed.

Councilwoman Bellamy hoped that we could continue that process with the existing areas within the City and at the same time add to our capital expenditures for the newly annexed areas to address their concerns. It's not something that the City usually does, but we can create another level of service that we give to people as they come into the City.

After a brief discussion about the ratio of police officers to residents, Mr. Pettibone said that the Annexation Services Plan contains one additional police officer.

City Manager Westbrook said that each time Council annexes, we may not need to add police officers or firefighters unless we annex additional people into the City or, in the case of fire, a lot of buildings. There is a standard that needs to be met. There is also a standard that recommends that you have so much park space per population and we don't measure that way either. Another way of considering the need for additional police officers is that is that we have a fairly low crime rate and that speaks well for the citizens and the Police Department.

Councilwoman Bellamy noted that if the City Council believes more police officers are necessary that Council can include that in our general budget process rather than try to make it up through the annexation process.

Mr. Fred English, Haw Creek resident, spoke in opposition to the City annexing stating that he is paying taxes now and not receiving services.

Mr. Mike Fryar spoke against annexation and felt that the Police Department needed additional police officers.

Mr. Wayne Marshall, resident on Honey Drive, asked specific questions about their trash pickup, tax to the Haw Creek Fire Department, School District changes, a new water line and additional sales taxes.

Upon inquiry of Mr. Dick Washam, Chunns Cove area resident, City Engineer Cathy Ball explained the City's street maintenance process.

Councilman Dunn felt that the $517,419 capital expenditures for this round of annexations should be spent on something more important, like infrastructure improvements. Mr. Shuford explained that the capital improvements have to be accomplished over a two-year period. From a business standpoint, if you are able to have a front-end cost like that and then have an overall positive operating revenue stream that would come from the project, normally you would act on that in a favorable manner.

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 04-28 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE HERITAGE BUSINESS PARK AREA

Councilman Newman moved for the adoption of Resolution No. 04-28. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 124

RESOLUTION NO. 04-29 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE HONEY DRIVE AREA

Councilman Newman moved for the adoption of Resolution No. 04-29. This motion was seconded by Councilman Davis and carried on a 4-3 vote with Vice-Mayor Mumpower, Councilman Dunn and Councilwoman Jones voting "no."

RESOLUTION BOOK NO. 28 – PAGE 125

RESOLUTION NO. 04-30 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE ENKA PARK AREA

Councilman Newman moved for the adoption of Resolution No. 04-30. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 126

RESOLUTION NO. 04-31 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE ASHWOOD AREA

Councilman Newman moved for the adoption of Resolution No. 04-31. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 127

RESOLUTION NO. 04-32 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE HEATHBROOK AREA

Councilman Newman moved for the adoption of Resolution No. 04-32. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 128

RESOLUTION NO. 04-33 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE SWEETEN CREEK ROAD AREA

Councilman Newman moved for the adoption of Resolution No. 04-33. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

RESOLUTION BOOK NO. 28 – PAGE 129

VI. OTHER BUSINESS:

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 13, 2004, AND THE WORKSESSION HELD ON JANUARY 20, 2004

Councilman Newman asked for clarification of the Pack Square Conservancy motion from City Council's January 13, 2004, meeting. He feels like there needs to be some clarity on whether or not the City supports the recommendations of the Pack Square Conservancy to remove from consideration the construction of a high rise building on Site A. It is his understanding that the Conservancy needs that issue to be clarified so that they can refocus on their basic mission of raising funds to develop a plan for the park.

Mayor Worley said the minutes of the January 13, 2004, regarding Pack Square Conservancy's request are accurate. He thinks the understanding differs among various members of Council as to the effect of the motion. He said the maker of the motion intended for all of the recommendations to be subject to a 60 day review period. His belief would be that if that was the intent then that would be the effect of the motion, although that might not necessarily be what was understood and intended at the time by the majority of City Council. He felt that the issue is probably moot because it is highly unlikely for any proposal to come before City Council before the Pack Square Conservancy can report back with their recommendations on March 16, 2004.

Councilman Davis felt it would be strange to take a definitive action without the recommendation being presented in a more formal manner. He thought the Conservancy was bringing their recommendations forth to air their views and then when Vice-Mayor Mumpower made the motion, he felt as though he was saying let's look at this for a sixty-day period and come back in a more final style for a permanent recommendation.

Vice-Mayor Mumpower apologized for his lack of eloquence when he made the motion, but when you look at the repercussions of taking the high rise off the table permanently, it's pretty significant and he wouldn't want to do that without a formal staff report and a lot more discussion and details.

Councilman Brownie said that as unlikely as a high rise may be, it would seem to make sense to get the community rallied around a great park design and bring some sense of closure to the community on the high rise matter.

Vice-Mayor Mumpower said that it is his understanding that the City is going to have some significant infrastructure costs associated with this and that a good bit of that money was going to be coming from the sale of this site and the on-going tax revenue from this site. If we take it off the table, we are eliminating a significant revenue source that has the potential to come back into our City tax dollars.

City Manager Westbrook said that there were some off-site issues that the City has to take care of as the project progresses and they are quite expensive. It was the understanding from the very beginning was that there would be some real estate that the City would have to sell to make the project move forward and that was a possible revenue source. If that doesn't come about, then the City will have to do their best to get grants and do other things to make that happen.

Mayor Worley said there are two issues here. One is the question of the high rise itself. It was the request of the Conservancy to take the high rise off the table, whatever precisely that means including whatever the definition of high rise is. The other was not to entertain any other developmental proposals for that site until they could review their guidelines. Their request was not to eliminate that site as a potential building site, but simply to eliminate it as a potential building site for a high rise, again, whatever that definition is.

Vice-Mayor Mumpower moved to approve the minutes of the January 13, 2004, meeting and the January 20, 2004, worksession. This motion was seconded by Councilman Newman and carried unanimously.

Councilman Newman moved that it is not the intention of this City Council to pursue the development of a high rise building on Site A and Council await the proposal from Pack Square Conservancy for the appropriate use of Site A. This motion was seconded by Councilwoman Jones.

Upon inquiry of Councilman Davis, City Attorney Oast said that it will require more than a motion to actually finalize Council's intention, if the motion passes. He was not sure whether City Council can bind their own discretion on that.

Vice-Mayor Mumpower was concerned about the process. He felt it was foolish for City Council to spend months considering the Grove Park Inn proposal which passed on a 6-1 vote, to now just decide to take the high rise building off the table without any foundation or discussion.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-3 vote, with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

CLAIMS

The following claims were received by the City of Asheville during the period of January 1-15, 2004: Roy Rogers (Streets), Lorie Poteat (Water), Fred Higginbottom (Streets), Matthew Hartwiger (Water), Dorinda R. Watford (Transit Services), Aerial Dev. (Water), Craig Culbertson (Streets), Martha Papp (Water), and Sondra Peterson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English commented about the Housing Authority audit, the option of the Grove Park Inn, possible economic development in the County, the Public Art sculpture and annexation in general.

Ms. Jan Howard, resident on Reservoir Road, presented City Council with information and asked that City Council close Reservoir Road due traffic concerns, alleging it is her private driveway. City Attorney Oast said that he would submit a report to City Council on this matter.

Mr. Christopher Fielden reviewed with Council the numerous violations by Wal-Mart on the Sayles Bleacneries site. He urged City Council to advise City staff to closely monitor the development and enforce the Unified Development Ordinance. City Engineer Cathy Ball said that her staff is on the site every day and she personally visits the site every week. She did feel that the developer should do more because of the size and importance to the community. Councilwoman Jones asked that Ms. Ball contact the N.C. Dept. of Environment and Natural Resources and ask that they visit the site just in case there are possible violations.

Mr. Mike Fryar asked for answers to his previous questions from prior meetings. He said that he is trying to figure out what was wrong with the annexation process of his property on Smoky Park Highway. Mayor Worley said that there is concern on Council about his situation and Council will address that concern shortly. At Councilwoman Bellamy's suggestion, Mr. Fryar said that he would be happy to meet with the City Manager. When Councilwoman Bellamy asked Mr. Fryar if he wanted City Council to take a formal vote to say that Council will re-consider his annexation, Mr. Fryar replied "no" that he just wanted City Council to decide what to do and explain why a certification was put on his annexation map after the fact. City Clerk Burleson explained that the certification on the map from the Buncombe County Register of Deeds Office is required by state statute to be included on any maps before recording in their office.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:35 p.m.

Magdalen Burleson	Charles R. Worley
CITY CLERK	MAYOR

Tuesday – February 10, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Commander of VFW Post 891 Harold Stines led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

RECOGNITIONS

Mayor Worley recognized eight students and two educators from Montenegro who are being hosted by Junior Achievement of WNC. The students are attending Asheville High School and are being hosted by ten different Asheville families. Vice-Mayor Mumpower said that he has met the students and was impressed by their achievements.

Councilwoman Bellamy introduced an intern from Mars Hill College who will be working with her this current semester.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2004 AS "BLACK HISTORY MONTH"

Councilwoman Bellamy read the proclamation proclaiming February, 2004, as "Black History Month" in the City of Asheville. She briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 27, 2004

B. RESOLUTION NO. 04-34 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "STEGALL LANE"

Summary: The consideration of a resolution accepting the new proposed street name "Stegall Lane."

EBJ Inc., owner of lots off of Mountainbrook Road, has petitioned the City of Asheville to accept the street name " Stegall Lane." The new street will begin at Mountainbrook Road and end at cul-de-sac on Stegall Lane.

City staff recommends adoption of the resolution accepting "Stegall Lane" as a new street.

RESOLUTION BOOK NO. 28 – PAGE 130

C. RESOLUTION NO. 04-35 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF " TASHA LANE"

Summary: The consideration of a resolution accepting the new proposed street name "Tasha Lane."

Tamella Spivy Mundy and Curtis J. Gudger, owners of lots off of Grandview Road, have petitioned the City of Asheville to accept the street name " Tasha Lane." The new street will begin at Grandview Road and end at "T" turnaround on Tasha Lane.

City staff recommends adoption of the resolution accepting "Tasha Lane" as a new street name.

RESOLUTION BOOK NO. 28 – PAGE 131

D. RESOLUTION NO. 04-36 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "SCOTTISH CIRCLE"

Summary: The consideration of a resolution accepting the new proposed street name "Scottish Circle."

Harrell and Associates Realty; owner of lots off of Summit Avenue, has petitioned the City of Asheville to accept the street name " Scottish Circle."
The new street will begin at Summit Avenue and circle back into Summit Avenue.

City staff recommends adoption of the resolution accepting "Scottish Circle" as a new street name.

RESOLUTION BOOK NO. 28 – PAGE 132

E. RESOLUTION NO. 04-37 - RESOLUTION ACCEPTING THE NEW PROPOSED STREET NAME OF "BLEACHERY BOULEVARD"

Summary: The consideration of a resolution accepting the new proposed street name "Bleachery Boulevard."

Home Development - River Bend, LLC, owner of lots in River Bend Marketplace off Swannanoa River Road, has petitioned the City of Asheville to accept the street name " Bleachery Boulevard." The new street will begin at Swannanoa River Road and end at Fairview Road.

City staff recommends adoption of the resolution accepting "Bleachery Boulevard" as a new street name

RESOLUTION BOOK NO. 28 – PAGE 133

F. ORDINANCE NO. 3089 – BUDGET AMENDMENT FOR TRANSPORTATION PLANNING FOR PACK SQUARE RENAISSANCE PROJECT

Summary: The consideration of a budget amendment, in the amount of $25,000, for a grant from North Carolina Department of Transportation (NCDOT) for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

The Pack Square Conservancy requested funds in the amount of $25,000 from the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

Since NCDOT can only provide these funds to municipalities, Pack Square Conservancy and NCDOT originally requested that we accept the money from the state pass it through to the Conservancy. Since that time, Pack Square Conservancy has requested that the City perform this work through a consultant. This grant requires no match from the City.

City Council approved the municipal agreement in March 2004.

City staff recommends City Council adopt the budget amendment, in the amount of $25,000, for a grant from the NCDOT for transportation planning to include evaluating pedestrian movement to allow maximum use of the park area and to provide for adequate vehicular traffic as part of the Pack Square Renaissance Project.

ORDINANCE BOOK NO. 21 – PAGE 56

G. RESOLUTION NO. 04-38 – RESOLUTION ACCEPTING OZARK SPRING LANE AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Ozark Spring Lane in Riverwood Subdivision off Bell Road in the Haw Creek Community as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Ozark Spring Lane is a developer-constructed street with an average paved width of 18 feet and a 45-foot right-of-way. The street is approximately 397 feet in length and ends with a cul-de-sac. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Ozark Spring Lane will be added to the official Powell Bill list. A two-year warranty, from the date of City Council's acceptance, will be required by the developer to cover major failures in the roadway.

City staff requests City Council accept Ozark Spring Lane as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 134

H. RESOLUTION 04-39 – RESOLUTION ACCEPTING REMAINDER OF PEACHTREE STREET AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept the remainder of Peachtree Road in Nettlewood Subdivision off Hendersonville Road as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

This section of Peachtree Road is a developer-constructed street with an average paved width of 25 feet. The street is approximately 0.62 miles in length. It begins at the end of the existing Peachtree Road and continues to Hendersonville Road. A private qualified consultant inspected this street. The data received by the City indicates that the street was constructed in accordance with the approved standards.

Following City Council's approval of this resolution, the remainder of Peachtree Road as described above will be added to the official Powell Bill list. A two-year warranty, from the time of Council's acceptance, will be required by the developer to cover major failures in the roadway.

City staff requests City Council accept the remainder of Peachtree Road as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 135

I. RESOLUTION NO. 04-40 – RESOLUTION ACCEPTING A PORTION OF OLD STONE GATE PLACE, A PORTION OF SENATOR REYNOLDS ROAD AND A PORTION OF ALTAMONT ROAD AS CITY MAINTAINED STREETS

Summary: The consideration of a resolution to accept a portion of the following streets, in Reynolds Mountain Subdivision, as City maintained streets: (1) Old Stone Gate Place; (2) Senator Reynolds Road; and (3) Altamont Road.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

These sections of Old Stone Gate Place, Senator Reynolds Road and Altamont Road are developer-constructed streets. Old Stone Gate Place has an average paved width of 20 feet and a length of 0.3 miles. Senator Reynolds Road has an average paved width of 20 feet and a length of 0.7 miles. Altamont Road has an average paved width of 20 feet and a length of 0.4 miles. Engineering Department staff has inspected these streets finds them to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, the portions of Old Stone Gate Place, Senator Reynolds Road and Altamont Road will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadways.

City staff recommends City Council accept a portion of the following streets in Reynolds Mountain Subdivision as City maintained streets: (1) Old Stone Gate Place; (2) Senator Reynolds Road; and (3) Altamont Road.

RESOLUTION BOOK NO. 28 – PAGE 136

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO CLOSING A PORTION OF AN UNOPENED UNNAMED ALLEY OFF FOREST STREET

RESOLUTION NO. 04-41 - RESOLUTION TO CLOSE A PORTION OF AN UNOPENED UNNAMED ALLEY OFF FOREST STREET

Mayor Worley opened the public hearing at 5:13 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close a portion of an unopened unnamed alley off Forest Street. This public hearing was advertised on January 16, 23, 30 and February 6, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close a portion of an unopened unnamed alley off Forest Street, the entry of which is located approximately 165 feet east of the intersection of Forest Street and Hendersonville Road (US Hwy 25).

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not in use as a means of ingress or egress for any of the properties abutting the alley. There are three lots that abut this portion of the unnamed alley. They are identified by PIN Nos. 9647.20-90-3952; 9647.20-90-5910; and 9647.20-91-4067.

The developer has agreed to preserve a 17-foot easement to connect future utilities.

City staff recommends that City Council adopt the resolution to close a portion of an unopened unnamed alley off Forest Street.

Councilwoman Bellamy asked if any of the area property owners were notified. Mr. Cole said that all adjoining property owners to the alley signed the petition to close and no notices were sent to area property owners. He did note that the alley was posted on both sides with the resolution of intent along with the legal notice that was in the paper for four successive weeks.

Councilwoman Bellamy said that she recalled this coming before Council a couple of years ago because the alley was the only thing that was stopping a large development on that property. Her concern is that there is a big neighborhood plan that is being worked on and she wanted to wait to see what the neighborhood wanted before considering the closing of the alley. She felt that to close the alley would allow more commercial encroachment into the residential neighborhood.

Mr. George Morosani, developer, said that he was involved with an alley closing on Shiloh Road a couple of years ago, but it was not related to this property. He explained that he has purchased more property in that area and intends to build a multi-use building with a residential component. The property on the other side of the alley will be used for parking. He said that all of his property is zoned commercial and only one parcel that adjoins the alley is zoned office.

Upon inquiry of Councilman Newman, Mr. Cole said that the access to the back side of the alley is off Cornell Street.

Councilwoman Bellamy said that there are a lot of things happening in the Shiloh community and she wished this alley closing would be delayed until the neighborhood plan is formed. She also was concerned that Mr. Morosani might sell the property and the future owner may not wish to build a multi-use building on the property.

Mayor Worley closed the public hearing at 5:17 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-41. This motion was seconded by Councilman Davis and carried on a 6-1 vote with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 137

B. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO DAVE STEEL COMPANY

RESOLUTION NO. 04-42 – RESOLUTION GRANTING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO DAVE STEEL COMPANY

Mayor Worley opened the public hearing at 5:24 p.m.

Economic Development Director Mac Williams said that this is the consideration of a resolution granting an economic development incentive grant for Dave Steel Company. This public hearing was advertised on January 30 and February 6, 2004.

Dave Steel Company, a local fabricator of structural steel, is adding new production equipment valued at $600,000. This equipment diversifies the company's capabilities allowing them to expand into new markets. This, in turn, will help stabilize employment for the current workforce and lead to the creation of 25 new jobs in 2004. The project qualifies for a Level 1 grant under the City Economic Development Incentive Policy.

The terms of the proposed agreement are summarized as follows: Dave Steel is an Asheville-based fabricator of structural steel that proposes to expand operations at its Meadow Road facility. The expansion is in the form of a capital investment of $600,000 in new production equipment which, in turn, would lead to the creation of approximately 25 new jobs paying at or above the median wage for Buncombe County. Said investment and new jobs are anticipated to be in place during the calendar year 2004.

The City proposes to award to Dave Steel, an incentive grant of $3,577, payable in January 2005, subject to the terms and conditions of a city-required Performance Agreement to be signed between the City and Dave Steel.

City staff recommends Council approve the resolution granting an economic development incentive grant for Dave Steel Company.

Mr. William Lewin, Vice-President of Finance with Dave Steel Company, asked City Council for their support of this incentive grant.

Mr. Fred English, Haw Creek resident, spoke in support of the grant.

Mayor Worley closed the public hearing at 5:29 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-42. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 140

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 04-43 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Mumpower said that the terms of Karen Tessier, Carol King, Andy Archie and Peter Alberice, as members on the Asheville Downtown Commission, expired on December 31, 2003

On January 20, 2003, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Mr. Archie and Mr. Alberice to each serve a three year term respectively, terms to expire December 31, 2006, or until their successors have been appointed.

In addition, on January 20, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for John Rogers, Barry Olen, Michael McDonough and Jesse Plaster. Other candidates that will be considered but not called in for an interview include: Gerald Green, Barbara Field and Jane Mathews.

After Council spoke about the excellent candidates, John Rogers received 4 votes, Barry Olen received 2 votes, Michael McDonough received no votes, Jesse Plaster received 3 votes, Gerald Green received no votes, Barbara Field received 2 votes and Jane Mathews received 3 votes. Since there was a tie between Jesse Plaster and Jane Mathews (with both receiving 3 votes), another vote was taken. Jesse Plaster received 4 votes and Jane Mathews received 3 votes. Therefore, John Rogers and Jesse Plaster were appointed to the Asheville Downtown Commission to each serve a three year term respectively, terms to expire December 31, 2006, or until their successors have been appointed.

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B. RESOLUTION NO. 04-44 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE GREENWAY COMMISSION

Vice-Mayor Mumpower said that the terms of Jack Saye and Phyllis Stiles, as members on the Greenway Commission, expired on December 31, 2003. Also, Pauline Kaltsunis has resigned from the Commission, thus leaving an unexpired term until December 31, 2004.

On January 20, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Jack Saye and Phyllis Stiles to each serve a three year term respectively, terms to expire December 31, 2006, or until their successors have been appointed.

In addition, on January 20, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Scott Jackson and Jill Jones. Ms. Jones asked not to be considered for any board appointments at this time.

It was the consensus of City Council to appoint Scott Jackson to the Greenway Commission to serve the unexpired term of Ms. Kaltsunis, term to expire December 31, 2004, or until his successor has been appointed.

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C. RESOLUTION NO. 04-45 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Vice-Mayor Mumpower said that the terms of Carol Pennell, Barbara Cary, Tina McGuire and Ellen Rickman, as members on the Public Art Board, expired on December 31, 2003.

On January 20, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Barbara Cary and Tina McGuire to each serve a four year term respectively, terms to expire December 31, 2007, or until their successors have been appointed.

In addition, on January 20, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Jonathan Flaum and Kathleen Peters.

It was the consensus of City Council to appoint Jonathan Flaum and Kathleen Peters as members to the Public Art board to each serve a three year term respectively, terms to expire December 31, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 143

D. RESOLUTION NO. 04-46 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT COMMISSION

Vice-Mayor Mumpower said that the terms of Claudia Nix, Ron Lambe, Althea Goode and Jennifer Knudtson, as members on the Transit Commission, have expired on December 31, 2003. In addition, James Garner has resigned as a member of the Transit Commission thus leaving a vacancy until December 31, 2004.

In addition, on January 20, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Bryan Freeborn, Linda Alfredson, Andrew Goldberg, Bill Michie and Karen Austin. Another candidate that will be considered but not called in for an interview is Ryan Pickens.

Bryan Freeborn received 6 votes, Linda Alfredson received 3 votes, Andrew Goldberg received 6 votes, Bill Michie received 5 votes, Karen Austin received 7 votes and Ryan Pickens received 6 votes. Therefore, Bryan Freeborn, Andrew Goldberg, Karen Austin and Ryan Pickens were appointed to each serve a three year term respectively, terms to expire December 31, 2006, or until their successors have been appointed. In addition Bill Michie was appointed to serve the unexpired term of Mr. Garner, term to expire December 31, 2004, or until his successor has been appointed.

A brief discussion was held about whether each Council member had to vote. City Attorney Oast read from City Council Rule No. 30, Appointments, as follows: "During each balloting, a member may case all of his or her votes or fewer than all of them, but he or she shall not cast more than one vote for a single candidate."

RESOLUTION BOOK NO. 28 – PAGE 144

VI. OTHER BUSINESS:

Boy and Girl Scouts

Councilman Mumpower said that we have lost over 500 scouts this past year because no parents will commit to serve in leadership roles. He asked for people to come forward and meet some of the needs of our Boy and Girl Scout programs.

Claims

The following claims were received by the City of Asheville during the period of January 1-15, 2004: BellSouth (Water), Clay Management (Streets), BellSouth (Water), Marie Jordan (Streets) and Gary Branson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English, Haw Creek resident, relayed to Council an incident where 300 cable electrical pieces were scattered in the street and after several calls to the City no one came to clean up the streets.

Mr. Joseph Smith relayed to Council a situation in which he allegedly exposed illegal activities at the local ABC Board and basically lost his job. Mayor Worley said that City Council would look into the situation. Vice-Mayor Mumpower suggested Mr. Smith meet with a couple of Council members to discuss his situation.

Closed Session

At 5:50 p.m., Councilman Dunn moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(3). This motion was seconded by Councilwoman Bellamy and carried unanimously.

At 8:05 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:05 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – February 17, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brownie W. Newman

CONSENT:

Multi-Family Housing Revenue Bonds for Battery Park Apartments by Housing Authority

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Battery Park Apartments project.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount up to $7,000,000 and to lend the proceeds of the bonds to Battery Park Senior Housing Limited Partnership to acquire and renovate an apartment development known as Battery Park Apartments to be operated for rental to elderly persons.

The Housing Authority held a public hearing on February 10, 2004, on the question of the issuance of the bonds. The bonds must now be considered and approved by the Asheville City Council.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities (both for profit and not-for-profit) to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority prior to the City taking action, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Battery Park Apartments project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that he would provide additional information on what other agencies City Council must approve the issuance of bonds.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR PASSENGER RAIL FACILITY AND ASSOCIATED BUDGET AMENDMENT

Economic Development Director Mac Williams said that consideration of a resolution authorizing the City Manager to enter into a municipal agreement with the N. C. Dept. of Transportation (NC DOT) for 10% of funding for acquisition of the site for the proposed passenger rail station; and an associated budget amendment, in the amount of $9,600, for funding the transit plan for the future multi-modal transit center.

As preparation for eventual passenger rail service to Asheville, the NC DOT Rail Division is in the process of securing the site for the proposed Asheville station in Biltmore Village. Property appraisals and estimates of related costs have been completed and a project budget for this site acquisition phase has been developed. Before the State can go forward with the actual purchase, by requirement, the NC DOT and the City of Asheville must first enter into a municipal agreement outlining the roles, responsibilities, and costs each agency will incur for this phase of the project. The municipal agreement requires the City provide 10% of the project cost. The project cost for this phase is estimated at $1,418,830. Thus, the required City match would be (not to exceed) $141,883. While City funds are not needed immediately, the City commitment for the funding, via the municipal agreement, is requested immediately for the project to move forward. Actual funding would be contingent upon a future appropriation from City Council.

In addition, it is envisioned that an inter-modal City transit hub could be co-located with the passenger rail station. In order to access federal funding for that portion of the facility, it will be necessary to conduct a Transit Study for the Biltmore location. The study is intended to assess the suitability of the proposed location for the transit system. It will quantify transit needs. In addition, the study will explore facility size, number of bays, etc. and explore how transit would tie in with rail as well as assess the suitability of the location for transit, in light of the needs and plans in the southern part of the city. The estimated cost for the Transit Study is $12,000 of which the City's share would be $9,600. The NC DOT Rail and Transit Divisions feel the study is a priority and needs immediate funding. The NC DOT share of the funds for the study is currently available.

The upside(s) to the implementation of the recommendation include:

- Purchase of an economic development site for 10% of cost
- Demolition of existing site in preparation for construction at 10% of cost
- Potential to develop rail station at fraction of cost
- Potential to place something else prepped on site if rail does not materialize
- Information concerning cost and feasibility of locating a transit sub-station at Rail Station

The downside(s) to the implementation of the recommendations include:

- Expenditure of city funds needed to create asset
- Possibility that this location is not optimal for transit sub-station

City staff recommends approval of the (1) resolution authorizing the City Manager to enter into the municipal agreement; and (2) budget amendment appropriating $9,600 out of Contingency as the City's share of the Transit Study.

There was considerable discussion by Council regarding these matters. From that discussion, Mr. David Bender, Project Manager for the N.C. Rail Division, Mr. Williams and City Transit Director Bruce Black responded to various questions/comments from Council, some being, but are not limited to: what is the chance the State will do the project; what if Asheville wanted to wait and not spend any money until there is something firm from Raleigh whether the project will move forward; request for statistically information on how Asheville has the density to support this program; is the study performed by NC DOT in 2001 accurate; has the 2001 report been updated for inflation and the cost of fuel; what are the 4 different alternatives and the times associated with each trip; what is the percentage breakdown on funding; where is the specific funding allocation from the Federal government coming from for rail service to WNC; what is the ridership of the Carolinian per day; what is the average subsidy for heavy rail across the country; what is the national average on cents per passenger mile; will the funding for this project take away money from other transit options; are there any successful models; are the successful models in high density areas; how fast do the trains travel; is the travel times factored into the times associated with each trip; why doesn't AMTRAK bring passengers into Asheville; what is the cost associated with the service between the Piedmont and Charlotte; what is the fare from Raleigh to Charlotte; what is the subsidy given to the Carolinian and the Piedmont; what is the anticipated passengers per day for WNC; what is the mileage between Asheville and Salisbury; what is the philosophy on why the NC DOT felt rail service was something to expand into; does Salisbury have a multi-modal transit center; what is the economic benefit having a multi-modal transit center; what is the impact on local investment with a multi-modal transit center; what is an estimated annual return on a multi-modal transit center; in Salisbury is their station multi-modal or just rail; need for explaining the whole financial picture regarding the subsidy; is the City going to have to subsidize rolling stock; does Asheville have a stake in subsidizing the train; will the multi-modal transit center enhance or save the City's Transit Department money; will there be operational data that comes out of the transit study; how long will the transit study take; request for a copy of the WNC study; request for copy of map showing density is 4,000 per square mile in the core area of the City; what will happen if the City wants to wait on the municipal agreement; how does the State back away from the project if the research doesn't support rail service; how can the City meet with NC DOT representatives to get specific questions answered; why does the City have to commit now when there is no reassurance that this will proceed; what is the position of the Chamber of Commerce in this; how much time does Council have before a final decision needs to be made on the municipal agreement; has local commitment been obtained up and down the rail line; and what is the time periods on the options to purchase the properties. When responses were unknown, City staff, along with Mr. Bender, said that they would provide additional information to Council.

City Manager Westbrook felt it might be appropriate for City Council to split the municipal agreement regarding 10% funding for the acquisition of the site for the proposed passenger rail station from the budget amendment for the City's share in the transit plan for the future multi-modal transit center.

Mr. Williams said that in anticipation that this project will have a regional impact, he is soliciting financial partnerships with AdvantageWest and the Buncombe County Tourism Development Authority to help with the City's match of $141,883.

It was the consensus of City Council to place the budget amendment, in the amount of $9,600, for the transit plan for the future multi-modal transit center on the next formal City Council agenda. Consideration of the resolution authorizing the City Manager to enter into a municipal agreement with the NC DOT for 10% of funding for acquisition of the site for the proposed passenger rail station will be postponed until March 16, 2004. City Manager Westbrook said that should give Council adequate time to visit NC DOT representatives to discuss the matter further.

LEAGUE OF WOMEN VOTER STUDY ON APPOINTED BOARDS AND COMMISSIONS

Ms. Kathleen Balogh, President of the League of Women Voter's of Asheville and Buncombe County (League), updated City Council on the League's study on appointed boards and commissions. The study is an outcome of recommendations by two committees of the League to the general membership at the 2003 annual meeting. Members shared a perception of the existence of barriers that prevented the appointment of a diverse membership to these boards and commissions – one that reflected make-up of the community in regards to race, gender and socio-economics. A Study Committee, comprised of League members, was convened to examine the application and appointment process used by City Council and the Buncombe County Commissioners in order to understand what works best for applicants, appointed members and the two government bodies they serve in order to support the most effective system of appointed boards and commissions for our community. Councilwoman Terry Bellamy has been City Council's representative on the Study Committee to insure communication between the Study Committee and Council. A representative from the County was invited as well to serve in that capacity.

Ms. Marsha Bate said that the Study Committee identified three distinct steps in the application and appointment process to explore: (1) The application process – what happens between the advent of an opening on a board or commission and the development of an initial list of applicants; (2) the selection process – the screening/review process that ends with a formal list of applicants to be submitted to the appointing body; and (3) the appointment process itself that is conducted by the appointing body.

Outcomes of the study include (1) a written report to include (but not be limited to) the following: (a) a description of how the study was conducted and who was involved; (b) a flow chart to help understand the application and appointment steps in the process; and (c) recommendations to the League Board and partner organizations (including but not limited to City Council and County Commissioners) for strategies to make the process more user-friendly and accessible to community members and support the appointment of a more diverse group of community volunteers; and (2) a community meeting to share the report and to gather feedback and determine if the study process was complete.

Vice-Mayor Mumpower, Chair of the Boards and Commissions Committee, said that he would be happy to be work with the Study Committee in any way they see fit.

Councilwoman Bellamy and Councilwoman Jones thanked the League for their work on this issue. They both felt it would be beneficial to Council as we move forward.

On behalf of City Council, Mayor Worley thanked the League for their efforts on this topic and will welcome them back for their recommendations.

PARKS & RECREATION CO-SPONSORSHIP

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution approving co-sponsored events for 2004.

This year, the Parks and Recreation Department has developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out-of-town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural understanding for the community. A total of 41 events were approved last year, which represented an estimated cost to the City of $90,000. This year, the number has been reduced to 30 events, resulting in a cost of approximately $75,000, which represents a reduction of $15,000 from the previous year. The following is a list of the events recommended for approval: Goombay; Greek Fest; Hard Lox Café; Taste of Asheville; Downtown After 5; The Human Race; Fiesta Latina; Light the Night Walk; Citizen Times 1/2 marathon; Walk America 2004; Shindig on the Green; Smokey Mountain Toy Run; Asheville Art Museum Boating Party; Day of Caring; The Sunset Stampede; Very Special Arts Festival; Biltmore Estate 15K; Children First Festival; Heroes for Hope; RiverLink Adventure Weekend; Anti-Cruelty Walk; Organic Fest; Sistahs on Stage; Holiday Parade; Cinema in the Park; Concerts on the Quad; Grove Arcade; October Harvest Festival; Light up the Holidays; Midday Musicals; and Grove Arcade Chili Festival.

Upside of Recommendation:

- Generates in excess of $15 million dollars for the local economy
- New matrix has reduced City's financial contribution
- Increases recognition of cultural diversity of the community
- Allows for fundraising opportunities for various charities
- Expands special events and festivals for the community

Downside of Recommendation:

- City costs for providing services estimated at $75,000
- A few groups that applied will not be co-sponsored which may jeopardize the event
- Events do place a wear and tear on infrastructure and equipment provided to the organizers.

The Parks and Recreation Department recommends that City Council accept the list of co-sponsored events for 2004.

Mr. Brinson did note that a late application was received by Mountain Renaissance Fair. After a brief discussion by Council, it was their consensus to add that Fair to the list of co-sponsorship events for 2004.

Upon inquiry from Councilman Dunn, Mr. Brinson said that dollar figures are based on attendance from out of town visits using the Chamber of Commerce's multiplier.

Upon inquiry from Councilman Dunn, Mr. Brinson said that Bele Chere is not included in this list because it is a City-sponsored event.

Mr. Brinson responded to Councilwoman Bellamy regarding other events his department helps with, e.g., neighborhood block parties.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

At 5:10 p.m., Mayor Worley announced a short break.

UPDATE ON PEDESTRIAN/STREET DESIGN IMPROVEMENTS

Mr. Anthony Butzek, the City's Traffic Engineer, said that this is an update on the basic guidelines and principles used to make design changes to City streets.

The design of our streets becomes more critical and more complex with increasing levels of urbanization. While rural streets typically serve people in vehicles almost exclusively, city streets must serve a much more diverse cross-section of people, including those in vehicles, on bicycles, walking, in wheelchairs, with other disabilities, and sometimes even as venues for festivals and gatherings. Because of the distinct difference in the use of rural and urban streets, it is important to understand the differences associated with their design.

Rural streets are designed for comparatively high-speed travel. Wide travel lanes and shoulders, spacious intersections, and unobstructed visibility corridors are desirable. In urbanized areas, such design features lead to higher speeds, higher crash rates, and are rarely desirable.

Before World War II, streets were designed to accommodate people. In the 1950's and 1960's, transportation policy changed to accommodate the motor vehicle boom, with the principles of street design generally tending toward bigger, wider, faster, and mostly ignoring the needs of all but those in motor vehicles. Although vehicular injuries and fatalities initially declined due to the vast safety improvements rural Interstates afforded, they then increased dramatically as a result of the application of rural design principles to urban America. Urban planners and traffic engineers have, in general, come to realize that "context-sensitive design," the design of transportation facilities to match their context, is necessary.

Pedestrian concerns are of particular importance in cities. With about 42,000 people killed on our streets and highways every year in the U.S., over 5,000 pedestrians are among them. While vehicular fatalities tend toward rural streets due to their high-speed nature, 70% of pedestrians killed are in cities. The following are some additional figures:

- More than 40,000 people are killed every year on our nation's roadways, the leading cause of death among people from age one to 34.
- This number was 42,815 in 2002, or 117 per day, or more than 3,500 per month.
- Walking as a means of getting from here to there is 36 times more dangerous than driving.
- About 5,000 people are killed as pedestrians per year, and about 100,000 are seriously injured.
- Although pedestrian/bicycle trips account for only about 5-6 percent of trips, they account for 12-13 percent of fatalities.
- Less than one percent of federal transportation funds are used for either facilities or safety for these two travel modes.
- 70 percent of pedestrian deaths occurred in urban areas, with more than half of these occurring while trying to cross a street.
- In North Carolina, 10-11% of traffic fatalities are pedestrians, while 0.7% of federal funds are spent on pedestrian safety.
- Asheville has similar pedestrian fatality characteristics: 2001 – 2003: 6 fatal, 12 disabling, about 100 other injury pedestrian crashes.

Why is this important? Everyone is a pedestrian some of the time. Many others would walk more if better facilities existed. A 1996 report by the Federal Transit Administration found that nearly 1/3 of the American population is transportation disadvantaged. This includes the 56 million children are under the driving age, 32 million senior citizens are seeing their driving ability diminish, and 24 million people with disabilities depend on transit, paratransit, or expensive private transportation services. More than one-quarter of all trips are still one mile or less; At least 123 million car trips made each day in the United States were short enough to have been made on foot.

Designing safe crossings is the most challenging aspect of developing a safe pedestrian environment. The main risk factors are:

1. Exposure – duration during which the pedestrian is exposed to traffic
2. Vehicle Speed – affects reaction distance, stopping distance, and severity of injury
3. Visibility of Pedestrian – drivers must be able to see pedestrian to avoid them

The City of Asheville strives to provide a transportation system that supports the continued safety, quality of life, and economic needs of the residents of and visitors to the City. In the City, this means designing streets that everyone can use safely. All users are considered: cars, buses, trucks, pedestrians, bicyclists, wheelchairs, etc. Where pedestrian use is high, priority is placed on minimizing pedestrian crossing distance while still accommodating large vehicles. Large vehicles are expected to use the full width of the street for turning, which is standard and accepted practice. Design right-turning speed is typically 6-10 mph. Excessive widths are avoided, as street width has been determined through research to correlate to high crash rates.

Design principles utilized in Asheville are based on successful projects and practice in other cities across the U.S. Projects involving narrower lanes, tighter corners, traffic calming, pedestrian features and amenities, bicycle lanes, and streetscapes have served many cities well to improve safety for pedestrians and motor vehicle occupants alike while serving as impetus for major economic redevelopment projects. He reviewed several such projects.

No action is necessary by City Council.

Discussion by Council resulted in Mr. Butzek responding to various questions, some being, but are not limited to: when did design practices change, and where were the fatalities in Asheville.

City Engineer Cathy Ball said that if there is an opportunity to make something safe at a reasonable cost, e.g., MSD or another utility doing work in the street, the City will want to do it.

Vice-Mayor Mumpower felt that the City is trying to find a reasonable point of balance with our citizens and our street design.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook said that he would give Council a written report on traffic calming, improvements and sidewalks at Amboy Road.

UPDATE ON THE GREENWAY CONNECTOR FROM AMBOY ROAD TO HOMINY CREEK

Elizabeth Teague, Transportation Planner, French Broad River MPO, said that this is an update on the scope and status of the Amboy Road to Hominy Creek Greenway; a request to move forward with a survey of the project area, the development of preliminary plans for the project and right-of-way acquisition; and preparation of a Municipal Agreement with the N.C. Dept. of Transportation (NC DOT).

The City of Asheville has an allocation of $300,000 in construction funds from the NC DOT to construct a greenway along the French Broad River from Amboy Road to Hominy Creek Park, overlapping Municipal Sewer District and Progress Energy easements. This portion of the City Greenway Master Plan will link the French Broad River Greenway and Park system to Hominy Creek Road and West Asheville. While no local match for these funds is required up front, the City is responsible for land/right-of-way acquisition, trail design and engineering, and any construction costs over the $300,000.

This project was originally scheduled on the State Transportation Improvement Program (TIP) to be built in coordination with the 240 widening (I-2513) in Federal Fiscal Year 2006. With the projected time frame of that project extending beyond 2006, the State Bicycle Division would like to move the project forward and has amended the TIP to make funds available this fiscal year.

To receive these funds, the City must develop and execute a Municipal Agreement with NCDOT. The Municipal Agreement lays out the scope of the project that the City will undertake, and the amount – up to $300,000 – that NCDOT will reimburse. To define the project scope and alignment, the City must survey the area and the survey will indicate right-of-way or land acquisition needs.

City staff held a preliminary meeting at Southern Waterways with surrounding landowners on September 4, 2003, which indicated general support for the project. Preliminary discussions with representatives of Progress Energy and the Metropolitan Sewer District (MSD) have also been positive.

The positives of this project are that:

- The execution of a Municipal Agreement releases $300,000 in reimbursement dollars to the City for implementation of the Greenway Plan;
- This portion of Greenway will connect West Asheville neighborhoods to the larger Greenway System along the French Broad River;
- This project will clean up and maintain an area along the river which has long attracted pedestrians and fisherman, making it safer and easier to patrol; and
- This project will establish a greenway that will be integrated into the I-240 widening project.

The potential negatives of this project are that:

- The execution of the Municipal Agreement will bind the City to complete construction within a three-year period and to cover any construction costs over the $300,000; and
- The City will need to work with multiple land-owners to obtain the required right-of-way. This will require expenses for Phase I studies, appraisals, legal fees, and possibly out-right purchase of property in cases where the land-owners will not dedicate or donate the needed area.

City staff recommends that City Council authorize the City Manager to direct staff to move forward with a survey and a preliminary plan for the greenway and right-of-way acquisition. City staff will return to Council once the survey and preliminary plans are complete and ask for approval of the Municipal Agreement.

Throughout the discussion, Ms. Teague responded to various questions/comments from Council, some being, but are not limited to: how wide is the MSD sewer easement, is there an opportunity to work with MSD on any line improvements in this area; and what will greenway security include.

Upon inquiry of Councilwoman Jones, City Manager Westbrook said that the City will not be over budget on this project.

It was the consensus of Council that the City Manager direct staff to move forward with a survey and a preliminary plan for the greenway and right-of-way acquisition.

NEW ECONOMIC DEVELOPMENT MARKETING TOOL

Economic Development Director Mac Williams said that consideration of a budget amendment, in the amount of $20,000, for computer coding for the development of a web site to be used as a marketing tool for City development and redevelopment.

At last year's City Council retreat, staff presented an economic development program concept for the City of Asheville. This concept concentrates on building the tax base through the promotion of higher density, higher intensity development consistent with recommendations from the Sustainable Economic Development Task Force and City development policies. Since that time, City Council has adopted a comprehensive plan and a new Neighborhood Corridor zoning district for Broadway. City Council has also previously approved an Urban Village zoning district and, during the coming year, will receive redevelopment plans for the urban riverfront and the WECAN neighborhood. Downtown Asheville is seeing new growth, but has many areas still available for redevelopment. Additionally, we may see changes to a number of big box development sites, as a result of economic conditions, making these sites also suitable for redevelopment at a significantly higher intensity.

As one means of implementing this tax base enhancement plan, staff is now proposing a marketing program intended to provide the development community with a tool for evaluating the development feasibility of targeted redevelopment areas. This is not a new approach – it uses tools that other communities have developed to promote development and redevelopment of city-owned properties and brownfield sites. It is markedly different, however, in the scope and scale of its focus in that our proposed web site will promote broad but targeted areas of our city versus specific parcels; and, the marketing focus is on the real estate developer rather than the end user.

The marketing program (which we are suggesting be called "Priority Places") will use GIS technology to facilitate developer inquiry into suitable areas for high-density, high intensity type development. On the City web site, we will identify areas that have been designated appropriate for development of this type in the City comprehensive plan or in other official plans and documents. Developers will be able to access property appraiser records, census and other demographic information, existing and projected zoning, any available development incentives (such as the affordable housing trust fund, administrative rezoning, or permitting incentives), City staff contact points, surrounding complementary and competing uses, known environmental conditions, and other information necessary for the performance of their preliminary due diligence. Additionally, outreach marketing is planned to further facilitate developer interest in the PRIORITY PLACES web site, including mailings, articles and advertisements in trade journals, visits to developers' offices, and other measures.

Internal staff has been able to establish the framework for this GIS tool and we will provide Council with a simulation during our worksession presentation. However, there is considerable coding work that is needed to complete the tool and we will require a supplemental budget allocation of $20,000 from the City's contingency fund to pay for this technical assistance.

Some points to consider as upside include:

- The Priority Places marketing program supports a wide variety of City goals and policies, including implementation of existing and proposed redevelopment plans, sustainable economic development policies and strategies, land use goals, and affordable housing policies.
- Other local/regional economic development agencies' marketing efforts are on attracting the end user business that will bring jobs. Further, while those efforts cover the City, they are not focused, as this program would be, solely on the City. The Priority Places marketing program is focused on attracting developers creating tax base in specific areas within the City.
- This effort is targeted to developers, both internal and external to the community, interested in this particular kind of development/redevelopment. This is expected to reinforce Council priorities that reflect Asheville as a "business-friendly" community interested in quality development and redevelopment.
- The City is already heavily invested in providing and applying GIS technology. This is an added dimension of its capabilities.

Some points to consider as downside include:

- No funding in the current budget.
- For marketing to be effective, it has to be consistent over time. There will need to be some level of funding beyond this start up to support ongoing marketing of the web site, including GIS support and more traditional marketing efforts.

City staff recommends City Council approve the budget amendment, in the amount of $20,000, for computer coding to enable the Priority Places marketing program to be established as a marketing tool for City development and redevelopment.

Mr. Tim Minter, GIS Coordinator, showed Council a simulation of how the marketing tool would work.

Out of Council's discussion arose several questions/comments, which were responded to by Mr. Williams. Some include, but are not limited to: how does this coincide with zoning; will different areas be added to the data base; can the City try to reduce procedural requirements when someone uses this tool; who will maintain this tool; are there other incentives that will be added to this tool; how will this tool be marketed; does the City anticipate local or outside utilization; has the City shared this concept with other people who will use it; can we ask the Chamber of Commerce to add a link to their website to this tool; will we be able to monitor the number of hits on the site and evaluate the tool in a year; and are there companies that do this type of work for-profit.

Vice-Mayor Mumpower felt the City should run the concept by people who will actually be using it. Planning & Development Director Scott Shuford said that if Council endorses this tool, they intend to have a focus group made up of developers and realtors. He felt this is a wonderful opportunity for people to prepare their marketing plans.

Upon inquiry of Councilwoman Jones, Mr. Williams said that the cost of marketing is estimated at approximately $10-15,000 a year, which will include mail outs to targeted groups, write-ups in publications, and some travel to follow-up on leads.

Upon inquiry of Councilman Davis regarding the importance of keeping this tool updated, City Manager Westbrook said that we have other GIS needs in the City and we may need to get approval for one additional staff person.

Councilwoman Jones noted that if Council approves this, the Contingency fund will only have $26,000 left for the remainder of this fiscal year.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY ON JOINT PLANNING AREA

City Attorney Bob Oast said that this is consideration of a resolution authorizing the City to enter into an interlocal agreement with Buncombe County for the establishment and administration of a joint planning area.

In late 2002, as an outgrowth of the City's most recent ETJ expansion, the City and County undertook to explore the possibility of establishing an area on the periphery of the City within which the City and County would have joint responsibility for administration of land use and development regulations. What emerged was the Joint Planning Area (herein "JPA") concept.

Drawing on various statutory authorities, along with a local law authorizing City-County cooperation, it appears that this type of joint regulatory authority can be provided for in an interlocal agreement under Article 20 of N.C.G.S. Chapter 160A.

The proposed interlocal agreement contains provisions regarding the establishment of the JPA, the classification of land within the JPA, and the adoption of regulations applicable within the JPA. The agreement relies on the laws that provide the extra-territorial jurisdiction for cities, and zoning ordinances for counties, and prescribes how the body of JPA regulations may be amended. The agreement also assigns primary responsibility for administration and enforcement of the JPA regulations. Also included are some provisions that are routine inclusions in agreements of this nature, and are required by law. Some blanks regarding dates remain to be filled in, and may be changed depending on what Buncombe County does.

As noted during an earlier presentation, this interlocal agreement does not by itself implement the JPA or its regulations; it only puts in place the legal framework by which the JPA can happen. No regulations will be effective within the JPA except following an extensive public notice process and several public hearings.

The considerations important to both the County and the City have been discussed at length during many other meetings, are well known, and are too numerous to summarize here.

This is Council's first review of the text of the interlocal agreement; the County Commissioners have not considered it yet. Revisions may be made, and are appropriate at this time, and there may be some negotiation with the County. Once the agreement is in a form that is satisfactory to Council, adoption of it is recommended.

City Attorney Oast said that after he meets with the County attorney to identify and negotiate some points, he will ask that this item be placed on the next available formal City Council agenda.

FIBER OPTIC FRANCHISE

City Attorney Bob Oast said that this is consideration of an ordinance granting a franchise to DukeNet Communications, LLC, pursuant to the City's Telecommunications Ordinance.

Back in September the City considered and adopted Ordinance No. 2056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Prior to that time, we had some discussions with DukeNet Communications, a Charlotte-based telecommunications service provider affiliated with Duke Energy. DukeNet and the City have since resumed these discussions, with the result that DukeNet now wishes to begin operation in Asheville.

Most of the substantive terms applicable to this franchise (or any telecommunications franchise) are already set forth in the Telecommunications Ordinance, and DukeNet, by accepting the franchise, agrees to abide by the provisions of the ordinance. The main issues to be determined in connection with this particular franchise are the fee that the City will receive and the length of the franchise term.

As to the franchise fee, a team consisting of representatives from Public Works, Engineering, Planning, Legal, Economic Development, and Information Services reviewed such issues as our administrative costs, wear and tear on our right-of-way facilities, other fees charged for right-of-way use in Asheville, and fees for similar right-of-way use charged by other cities. We determined that a two-tiered fee structure based on density would reflect the value of the right-of-way in high density areas while encouraging the extension of service into under-served and less dense areas. Within the downtown area (defined as Charlotte/South Charlotte Streets on the east; Beaumont/Hilliard Streets on the south; Clingman/Haywood Streets on the west; and I-240 on the north), the rate is proposed to be $.10 per foot per month for each linear foot of right-of-way used for the installation. Outside of this core area, the rate drops to $.02 per foot per month.

As to the length of the term, DukeNet has asked for a 10-year term, renewable for two 10-year terms, unless either party terminates. While we have no problem with the length of the term, we think that the rate should be subject to increase based on the CPI after the first five years.

Although DukeNet apparently has some potential customers, they have not revealed the location of their proposed initial installation. Any installation, however, would have to be approved by the City Engineer, at least as to the route and manner of installation, and would become part of the franchise.

Considerations:

(1) This is the City's first telecommunications franchise, and we really have no local experience with such efforts, other than cable television, which is not directly relevant.

(2) The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for its use by profit-making enterprises. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another, so the compensation paid by DukeNet will be a benchmark for future installations.

(3) There is a significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

If Council wishes to grant a franchise to DukeNet, adoption of the ordinance is recommended. Council may suggest alternatives to the proposed fee schedule and the term, but most other substantive issues are already dealt with in the Telecommunications Ordinance adopted in September. Because this is a franchise ordinance, a second reading of it will be required.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

BOARDS AND COMMISSIONS

It was the consensus of City Council to have the City Clerk arrange interviews of John Kiser, Jane Mathews, Lee McElrath, David Brown and Michael Anders for vacancies for alternate positions on the Board of Adjustment.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint John Burchfield to the Citizens/Police Advisory Committee.

It was the consensus of City Council to have the City Clerk arrange interviews of Jim Lawrence, Lillian Alexander, David Schulman, Matthew Marquis and Jon Meneck for vacancies on the Film Commission.

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Sharon Bell to the Planning & Zoning Commission.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:12 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 76

(FEBRUARY 24, 2004 -
SEPTEMBER 14, 2004)
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START

OF

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Division of Historical Resources
Archives and Records Section

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This is to certify that the following records of

BUNCOMBE COUNTY

CITY OF ASHEVILLE, CITY COUNCIL, MINUTES

consisting of MINUTES

beginning with VOLUME: 76

PAGE: INDEX

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Tuesday – February 24, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Carl Mumpower, retired Air Force Veteran, led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 24, 2004, AS "211th MILITARY POLICE COMPANY DAY"

Mayor Worley read the proclamation proclaiming February 24, 2004, as "211th Military Police Company Day" in the City of Asheville. He presented the proclamation to Mr. Brian Freelan, employee with the Police Department, who has just returned home from Iraq. Mayor Worley also recognized the other City employees who are actively serving in the military.

B. PROCLAMATION PROCLAIMING MARCH 7-13, 2004, AS "GIRL SCOUT WEEK"

Mayor Worley read the proclamation proclaiming March 7-13, 2004, as "Girl Scout Week" in the City of Asheville. He presented the proclamation to Ms. Sally Blue, Director of Membership, who presented City Council with boxes of Girl Scout cookies and briefed City Council on some activities taking place during the week.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 10, 2004, AND THE WORKSESSION HELD ON FEBRUARY 17, 2004

B. RESOLUTION NO. 04-47 - RESOLUTION AUTHORIZING THE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS FOR BATTERY PARK APARTMENTS FOR THE HOUSING AUTHORITY

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Battery Park Apartments project.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount up to $7,000,000 and to lend the proceeds of the bonds to Battery Park Senior Housing Limited Partnership to acquire and renovate an apartment development known as Battery Park Apartments to be operated for rental to elderly persons.

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The Housing Authority held a public hearing on February 10, 2004, on the question of the issuance of the bonds. The bonds must now be considered and approved by the Asheville City Council.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities (both for profit and not-for-profit) to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority prior to the City taking action, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Battery Park Apartments project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 28 – PAGE 145

C. RESOLUTION NO. 04-48 - RESOLUTION APPROVING THE PARKS & RECREATION CO-SPONSORSHIP LIST

Summary: The consideration of a resolution approving co-sponsored events for 2004.

This year, the Parks and Recreation Department has developed a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out-of-town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural understanding for the community. A total of 41 events were approved last year, which represented an estimated cost to the City of $90,000. This year, the number has been reduced to 31 events, resulting in a cost of approximately $75,000, which represents a reduction of $15,000 from the previous year. The following is a list of the events recommended for approval: Goombay; Greek Fest; Hard Lox Café; Taste of Asheville; Downtown After 5; The Human Race; Fiesta Latina; Light the Night Walk; Citizen Times 1/2 marathon; Walk America 2004; Shindig on the Green; Smokey Mountain Toy Run; Asheville Art Museum Boating Party; Day of Caring; The Sunset Stampede; Very Special Arts Festival; Biltmore Estate 15K; Children First Festival; Heroes for Hope; RiverLink Adventure Weekend; Anti-Cruelty Walk; Organic Fest; Sistahs on Stage; Holiday Parade; Cinema in the Park; Concerts on the Quad; Grove Arcade; October Harvest Festival; Light up the Holidays; Midday Musicals; Grove Arcade Chili Festival; and Mountain Renaissance Fair.

Upsides of Recommendation: (1) Generates in excess of $15 million dollars for the local economy; (2) New matrix has reduced City's financial contribution; (3) Increases recognition of cultural diversity of the community; (4) Allows for fundraising opportunities for various charities; and (5) Expands special events and festivals for the community.

Downsides of Recommendation: (1) City costs for providing services estimated at $75,000; (2) A few groups that applied will not be co-sponsored which may jeopardize the event; and (3) Events do place a wear and tear on infrastructure and equipment provided to the organizers.

The Parks and Recreation Department recommends that City Council accept the list of co-sponsored events for 2004.

RESOLUTION BOOK NO. 28 – PAGE 146

D. ORDINANCE NO. 3090 - BUDGET AMENDMENT FOR COMPUTER CODING FOR THE DEVELOPMENT OF A WEB SITE TO BE USED AS A MARKETING TOOL FOR CITY DEVELOPMENT AND REDEVELOPMENT

Summary: This is the consideration of a budget amendment, in the amount of $20,000, for computer coding for the development of a web site to be used as a marketing tool for City development and redevelopment.

At last year's City Council retreat, staff presented an economic development program concept for the City of Asheville. This concept concentrates on building the tax base through the promotion of higher density, higher intensity development consistent with recommendations from the Sustainable Economic Development Task Force and City development policies. Since that time, City Council has adopted a comprehensive plan and a new Neighborhood Corridor zoning district for Broadway. City Council has also previously approved an Urban Village zoning district and, during the coming year, will receive redevelopment plans for the urban riverfront and the WECAN neighborhood. Downtown Asheville is seeing new growth, but has many areas still available for redevelopment. Additionally, we may see changes to a number of big box development sites, as a result of economic conditions, making these sites also suitable for redevelopment at a significantly higher intensity.

As one means of implementing this tax base enhancement plan, staff is now proposing a marketing program intended to provide the development community with a tool for evaluating the development feasibility of targeted redevelopment areas. This is not a new approach – it uses tools that other communities have developed to promote development and redevelopment of city-owned properties and brownfield sites. It is markedly different, however, in the scope and scale of its focus in that our proposed web site will promote broad but targeted areas of our city versus specific parcels; and, the marketing focus is on the real estate developer rather than the end user.

The marketing program (which we are suggesting be called Priority Places) will use GIS technology to facilitate developer inquiry into suitable areas for high-density, high intensity type development. On the City web site, we will identify areas that have been designated appropriate for development of this type in the City comprehensive plan or in other official plans and documents. Developers will be able to access property appraiser records, census and other demographic information, existing and projected zoning, any available development incentives (such as the affordable housing trust fund, administrative rezoning, or permitting incentives), City staff contact points, surrounding complementary and competing uses, known environmental conditions, and other information necessary for the performance of their preliminary due diligence. Additionally, outreach marketing is planned to further facilitate developer interest in the Priority Places web site, including mailings, articles and advertisements in trade journals, visits to developers' offices, and other measures.

Internal staff has been able to establish the framework for this GIS tool and we will provide Council with a simulation during our worksession presentation. However, there is considerable coding work that is needed to complete the tool and we will require a supplemental budget allocation of $20,000 from the City's contingency fund to pay for this technical assistance.

Some points to consider as upside include:

- The Priority Places marketing program supports a wide variety of City goals and policies, including implementation of existing and proposed redevelopment plans, sustainable economic development policies and strategies, land use goals, and affordable housing policies.
- Other local/regional economic development agencies' marketing efforts are on attracting the end user business that will bring jobs. Further, while those efforts cover the City, they are not focused, as this program would be, solely on the City. The Priority Places marketing program is focused on attracting developers creating tax base in specific areas within the City.
- This effort is targeted to developers, both internal and external to the community, interested in this particular kind of development/redevelopment. This is expected to reinforce Council priorities that reflect Asheville as a "business-friendly" community interested in quality development and redevelopment.
- The City is already heavily invested in providing and applying GIS technology. This is an added dimension of its capabilities.

Some points to consider as downside include:

- No funding in the current budget.
- For marketing to be effective, it has to be consistent over time. There will need to be some level of funding beyond this start up to support ongoing marketing of the web site, including GIS support and more traditional marketing efforts.

City staff recommends City Council approve the budget amendment, in the amount of $20,000, for computer coding to enable the Priority Places marketing program to be established as a marketing tool for City development and redevelopment.

ORDINANCE BOOK NO. 21 – PAGE 58

E. RESOLUTION NO. 04-49 - RESOLUTION APPOINTING A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: Ann Flynn has resigned as a member of the Citizens/Police Advisory Committee, thus leaving a vacancy in the Central area until June 30, 2005.

At City Council's worksession on February 17, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint John Burchfield as a member of the Citizens/Police Advisory Committee, to serve the unexpired term of Ms. Flynn, term to expire June 30, 2005, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 147

F. RESOLUTION NO. 04-50 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION

Summary: Selina Sullivan has resigned as a member of the Planning & Zoning Commission, thus leaving a vacancy on the Commission until August 14, 2005.

At City Council's worksession on February 17, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Sharon Bell as a member of the Planning & Zoning Commission, to serve the unexpired term of Ms. Sullivan, term to expire August 14, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 148

G. ORDINANCE NO. 3091 - ORDINANCE GRANTING A FRANCHISE TO DUKENET COMMUNICATIONS, LLC, PURSUANT TO THE CITY'S TELECOMMUNICATIONS ORDINANCE

Summary: The consideration of an ordinance granting a franchise to DukeNet Communications, LLC, pursuant to the City's Telecommunications Ordinance.

Back in September the City considered and adopted Ordinance No. 2056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Prior to that time, we had some discussions with DukeNet Communications, a Charlotte-based telecommunications service provider affiliated with Duke Energy. DukeNet and the City have since resumed these discussions, with the result that DukeNet now wishes to begin operation in Asheville.

Most of the substantive terms applicable to this franchise (or any telecommunications franchise) are already set forth in the Telecommunications Ordinance, and DukeNet, by accepting the franchise, agrees to abide by the provisions of the ordinance. The main issues to be determined in connection with this particular franchise are the fee that the City will receive and the length of the franchise term.

As to the franchise fee, a team consisting of representatives from Public Works, Engineering, Planning, Legal, Economic Development, and Information Services reviewed such issues as our administrative costs, wear and tear on our right-of-way facilities, other fees charged for right-of-way use in Asheville, and fees for similar right-of-way use charged by other cities. We determined that a two-tiered fee structure based on density would reflect the value of the right-of-way in high density areas while encouraging the extension of service into under-served and less dense areas. Within the downtown area (defined as Charlotte/South Charlotte Streets on the east; Beaumont/Hilliard Streets on the south; Clingman/Haywood Streets on the west; and I-240 on the north), the rate is proposed to be $.10 per foot per month for each linear foot of right-of-way used for the installation. Outside of this core area, the rate drops to $.02 per foot per month.

As to the length of the term, DukeNet has asked for a 10-year term, renewable for two 10-year terms, unless either party terminates. While we have no problem with the length of the term, we think that the rate should be subject to increase based on the CPI after the first five years.

Although DukeNet apparently has some potential customers, they have not revealed the location of their proposed initial installation. Any installation, however, would have to be approved by the City Engineer, at least as to the route and manner of installation, and would become part of the franchise.

Considerations:

(1) This is the City's first telecommunications franchise, and we really have no local experience with such efforts, other than cable television, which is not directly relevant.

(2) The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for its use by profit-making enterprises. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another, so the compensation paid by DukeNet will be a benchmark for future installations.

(3) There is a significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

If Council wishes to grant a franchise to DukeNet, adoption of the ordinance is recommended. Council may suggest alternatives to the proposed fee schedule and the term, but most other substantive issues are already dealt with in the Telecommunications Ordinance adopted in September. Because this is a franchise ordinance, a second reading of it will be required.

ORDINANCE BOOK NO. 21 – PAGE 60

H. ORDINANCE NO. 3092 - BUDGET AMENDMENT FOR FUNDING THE TRANSIT PLAN FOR THE FUTURE MULTI-MODAL TRANSIT CENTER

Summary: The consideration of a budget amendment, in the amount of $9,600, as the City's share of the transit plan for the future multi-modal transit center.

The N.C. Dept. of Transportation (NC DOT) and the City's Transit Department are studying the need for a transit hub facility in the southern part of the City. One possibility is to co-locate the transit hub with a passenger rail station (proposed for Biltmore Village) in the event that service comes to Asheville. Independent of the rail service, should a hub be needed and a new facility built, and, in order to access federal funding for construction of the transit facility, it will be necessary to have conducted a Transit Study (TS) including the Biltmore location. The estimated cost for the TS is $12,000. The City share for the TS would be $9,600. The NC DOT Rail and Transit Divisions feel the TS is a priority and needs immediate funding. The NC DOT's share of the funds for the TS is currently available.

City staff recommends approval of the budget amendment to appropriate $9,600 out of Contingency as the City share of the Transit Study.

ORDINANCE BOOK NO. 21 – PAGE 73

I. RESOLUTION NO. 04-51 - RESOLUTION MODIFYING THE 2004 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE MARCH 2, 2004, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 28 – PAGE 149

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING OF 25.429 ACRES ON CRAYTON ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3093 - ORDINANCE TO REZONE 25.429 ACRES ON CRAYTON ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:20 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone 25.429 acres on Crayton Road from Commercial Industrial District to Highway Business District. This public hearing was advertised on February 13 and 20, 2004.

The property is located within the City limits on the north side of Crayton Road north of Interstate 40. Surrounding land uses and zoning include commercial and office uses to the north zoned Commercial Industrial (CI), commercial and residential property zoned Commercial Industrial (CI) and RS8, respectively, to the east across a railroad right-of-way, Interstate 40 (unzoned) and commercial to the south zoned CI, and commercial and industrial zoned CI to the west.

The applicant, Michael Goodman, wishes to rezone the property in order to utilize it for uses permitted in the Highway Business District. The purpose of the Highway Business (HB) District is to address the needs of commercial development along major thoroughfares.

The Future Land Use and Transportation Plan of the 2025 Asheville City Development Plan identifies the intersection of Sweeten Creek Road and Interstate 40 as the dividing point between an Urban/Neighborhood Corridor to the north and a Gateway Corridor to the south.

Currently, the property is vacant except for a driveway on the far western portion of the site that provides access to the property to the north, which the applicant also owns. The property's access is from Crayton Road, which is accessed via Sweeten Creek Road near its interchange with I-40. Crayton Road also provides access to the commercial property directly east across the railroad right-of-way. Further east of that property, a road barrier has been placed across Crayton Road to prevent commercial traffic from entering the residential neighborhoods to the east.

A gravel and dirt road currently bisects the subject property through its center. This is the beginning of an eventual street that was approved as part of major subdivision for the property in early 2002. Revisions to the approved subdivision plan may result from the proposed rezoning, necessitating another review by the Technical Review Committee (TRC).

The petitioner believes he is not able to develop the property according to the requirements of the CI District, especially as they relate to front setbacks and the inability to provide parking within that setback. Permitted uses, uses permitted by right subject to special requirements, conditional uses, and prohibited uses in both districts are similar, with the main difference being that HB does not permit industrial uses.

Rezoning the properties would allow the applicant the opportunity to develop the property for uses permitted in the HB District. It would provide the property a less intensive zoning district than it has currently. It would also allow the applicant more flexibility in terms of parking requirements as they relate to front setbacks. In consideration of the above, the adjoining zoning and land uses in the area surrounding site, and the site's proximity to Interstate 40 and Sweeten Creek Road, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

The pros for the rezoning include:

- Specifically provides for highway and automobile-oriented type development in close proximity to the Interstate 40/Sweeten Creek Road interchange.
- More flexibility for the property owner in terms of parking in the front setback.
- Rezoning to a lesser intensive zoning district (HB) that allows a large number of similar uses permitted in the existing zoning district.

- More likely to result in a better-designed commercial development with HB development standards.

A con for the rezoning is the loss of zoning that permits the option of certain types of industrial and manufacturing uses.

City staff recommends approval of the rezoning request. The Planning & Zoning Commission, at it's February 4, 2004, meeting voted unanimously to recommend approval.

Mayor Worley closed the public hearing at 5:26 p.m.

Mr. Pettibone responded to questions from Council regarding the loss of industrial property.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3093. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 75

IV. UNFINISHED BUSINESS:

A. CONSIDERATION OF THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A PROPOSED 55 LOT SUBDIVISION

ORDINANCE NO. 3094 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PROPOSED 55 LOT SUBDIVISION LOCATED AT SAND HILL ROAD (HABITAT FOR HUMANITY)

Mayor Worley said that the public hearing and approval of the conditional use zoning was held on January 13, 2004. At that meeting, Councilwoman Bellamy moved to continue consideration of the conditional use permit until February 24, 2004, in order for the developer and neighborhood to meet to discuss the stub street, additional buffer, fewer lots, and/or other things that might make the development more attractive or palatable.

Urban Planner Carter Pettibone said that on Monday, February 16, 2004, Habitat for Humanity held a meeting to discuss the revised plan for their proposed subdivision on Sand Hill Road. In addition to Lew Kraus, Fred Barbour (member of the Habitat's Site Selection Committee), and Gerald Green representing Habitat, twelve neighbors were in attendance, as well as Carter Pettibone of the City's Planning staff.

Mr. Kraus and Mr. Green then presented the proposed changes to the plan, which they felt address the major concerns of the neighbors. The changes to the plan include:

-Reduction of total lots from 60 to 59 (City Exhibit 5 – Revised Site Plan)
-Reduction in the number and increase in the size of lots located closest to the Captain's Drive development
-Changed street stub connection to Buncombe County property to the north to a pedestrian connection
-Changed the two cul-de-sacs near Captain's Drive to "T' type hammerhead turnarounds that will meet City Engineering and County Fire requirements

-Open space has been reduced, but is still well above the minimum required by the Unified Development Ordinance (UDO)
-The proposed buffer between the development and Captain's Drive will utilize existing vegetation and be supplemented to achieve a "C" type buffer as described in the UDO

Mr. Kraus and Mr. Green then fielded questions about the subdivision plan and its proposed changes.

Neighbors expressed concerns about emergency vehicle access, fencing and buffering, status of the contract between Habitat and the property owner (Fletcher Partners), the number of homes and the scale of project, effect on adjoining property values, Habitat's involvement with the subdivision's homeowner's association, and the future maintenance of the subdivision and its common areas. They also indicated they were especially concerned about not just the first set of residents of the development, but future residents and how they will maintain their homes.

Other topics discussed included how Habitat operates and how it looks for available land in the area, other Habitat projects built or under construction, how Habitat develops its subdivisions, and the number of houses Habitat has had to foreclose on in other subdivisions.

Neighbors asked Habitat to consider widening the proposed buffer and installing a minimum eight-foot tall wood privacy fence on Habitat's side of the buffer that would be built by the time the first home is built. They also requested making the fence surrounding the cemetery plastic-coated chain link fencing, and hiring a property management company to maintain the common areas.

Mr. Kraus indicated he would take these requests to his governing committee later that week. He also said he would see if Habitat could retain a stewardship role in the subdivision once it is complete and a homeowner' association is established, but said it would take more time to investigate the legality of the issue.

Some neighbors asked for Habitat to provide copies of the plan, proposed elevations, and copies of HOA covenants from other Habitat subdivisions. Mr. Kraus said he would provide these when they were completed.

The applicant has provided staff with revised plans (City Exhibit 5 – Revised Site Plan). The applicant also informed City staff that additions to the proposed conditions could result from the neighborhood meeting depending on his consultation with Habitat's governing board.

Staff, in conjunction with the Buncombe County Fire Marshal, has reviewed the revised plans and recommends approval of the amended conditional use permit with the following conditions:

- Streets within the development will be at least 24 feet wide with on-street parking permitted only on one side of the street.
- On-street parking is not permitted in the cul-de-sac or hammerhead turnarounds.
- If a street connection to Buncombe County property to the north is waived in lieu of a pedestrian connection, the proposed pedestrian right-of-way is widened to 20 feet and a 10-foot wide asphalt path is constructed within it.
- The developer will retain as many existing trees as possible during the construction process.
- All other applicable outstanding Technical Review Committee (TRC) conditions are addressed.
- If the applicant does not take possession of the properties, the zoning of the properties will revert back to the original RS-2 and RS-4 zoning (requested by applicant).

In addition, Council may want to consider the buffer enhancement proposed by the neighborhood (a fence) or alternative buffering (such as going to a "D" buffer) as an added condition.

Finally, as stated in staff's original report, the TRC recommended approval with the conditions identified by staff. The Planning and Zoning Commission then voted 5-1 to recommend approval with the conditions identified by the TRC (City Exhibit 6)

Mr. Gerald Green, representing Habitat for Humanity, said that in response to comments and direction provided at the January 13, 2004, City Council public hearing, the following revisions have been made to the subdivision plat (Applicant Exhibit 1):

- The cul-de-sac turnaround on the first street has been changed to a hammerhead turnaround in order to increase the land available for the lots abutting the turnaround
- The total number of lots has been reduced to 59
- The proposed stub street to the Buncombe County soccer fields has been removed. In its place a fenced and graveled footprint connecting the subdivision street, sidewalk, and walking trails is proposed
- The lot area of all lots abutting Captain's Drive has been increased. These lots now average 0.40 acre (including buffer areas), the same average size as the adjacent lots in the Captain's Drive development
- Larger homes (3 and 4 bedroom) will be built on the lots abutting Captain's Drive (lots 38, 39, 50, 51 and 52)

Habitat feels that these changes will address the major concerns raised at the January 13 Council meeting. Their goal is to provide homes that are affordable to the working people of Buncombe County in a development that strengthens and enhances the neighborhood, the community, and the City.

Mr. Green showed Council photographs of typical Habitat homes (Applicant Exhibit 2). Regarding neighborhood requests, he said that Habitat will widen the buffering near Captain's Drive to a "D" buffer and will have the fence surrounding the cemetery a plastic-coated chain link fence. Regarding hiring a property management company to maintain the common areas, that is something their attorney is still investigating and how it will impact the home price. Habitat does not feel that a eight-foot tall wood privacy fence on Habitat's side of the buffer is appropriate for two reasons: (1) cost of approximately $20,000; and more importantly, (2) they do not build communities to wall them off from the rest of the City.

Vice-Mayor Mumpower felt that there was going to be a stronger effort to preserve trees, but after seeing the photographs that Mr. Green presented (Applicant Exhibit 2), he was not left with that sense. Mr. Green responded that (1) the examples shown are homes that weren't heavily wooded to begin with; and more importantly, (2) the pictures are only representative of how the homes are built, what they look like and if there are problems, that Habitat addresses them.

Mr. Pettibone used City Exhibit 4 to remind Council what the area looked like from Captain's Drive.

Councilman Dunn felt the 59-lot subdivision is too dense to have room for children to play. He was concerned that the Buncombe County soccer field will not be available for the kids and with the increased traffic from this development, it will be dangerous for those kids who play in the streets. Mr. Green felt that children will play in the yards, in the open spaces, at parks, and playgrounds.

When Councilman Dunn expressed his concern of traffic, Mr. Green responded that the City's traffic engineer did not identify significant issues regarding traffic congestion or safety.

Councilman Davis appreciated Habitat's working with the neighborhood on enlarging the lots and the buffer areas. He was encouraged to see the larger lots around the turnarounds but was distressed to see the size of the other lots along Hominy Creek. He felt that it would be ideal to make the subdivision a little less dense in order to allow the lots along Hominy Creek a more spacious and more space for the children to play. Mr. Green replied that the project originally was planned for 65 lots they have reduced the lots by 10% to 59 lots. However, there may be some room where they can reduce the density a bit more, but the point of affordability can be no less than 55 lots.

Upon inquiry of Vice-Mayor Mumpower, Mr. Pettibone said that this plan is well above the parameters of the open space requirements without the cemetery.

Councilman Dunn felt that Habitat can afford to build less lots because they have volunteer labor. Mr. Green responded that a lot of the costs are the same as for private contracts, e.g., land; infrastructure; water and sewer; sidewalks; curbs and gutters, building materials, reviews, etc.

The following individuals spoke against issuance of the conditional use permit for various reasons, some being, but are not limited to: the housing project is completely out of character with Captain's Drive; Captain's Drive homes have basements, not crawl spaces; the housing project will injure surrounding property values; how can trees be saved with 59 homes; the cemetery is fragile and should not have children playing around it; the City is not making Habitat follow guidelines like other developers; there is a liability issue if there are unsupervised children playing on the County soccer field or on the school property; reducing the lots from 59 to 55 is only a token, not a solution; is the floodplain included as open space; houses will be too close to each other; there will be clear-cutting of trees; children should not play around the cemetery; there is no access to the County soccer park; Habitat has not given the neighborhood anything they wanted; this is an urban development in a suburban area; people will be crammed together; need for open space in the middle of the development for a playground or basketball court; they keep changing what the bottom line is on number of units; let Habitat build to the existing zoning; the stub-street was a TRC requirement and now is completely out of the plan; Habitat is being given preferential treatment; and more open space is needed.

Ms. Sandra Bailey, resident on Captain's Drive
Ms. Carol Tracy, resident on Captain's Drive
Mr. Steve Ayala, resident on Captain's Drive
Mr. Walter Plaue, County resident
Mr. Joe Treadway, resident on Sand Hill Road
Mr. Gail Crawford, resident on Sand Hill Road (Neighborhood Exhibits 4 and 5)
Mr. Tom Plemmons, resident on Sand Hill Road
Ms. Kathleen Bailey, resident on Captain's Drive

Upon inquiry of Mayor Worley, Mr. Green said that the reduction of lots to 55 will result in approximately $5,000 more per house.

When Councilwoman Bellamy asked what the City will do to assure the parking prohibitions, Mr. Pettibone said that the would be achieved by signs. City Attorney Oast said that he would investigate if that provision could be included in the homeowner's covenants, if Council chooses to do that.

Upon inquiry of Councilwoman Bellamy, Mr. Pettibone said that approximately 45 units could be built on the property with the existing zoning.

In response to Councilwoman Bellamy, Mr. Pettibone said that if Habitat acquired additional land, the density would go down.

Mr. Pettibone said that Habitat did not receive any preferential treatment on this development. They had to be reviewed by TRC and comply with all City requirements. Planning & Development Director said that they are not eligible for reduced permit fees nor reduced fees regarding water. However, they would be eligible for a reduced MSD fee.

Councilman Newman asked if children could use the Buncombe County soccer field and the school's recreational facilities if they are supervised. Mr. Pettibone said that they have contacted the County but have not received a response.

Councilwoman Bellamy moved to adopt Ordinance No. 3094 to issue a conditional use permit for property located at Sand Hill Road (Habitat for Humanity) for a 55 lot subdivision, subject to the following conditions: (1) Streets within the development will be at least 24 feet wide with on street parking permitted only on one side of the street; (2) On-street parking is not permitted in the cul-de-sac or hammerhead turnarounds (to be included in the homeowners covenants depending on the City Attorney's investigation); (3) If a street connection to Buncombe County property to the north is waived in lieu of a pedestrian connection, the proposed pedestrian right-of-way is widened to 20 feet and a 10-foot wide asphalt path is constructed within it; (4) The developer will retain as many existing trees as possible during the construction process; (5) All other applicable outstanding TRC conditions are addressed; (6) If the applicant does not take possession of the properties, the zoning of the properties will revert back to the original RS-2 and RS-4 zoning (requested by applicant); (7) The buffer between the development and Captain's Drive is supplemented to achieve at least a "D" type landscape buffer; and (8) Children not be allow to play in the cemetery. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower explained why he felt the development did not meet Standards 3 or 4. He felt the development will have a negative impact on adjoining properties and also that it is not in character of the neighborhood.

Councilman Dunn explained that the developers have not meet Standards 1, 3, 4 or 7. He felt the density was too high, the development does not fit the character of the neighborhood, the development will injure the value of abutting properties and the development will cause undue traffic congestion.

Councilman Newman hoped that if there was going to be more open space that there will be a process on the best way to achieve it. He would rather not marginally increase the lot sizes, but maybe find an open space that might be used for some recreational function.

Councilwoman Bellamy suggested Habitat might want to partner with Quality Forward on tree plantings or work with them regarding playgrounds.

The motion made by Councilwoman Bellamy and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no".

City Attorney Oast said that he would draft the Order and bring it back at Council's next formal meeting on March 9, 2004.

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At 6:45 p.m., Mayor Worley announced a recess.

B. BUDGET AMENDMENT FOR THE SECTION 108 GUARANTEED LOAN AND ECONOMIC DEVELOPMENT GRANT

Mayor Worley said that on January 27, 2004, City Council reviewed this matter and continued it until February 24, 2004, to receive additional information. He said that public comment would be limited only to the new information City Council requested at that meeting.

Planning & Development Director Scott Shuford said that this is the consideration of a budget amendment, in the amount of $1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative (EDI) grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square.

Prior staff reports have provided considerable information concerning this budget amendment request to allocate $800,000 of HUD Section 108 funds and $340,000 of EDI grant monies to an Eagle Market Streets Development Corporation project to redevelop property on Eagle and Market Streets.

This is an economic development project that will be funded through private investment using historic tax credits and conventional financing, along with the funding sources from this budget amendment. By itself, it will create over 8,000 square feet of additional retail and office space and 14 residential units. The funding would also leverage additional monies to be spent in a Mt. Zion Church project, resulting in a total of approximately 12,000 square feet of retail and office space and a total of 47 residential units. Five historically significant buildings will be restored to Secretary of Interior standards and a new infill building will be constructed on vacant property if these two projects are realized. It is important to note that this project is not an affordable housing project, although the units will be affordable (renting at 95 cents a square foot) to many service workers, City employees, and other people that make up our local workforce. This is a greatly underserved group in our Downtown housing market.

In January, Council continued this item for additional information. The following are our responses to this information request.

Compliance with Plan - Staff finds that the proposed project will be fully consistent with the South Pack Square Redevelopment Plan. Plan quotes and map references follow.

On page 16, the Plan provides:

> [T]he site plan options present a wide variety of mixed residential, commercial, and support uses to achieve the objectives of this plan. The general obligations presented by the development options are: . . .
>
> 5. To provide for the area the widest possible variety of compatible mixed use development; and
>
> 6. To promote upper story residential development over mercantile business as well as the possibility of new housing construction.

Additionally, in several places, the Plan specifically calls for infill development and new construction:

- There will also be an effort to provide for space for new construction within the project area. (Plan, p. 19).

- Infill on vacant property for new commercial structures on Market Street and Biltmore Avenue is encouraged. (Plan p. 21; emphasis added).

The maps accompanying the Plan also suggest that infill development is generally encouraged and is an appropriate use for the Subject Property:

- The Existing Land Use Maps (Maps 8 & 10) show the Subject Property as being in commercial use;

- The Existing Zoning Map (Map 9) shows the Subject Property zoned to a CBD (Central Business District) classification;

- The Vacancy Map (Map 13) does not identify the Subject Property as vacant;

- The Proposed Site Plan (Options 1 and 2) (Maps 14 & 15) show the Subject Property as available for "mixed use (res./comm.)".

- The Greenway and Open Space Map (Map 17) does not show the Subject Property as being set aside as a greenway or open space.

Pro-Forma Projections – Pro-forma projections appear to be sound. A staff survey of similarly-priced product (100 units total) in our downtown shows a 97% occupancy rate, with waiting lists for units in the larger buildings. In addition, the project is fully consistent with all applicable financial review criteria necessary for the City to carry out its responsibility in monitoring the allocation of federal funds and in securing the consequent City financial interest in the project.

Lease and LLC Agreements - Copies of lease agreement and organizational (LLC) agreements have been provided to Council.

Private Party Background Information – Council has received corporate profiles for Historic Acquisitions LLC and Enterprise Real Estate Services plus informational brochures. Other background information about the private parties involved in the project, including reference information and web-page referrals, has been previously provided.

EMSDC Information – This includes the completed 2002 audit, deadline for the 2003 audit, by-law compliance, board term limits, consultant recommendations on internal organization, evidence of progress in developing an effective and broadly inclusive community involvement plan, and a plan for maximizing economic opportunities from the project for minority and low-income residents. EMSDC will provide this information.

Other Information – The following information has been previously provided:

- Market Study completed in September, 2003.
- Property Appraisal completed in November, 2003.
- Risk to City funds if the project fails or the CDC disbands or is not funded.
- "Exit strategy" should Council choose not to fund this project.
- Rationale for drawing down the Section 108 loan monies in August.

Reasons to Support/Not Support – Pursuant to Council's direction, the following are reasons to support and to not support the project:

Support:

- Residential – builds 14 units; leverages 33 more = 47 total units
- Residential – market rate, workforce housing
- Retail/Restaurant/Office – more than 12,000 square feet
- 5 historic structures restored to Department of Insurance standards
- More than $6 Million in tax base
- Implements South Pack Square Redevelopment Plan
- Partnership with Enterprise Foundation (because of its expertise, reputation, and potential role in future developments in Asheville)
- Partnership with David Rogers (because his expertise gives us confidence it will be constructed as planned)
- Project fully complies with all relevant financial review standards
- All federal monies are fully secured
- There are no local tax monies in the project
- Project rental vacancy and rate projections are sound based on downtown market
- Infill building and renovations approved by two different design review boards
- Public support from EMSDC, Mt. Zion, Preservation Society, and may individuals, particularly African Americans who remember the Block in its heyday

Reasons not to support:

- Fence – poor public relations by EMSDC
- Capacity of EMSDC – management issues
- Residential units not "affordable" enough
- Want something else on infill site (park, parking, etc.)
- Do something else with the money
- Opposed by adjoining property owners
- Council goals have changed

Staff recommends that the City Council approve the budget amendment that allocates $800,000 of HUD Section 108 funds and $340,000 of EDI grant monies to the EMSDC project.

On February 20, 2004, EMSDC provided City Council with the following information: (1) completed audit report for 2002; (2) agreement with auditor for completing the 2003 audit by April 30, 2004; (3) updated list of Board members showing how membership complies with the agency's by-laws and HUD's requirements for Community Based Development Organizations; (4) draft revised by-laws presented for approval by the EMSDC Board on February 24, 2004; (5) organizational development recommendations prepared by management consultant Leslie Anderson in February 2004; (6) summary of "You Stand" program activities for recruiting and developing minority-owned businesses; (7) extract from performance report to the City for year-ended June 30, 2003, relating to "You Stand" activities; (8) residential/business Marketing Outreach Work Plan for 2003-04; (9) Minority Participation Plan by Clancy & Theys, general contractor for the project; (10) draft Community Involvement Plan – SPS Advisory Panels; (11) agenda and other material for SPS meeting held at the YMI on February 19, 2004; and (12) draft memorandum of understanding between EMSDC and the City, on community involvement (staff has not yet had an opportunity to review this).

Mr. Shuford presented Council with the following construction prices per square foot:

- EMSDC - $91/sf
- Harry Pilos – Rehab: clean shell, no structural issues - $90-120/sf
  New construction: 4 story, mixed use, 25% commercial - $135/sf commercial
  $100-110/sq ft residential (unsure if it includes upfit costs, probably not)
- Peter Alberico – Rehab: $50/100/sq ft
  New construction: $150/250/sq ft

Mid grade residential	$150
Mid grade office	$175
Retail	$200
Hi grade residential	$250

- Harry Weiss – Rehab: $90-120/sf (breakdown $60-85/sf hard costs plus soft costs of 25-32% of construction cost)

Mr. Shuford said that City Council has received information which summarized the first community meeting held on February 19, 2004, and information on the alternative projects presented at the community meeting held on February 23, 2004.

Mr. Gene Ellison, co-owner of the Ritz building, said that City Council has challenged them to come up with an alternative plan. He said that in 3.5 days they have come up with an alternative plan that a great deal of people think is a possibility. He said private individuals have invested close to $2 Million on the Block and they need to be included. This project can be done in a lot of different ways.

Mr. C. Crawford Murphy, architect, briefly reviewed with Council his alternative to the EMSDC plan, noting that he used the exact amount of square footage. Showing sketches, he said he added open space, increased the parking and maintained all the retail. A concession to be made is that the alternative might jeopardize the historic tax credits, but in the design alternatives, relatively speaking, we think there is a savings of approximately $500,000 in construction costs. In summary, the plan shifts the infill building to above the Collette building on Eagle Street. The building located at 3 Wilson Alley would be saved and a two-level, open-air parking deck would be constructed on the existing parking lot. There would be an interior park created on the second level of the parking deck that would be accessible through the Collette building. The parking deck is accessed from Market Street via two single lane driveways, one going to the upper deck and another going to the lower deck. He said this is a $3.1 Million project including the parking, which is not in the other plans, and the development of the building in the back.

Mr. Jesse Plaster presented Council with another alternative plan of a renovation-only project. The plan would create a park on the existing parking lot, providing for a public market space and outdoor seating/cafes. The Campbell and Collette buildings, and possibly 3 Wilson Alley, would be renovated in an historically appropriate fashion. Some advantages include (1) renovation is more economical than new construction ($60/sf rehab vs. $80/sf for new construction); (2) tax credits come only from renovation work; (3) Collette and Campbell buildings require little, if any, structural modifications; (4) Eagle-Market Streets properties can be renovated with money in-hand; (5) renovation of building at 3 Wilson Alley will be for affordable housing; (6) precarious nature of EMSDC Plan puts properties at financial risk; (7) this plan uses real numbers for vacancy rates (10%), management fees (10%) and maintenance costs (5%); (8) this alternative requires no subsidy from the City; and (9) this alternative includes a community park with the opportunity for community input on design. He pointed out that using $100/sq ft for renovation and $150/sf for new construction the EMSDC Plan would bring the project over budget by $1.5 Million.

Pastor William Henry Hutchison, tenant of EMSDC, explained to Council his displeasure surrounding alleged forged documents by EMSDC staff regarding a reimbursement request for moving and storage expenses.

The following individuals spoke in favor of revitalizing the Block but preferred an alternative Plan to EMSDC's plan:

Ms. Amy Plaster, owner of the Wilson building at 13 Eagle Street
Mr. Jesse Ray Jr., Vice-Chair of YMI Cultural Center and Chair of YMI Community Development Corporation
Mr. Don Yelton
Mr. Isaac Coleman

The following individuals spoke in favor of revitalizing the Block with the EMSDC's plan:

Ms. Dena Banks, owner of New Ebony Bar and Grill in Collette building
Mr. Marvin Chambers, Board Member of EMSDC
Mr. Marvin Vierra, Board Member of EMSDC
Mr. Fred English, Haw Creek resident
Mr. Billy Adams, former Eagle Street resident

Councilwoman Bellamy had originally asked for the delay at Council's last meeting when this issue was before us in the hopes that we could come to a place where the community can be unified behind one plan or the other. She said Council has been provided with the minutes of the February 19 and February 23 meeting minutes. The two alternative plans have arisen out of the two community meetings and it was her hope that one plan could be supported. There was no consensus of the community on either alternative plan. Throughout the process it has been encouraging to hear the dialog and it was unanimous on February 19 that the vision was to see redevelopment. Now it's just how do we get there. She would be opposed to delaying this issue any longer. The number one goal of the 1996 South Pack Square Redevelopment Plan was to eliminate and prevent further deterioration of South Pack Square. Over the past month she has met with people in the area, but consistently EMS didn't move. That was discouraging. At last night's meeting when there was an opportunity to hear comments, EMS didn't come to the meeting just to hear more public input. Some people felt it wasn't important enough for them to come and in her opinion, they hid behind the fact that they are in a lawsuit and their attorney advised them not to say anything. However, one thing is to listen to the community, and the other thing is to participate. For her, we are asking the lead organization on this development to entrust them with $1.14 Million and it's hard for her to get beyond the hurdle of issues discovered in the last four weeks that were not mentioned before. It's hard for her to entrust this amount of money into an organization who is not willing to listen, even if they say they are not changing. EMSDC is the agent for the City to get the job done, so they should be the extension of what we want to see. The ultimate goal is to see something preserved that is important to the entire community. And, she doesn't see it in the lead organization that we are supposed to entrust our money. She has no doubt that Rogers & Associates can do the work because they are good developers. Her concern is she can't get over the hurdles of the organization's capacity to ensure that when the money is given to them, that they know Rogers are doing the right thing. She doesn't see that at the current level. She would like to see a lot of changes in the Board and staff at EMSDC.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that the EMSDC plan is 35,132 square feet with total development cost of $3.2 Million which is approximately $91/square foot (not including the acquisition cost but that is a given for anyone who would build on this particular

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site). The figure for total development costs, with the acquisition, including hard costs, soft costs, new construction and rehab is $101/sf. In addition, from figures given to him by Mr. Plaster, Mr. Shuford said that Mr. Plaster had earlier quoted his rehab figure of $60/sf, however, his figures show that Mr. Plaster developed his rehab building for approximately $83/sf. Mr. Plaster disagreed stating his rehab amount was $60/sf.

Vice-Mayor Mumpower said that his concerns about Rogers & Associates have been addressed. Even though he doesn't believe Mr. Rogers is responsible, he did note that the Grove Arcade Project had $3 Million in cost overruns and they ran into problems they didn't foresee. If that can happen with the best minds and a strong developmental process, he is left with concerns that the same potential exists in this project.

Responding to Vice-Mayor Mumpower concern about cost-over-runs, Mr. Shuford said that in this project there is a reserve that would allow the project to sustain a 20% vacancy rate for a period of nine years. Given the quality of the developer and the thoroughness of the architect, he felt the chances of having an over-run are small, but there is a provision in the way the financing is set up for that to be accommodated.

Vice-Mayor Mumpower continued to express concerns about hidden cost over-runs and questioned how this project can be developed at $91/sf and others say it cannot be developed at that cost. Ms. Caplan attempted to show Council how resilient the project is to vacancy rates that could exceed 4% for a period of time. She said that the City would expect to see any project coming up for our City support to show a robust pro forma, stressing that an operating reserve is something that should be shown in prudent budgeting.

Councilman Dunn felt that the taxpayer's money that is in the reserve account (20% vacancy rate for nine years) might be used for another project or perhaps the City could build some sidewalks or put in infrastructure somewhere else. Community Development Director Charlotte Caplan explained that this reserve is the bank's money required by the bank lender. It will be reserved from the bank loan funds. Mayor Worley further explained that the money we are talking about under the terms of the grant is money that is from HUD for this purpose only and if it's not used, it goes back to HUD. The City cannot turn around and use that money for any City infrastructure.

Upon inquiry of Councilman Newman, Ms. Caplan said that the developer would potentially lower the rental prices in order to get a higher rate of occupancy. In fact, the pro forma also includes a very generous allowance for marketing incentives, which she thinks is mainly aimed at the commercial tenants.

Vice-Mayor Mumpower asked if there were any unaccounted dollars that staff was aware of that is not in the materials before Council. Ms. Caplan said that two things do not appear in the pro forma: (1) the cost of acquisition of property (because the project will be leased); and (2) approximately $3,000 a month the City has been paying EMSDC for their operating costs.

Mayor Worley asked Mr. Crawford what was the basis upon which he addressed the costs to his alternative plan. Mr. Crawford responded that he took the EMSDC design and began to look in the design concept of the alternative he was offering to see what impact did it have on the costs of the construction, particularly the new construction. He found that in the alternative design there was about 40% less exterior wall, 50% less roof area and there was a whole floor that wasn't needed. Then he added back differences of improving the basement of the Collette building vs. the EMSDC plan to put parking under there. Then at the end he applied $100/sf to remodel and $130/sf to new construction. These are broad stroke figures. He hasn't had time to get relative evaluation between the two. He feels that both are viable alternatives and with enough examination, he felt they are worth consideration. He said that these numbers are so broad that just by changes of the design, you can create economic opportunities.

When Mayor Worley asked Mr. Crawford if he had an opportunity to go through the buildings, Mr. Crawford said that he has been in several of the buildings and examined the Wilson building in a walk around and look through.

Mayor Worley said that he recalled that the Gennett Building is scheduled to be demolished as a part of the EMSDC plan because it was too far deteriorated to be renovated. Mr. Crawford said that he called six companies that specialized in cleaning out buildings like that and he could have had a contract yesterday morning to clean the building out because that is a common task that can be overcome. He hasn't had a chance to look in it, but took the worse case scenario which is to gut the whole inside, leave the exterior, and build back inside. That cost is almost $300,000 for 3500/sf.

Mayor Worley then asked Mr. Plaster what was the basis upon which he addressed the costs to his alternative plan. Mr. Plaster responded that best resources they used was the powerpoint slide EMSDC used, showing how they arrived at $60/sf for rehab and $80/sf for new construction. Regarding the condition of the Gennett building, Mr. Plaster said they talked to Bill Wescott, a preservation engineer, because he has had experience with that building. However, their conversation wasn't directed at this debate at the time he spoke to him. The Gennett building is locked and they have not been able to gain access. However, Mr. Wescott spoke about the interior condition of the building and felt that it could be preserved and that there was significant architectural detail inside the building making it a good case for preservation.

Upon inquiry of Vice-Mayor Mumpower, Mr. Plaster felt the EMSDC's projections are not realistic. His father is an architect and he has grown up with a close relationship to the construction industry. He felt that even $91/sf for an infill residential project is a far cry from most other architect's projections. He said the difficulties of this site are it's in an urban environment, it has immediate adjacencies on three sides, a public street – all of which factor into increased construction costs.

Upon inquiry of Mayor Worley, Mr. David Rogers, with Rogers & Associates, said that one reason the risk factor is low is because he has 30 years experience in rehab of old buildings totaling $1 Billion. He is confident that he has all the unknowns taken care of. They commonly refer to renovations as discovery because after you begin, there may be structural problems they don't see. He explained that they have a contingency in the General Contractor contract and a contingency in the pro forma which should cover any unknowns that should come up. Regarding the Grove Arcade project, he said that the 330,000/sf project at a $332 Million pro forma is approximately $100/sf for that high quality renovation. Regarding the construction numbers, HUD and the City requires them to furnish the City the lump sum guaranteed maximum contract from the contractor, who is bondable and capable of doing that project, which guarantees the costs before any HUD money is spent. That has been furnished to the City. He explained that there is no risk in the construction costs because we have someone guaranteeing the construction costs and they have contingencies built in their numbers. The only thing that would ever go up would be a change order from an unknown and we have money to cover that. The reserves are something that the lender requires and the tax credit investor requires us to fund those reserves at the start and put them in escrow. We cannot touch them – they are there for the project.

Upon inquiry of Councilman Newman, Mr. Rogers said the reserve is higher than normally a lender would require because of the tax credit investor.

Mayor Worley asked Mr. Rogers what his opinion is regarding whether the Gennett building was salvageable or not. Mr. Rogers said that he has looked at the building, the

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environmental reports and the quotes that EMSDC received. They had 82 people show up and only 2 people quoted (the lowest quote being $315,000), and neither one guaranteed that the mold and spores in the building could be killed. Mold is a very serious problem that is hard to overcome and kill. He said they had another use for the property in another phase in the future.

Upon inquiry of Vice-Mayor Mumpower, Mr. Rogers said that he doesn't spend over $100/sf for any renovation project whether it's a $3 Million project or a $30 Million project

Mayor Worley asked Mr. Rogers if he felt there was merit to any of the concepts of the two alternatives just presented to Council. Mr. Rogers replied that one proposal was 100% different than EMSDC's plan. The other proposal was virtually doing the same thing as the EMSDC plan, but rather than comment on how the EMSDC can change their proposal to fit other needs, they brought forward a brand new proposal. He has heard no comments on what he could do to change EMSDC's plan. He did note that it took them eight months to get where they are at now and it's hard to believe that anyone can come in and tell you in three days what is a good proposal and the cost to make it work.

Councilman Dunn asked Mr. Rogers if, after Council had time to review the two new proposals, he would be willing to be the developer to work with them. Mr. Rogers explained that they have already spent approximately $200,000, and he wasn't sure how to overcome that at this stage in the game. There will have to be all new architectural fees, a new appraisal to do, etc. However, he would be willing to sit down and talk with them. He wished this input would have come forward six months ago. He then explained why there is no way that tax credits can be used on either one of these alternatives. He explained that the EMSDC plan is what all the different agencies (State Historic Preservation Office, and Park Service) would approve.

Councilman Dunn said that historical buildings are nice, but if it interferes with good development then we might have to lose it.

Councilman Dunn asked if Mr. Rogers could be reimbursed and the City advise HUD that we have found a better project that will save money. City Attorney Oast said that he would have to investigate reimbursing Mr. Rogers back. He did state, however, that there are restrictions on how federal money can be used.

Vice-Mayor Mumpower asked if there was any concern about the $97.5/sf rental rate for residential units. Mr. Shuford said that the rental rate for both the office space and residential is well within market for our downtown. Larger residential projects have waiting lists and there is very little vacancy in our downtown right now. After researching other parts of downtown and reviewing the numbers with a commercial realtor, he thinks the rent rates for both residential and commercial are fine.

Vice-Mayor Mumpower asked if this area is considered as the core area. Mr. Shuford responded that this is in an area that is in one of the more exciting and vibrant parts of downtown and certainly the effort that is going on to rejuvenate it through the private sector is starting to bring this area back.

Vice-Mayor Mumpower asked if there are any concerns that this has the potential to be seen as federally funded gentrification. He said that we have a rich history and a rich level of activity in that area, but we don't have a history of high-dollar format and this seems like it's high-dollar. Mr. Shuford said that it is always a struggle to figure out who is going to live in the units. We have finally gotten away from who can live in the unit to if they can afford the payments, then they can live in the unit. That is the appropriate way and how it should be. In this particular case, it is the lower end of our rental market rate housing in our downtown.

Councilman Newman said that substantially he thinks this is a good project. For him, voting to support investment and rehabilitating historic buildings in the downtown and to support an infill building on an empty parking lot is easy. But for him, voting for a large subdivision in a mature wooded area is hard. He does think the project will go a long way towards addressing the blighted condition of the neighborhood. His concern has been the scarcity of affordable housing as part of the project. While he realizes that simply addressing the blighted nature of the neighborhood is very valuable in its own right, he is concerned about the overall gentrification that is occurring in the community and in downtown. He lives in a neighborhood now that 10 years ago was considered an unsafe area. Today it is very hard for people to be able to buy a home there. It can happen very fast. He would not support the project if he felt that the affordability issue could be changed significantly for the better, but after talking with the developers and other people who are involved in this project, he thinks that there are significant physical constraints on the ability to do that. We are dealing with historic buildings and it is expensive to renovate old buildings. Even on the infill building where one might think it might be easier to design more affordable units into it, simply by including small units rather than a smaller number of larger units, the cost of the space is there and there are significant constraints on that as well. He is convinced that the developers would like to include more affordable units if it were more physically possible to do that with this project. Regarding the process, he thinks there has been a bad process. In many ways over the last decade there has almost been too much discussion and not enough action going on in terms of substantive revitalization of this area. And then in the last year, there has been a lot more action and not enough community input which is unfortunate. He doesn't want to legitimize a bad process but he also has concerns from a process standpoint about not moving forward. The City has invested a lot of money over many years to revitalize this area. The blighted nature of the Block adds significant costs to our community in a very real sense in terms of the costs that we need to invest in policing of this area and the lost economic opportunities if the area was more productive and vibrant. The City Council has voted to postpone this issue twice to get more input and bring people together and he is concerned if we continue to postpone it, the project could collapse under its own weight. Some people say that the market force will continue to renovate this area and he commends the people who have gone out of their way and been the pioneers by investing in the neighborhood. But, the City has made it a priority to invest in the renovation of this area, EMSDC has purchased buildings, and the Church has purchased buildings, so the reality is that most of the important buildings in this neighborhood are now owned by these entities and if they can't more forward with some kind of renovation then we know that this neighborhood will remain in a blighted condition. For those reasons, he is supportive of moving forward with the project. His remaining concerns deal with the community representation on the Board of the EMSDC and also concerns about retaining the existing businesses that are in the community. He is very concerned when he hears business people who have operated in this area say that they fear they will be left out once the renovations happen. It's not necessary the issue that we are voting on tonight, but those two concerns about board representation and supporting existing businesses will have to be addressed for him to provide any other future support of EMSDC's work in this area. He said that in future phases of the development of the neighborhood he would like to see a very significant component of affordable housing so that we don't have gentrification of this neighborhood. Therefore, he moved that City Council approve a budget amendment, in the amount of $1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Initiative (EDI) grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square. This motion was seconded by Councilman Davis.

Councilman Davis said that he agrees with Councilman Newman. There is a part of him that is almost sick to second the motion because of the process that has gone on. This has been going on for a long period of time and he thinks that in spite of the ill handling of the public involvement early on in this, EMSDC has managed to get a very good developer to the table. They have also managed to bring with them the Enterprise Real Estate which is another good plus for the second or third phases of this project. As a business person, he feels like the

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business community and the private investors have been left out of the process which they should have been considered early on. But, we also have at this point gotten a lot of money at the table and some good plans and, quite frankly, if this falls in, he doesn't see the private sector coming down and spending a lot of money to take this forward to the degree that we have the opportunity to do so now. If we go back through Mr. Murphy's plans, we will be re-inventing the wheel at a late stage, so he is comfortable with moving forward with this now.

Mayor Worley said the one thing he has heard unanimity on is that everybody is for the redevelopment of the Block. We all recognize that the process was not the process that we would desire to see a project like this move forward. The process seemed to pick up a little bit once things surfaced in the fall. There were some meetings in the fall and early winter and even kicked into higher gear over the last week, which is very late in the overall scheme of things. City Council has postponed a decision on this issue at least twice. We have done so each time with some trepidations about what that might mean for the viability of the project in terms of potential or rising interest rates, etc. Today we have received alternatives. They are very preliminary, at best, and they come in very late in the process. There is a wide range of guesswork in the cost and feasibility of those and there is a pretty wide difference of opinion in terms of the feasibility of renovating vs. demolishing at least one component of it. The choice that we are left with is to either approve the EMSDC development or turn it down. If we turn it down, he thinks it will be because of flaws in the process and perhaps the potential for the new alternatives. He doesn't think we can effectively postpone this. If we don't reach a decision tonight, whether we officially turn it down, we will have turned it down. Turning it down at this point will leave us with some very real unknowns in alternatives that are as yet un-designed. They are sketches and concepts but no design or full blown architectural study. It would leave us with unconfirmed costs. Also if we turn it down, we need to consider the $200,000 that has already been spent so far. It is a hard choice. He is convinced that when you weigh the alternatives – where we are at this point in time and the prospects for the future - the only logical choice you can come to is to approve the EMSDC project and move forward. He was very concerned about the process and one of the conditions he would insist on would be that the board representation be changed with EMSDC to be sure that there is full community representation and that process be monitored very closely to be sure that there is full community participation in future decisions relating to the Block. Sometimes you have the participation and a lot of disagreement, but we must have that participation to the fullest extent going forward. He has a lot of confidence in Mr. Rogers, his past experience and his proven track record. When he looks at the alternatives, the pro forma and cost per square foot, he has to rely on those people who have expertise in those areas. He did note that on the figures that Mr. Shuford provided Council on the square footage cost that most of the others who were contacted gave a range and the EMSDC cost per square foot falls within that range, although at the low end. When he weighs all of those things, he comes to the conclusion that we do need to approve this and move on and see some redevelopment occur on the Block.

Councilwoman Jones said that she brought up a lot of issues around organizational capacity a month ago and the EMSCD is on a path to tighten up a lot of the problems that she identified at first glance. She commended the EMSDC Board for working so hard on that. No matter how the vote goes today, that will send them on a road that will make them stronger. She appreciates the optimism of Councilwoman Bellamy but it's important to her to say that she is aware of the things that we are going to lose if we don't approve the project. Money on the table has been identified. She hasn't had problems with David Rogers from the beginning and he has been very helpful and she thinks he would do a great job. We will lose Enterprise Real Estate and that is a huge resource to this community. We will not get the tax credits back. We might have a chance at the EDI. She felt the process does matter. But she does believe that as strong as Councilman Newman's arguments are, that if we have a shot at some of that intent for affordability and to plan out the plan, then she has to vote no for going forward. She understands what we will be giving up and its lose to our community. It is in the community's hands, and she will hold hands with you, to try to see what we can salvage to go forward. This is the hardest vote she has ever cast.

Councilman Dunn said this is one of his hardest decisions as well. To say that we must move on due to the money and studies that have already been presented, when he has heard better ideas, even though they are late, bothers him. He thinks it is a way of rationalization that he can't condone. There was a comment about this being a historical vote. He doesn't think it will change the history of Asheville. Market forces are in place. The Block is coming back. He grew up here and he's seen what it used to be like. This isn't a black or white issue and not one neighborhood against another. To him it involves common sense. When he sees information from staff that says we have this Section 108 money and worse case scenario is that we can pay it back, he felt we are not good stewards with this taxpayer money. It should be dealt with in a very conscientious way. He doesn't see that it is. The Board has worked hard on this but he still has problem with what has gone on in the past. The process has been flawed. Sometimes the best deal you can make is one you walk away from. It troubles him that we are going to lose something big but he sees a re-birth of ideas. He doesn't think this is a lost cause. He can't support something that there are too many uncertainties. He can't believe the pro forma is as good as it is. To say that we are going to use taxpayers money to have a 20% vacancy rate for nine years shows that we are not good stewards of taxpayer's money. That money could be used for other things. He will vote against this. He hoped to reconstitute this Board and move forward in a new direction.

Vice-Mayor Mumpower felt we have a failed planning process. He does think that we have a federally-funded gentrification effort. With that said, he does think a lot of hard work has gone into it with a lot of good minds and well intended people. We have all made our share of errors. When we look at our guiding document, the South Pack Square Redevelopment Plan under goals and objectives, he believes three goals have not been met: No. 4 – To stimulate and nurture small business development and job creation primarily for, but not limited to, the African American Community (he doesn't think this project will do that); No. 5 – to increase property values in the area while at the same time working to ensure the long term affordability of commercial space for small businesses and the long term affordability of housing for low and moderate income residents (he thinks this clearly doesn't do that); and No. 7 – to plan and implement development that is sensitive and responsive to the needs of the people who have traditionally inhabited and conducted business in the area (he doesn't believe this plan does that). Therefore, he will not vote for it.

Councilwoman Bellamy said that when this first came before Council she was optimistic in the future of it. At the last meeting Council had comments from individuals talking about Dr. Martin Luther King's vision, dreams, and goals for our community and for African Americans. Tonight, for her, she feels like we missed it again. This is a hard decision. She has had to ask tough questions. She hates to think that she is letting people down or stopping progress. But she has to stand for what is right. She believes by supporting this project she wouldn't be doing that. She would be legitimizing a process that is exclusive. She'd be saying it's okay to change forms and it is okay not to talk to everyone at the table. She can't do that. She thinks that looking at things as though they could be, even though they are not, isn't a bad thing. She thinks that to add another six months to this process and having everyone at the table isn't a bad thing. She won't support the motion. She will offer other motions moving forward to see some changes.

The motion made by Councilman Newman and seconded by Councilman Davis failed on a 3-4 vote, with Mayor Worley, Councilman Davis and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Dunn and Councilwoman Jones voting "no."

After a brief discussion initiated by Councilwoman Bellamy, it was the consensus of City Council to have staff prepare a report at a worksession on what they are doing regarding a renegotiated contract with EMSDC and then give staff further direction.

V. NEW BUSINESS:

A. RESOLUTION NO. 04-52 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Mumpower said that this is the consideration of appointing alternate members to the Board of Adjustment.

The terms of Headlee Howard (Alternate) and Patricia Grant (Alternate) expired on January 21, 2004. In addition, there is a vacancy left by Steven Sizemore (Alternate) until January 21, 2005.

At City Council's worksession on January 20, 2004, City Council instructed the City Clerk to re-advertise for these vacancies.

On February 17, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for John Kiser, Jane Mathews, Lee McElrath, Michael Anders and David Brown. John Kiser has moved out of the City and would not attend the interview.

Jane Mathews received 3 votes; Lee McElrath received 7 votes, Michael Anders received 7 votes, and David Brown received 4 votes. Therefore, Lee McElrath and Michael Anders were appointed as Alternate members to the Board of Adjustment to each serve a three year term respectively, terms to expire January 21, 2007, or until their successors have been appointed. In addition, David Brown was approved as an Alternate member to serve the unexpired term of Mr. Sizemore, term to expire January 21, 2005, or until his successor has been appointed.

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B. RESOLUTION NO. 04-53 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Mumpower said that Ray Sanow has resigned as a member of the Asheville Film Commission, thus leaving a vacancy on the Commission until November 1, 2006. In addition, Gail Wurthner has resigned from the Commission, thus leaving another unexpired term until November 1, 2004.

At City Council's worksession on February 17, 2004, City Council instructed the City Clerk to arrange interviews for Lillian Alexander, Matthew Marquis, David Schulman, Jim Lawrence and Jon Menick. Mr. Menick had a prior commitment and could not be able to attend the interview.

It was the consensus of Council to appoint Jim Lawrence as a member to the Asheville Film Commission, to serve the unexpired term of Mr. Sanow, term to expire November 1, 2006, or until his successor has been appointed. In addition, David Schulman was appointed as a member to the Asheville Film Commission, to serve the unexpired term of Ms. Wurthner, term to expire November 1, 2004, or until his successor has been appointed.

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VI. OTHER BUSINESS:

Asheville Community Resource Center

Upon inquiry of Councilwoman Bellamy, Mayor Worley said that City Council has received correspondence about the Asheville Community Resource Center and the Asheville Free School losing their lease at 63 N. Lexington Avenue. He advised Council that the landlord is terminating their leases and the City of Asheville, regretfully, has no ability or authority to do anything regarding that.

Claims

The following claims were received by the City of Asheville during the period of January 30-February 13, 2004: Cheryl Singles (Water), Jim Lowe (Water), CP&L (Water), Mark Morales (Water) and Janet McPherson (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English was opposed to the City's public access television station.

Mr. Don Yelton presented City Council with information off of the URTV's (public access television station) website which one day read "You can make a show about anything that you want, and no one can legally censor it unless it breaks federal laws." He then presented Council with a copy of the information off the website the following day that has that language deleted. He expressed his concern about this station and material that would be shown on it.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:04 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

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Tuesday – March 9, 2004 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson
Absent:	None

PLEDGE OF ALLEGIANCE

Ms. Ann Deweese, retiree from the U.S. Army Air Corp, led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 24, 2004

B. RESOLUTION NO. 04-54 - RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO CANCEL THE MARCH 30, 2004, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 28 – PAGE 152

C. RESOLUTION NO. 04-55 - RESOLUTION ACCEPTING MYRA PLACE AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Myra Place in Maple Grove Subdivision off East Starnes Cove Road in west Asheville as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Myra Place is a developer-constructed street with an average paved width of 20 feet. The street is approximately 0.09 miles in length and ends with a cul-de-sac. Engineering Department staff inspected this street finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Myra Place will be added to the official Powell Bill list. A two-year warranty, from the date of City Council's acceptance, will be required by the developer to cover major failures in the roadway.

Staff requests City Council adopt the resolution accepting Myra Place as a City maintained street.

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D. RESOLUTION NO. 04-56 - RESOLUTION SETTING A PUBLIC HEARING ON APRIL 13, 2004, TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 86 CRAYTON ROAD BE DEMOLISHED

Summary: The consideration of a resolution setting a public hearing on April 13, 2004, to consider adoption of an ordinance ordering demolition of 86 Crayton Road.

The dwelling at 86 Crayton Road is a small wooden dwelling containing approximately 450 square feet with missing windows, doors and a porch that is caving in upon itself. The property owner, D.P.S. Properties, a North Carolina General Partnership, has failed and refused to demolish the dwelling in compliance with the Order entered by the Code Enforcement Officer (CEO).

A Complaint and Notice of Hearing was issued on the 17th day of December 2002. A hearing was held on January 8, 2003. Following the hearing, a Findings of Fact and Order was entered and served on the owner. The owner agreed to demolish the dwelling by July 1, 2003, but failed to do so. To date, no corrective action has been taken by the owner and the dwelling continues to remain a safety hazard, at times open and accessible to the public and unfit for human habitation.

The Housing Code requires adoption of an Ordinance ordering a dwelling demolished before the CEO may proceed with demolition. The fair market value of the dwelling according to the Buncombe County Tax Records is $13,600; the estimated cost to make the dwelling compliant with the Code is from $15,000-$20,000. Affordable housing agencies were notified. Staff plans to utilize Community Development Block Grant funds for demolition.

Advantages of the demolition include:

- Improve the appearance of the neighborhood (remove blight)
- Prevent vagrants and vandals from occupying the dwelling
- Prevent neighborhood children from playing in the dwelling and reduce the risk of injury
- Remove the safety and fire hazard

Disadvantages of Demolition include:

- Demolition of a dwelling that has potential for rehabilitation
- Utilizes public funds to eliminate a private nuisance

City staff recommends adoption of the resolution setting a public hearing on April 13, 2004, to consider an ordinance ordering that the property located at 86 Crayton Road be demolished.

RESOLUTION BOOK NO. 28 – PAGE 154

E. RESOLUTION NO. 04-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HOBSON CONSTRUCTION CO. INC. FOR THE PROJECT KNOWN AS 2002 ANNEXATION AREAS SEWER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Hobson Construction Company, Inc., in the amount of $110,700, for the 2002 Annexation Areas Sewer System Improvements Project.

This project consists of the installation of approximately 870 linear feet of eight-inch diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three bids on Thursday, February 5, 2004, at 2:30 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Hobson Construction Company, Inc., was found to be the lowest responsible bidder with a total bid of $110,700.

The project will be financed with monies from Capital Improvements Fund.

Hobson Construction Company, Inc., has performed several projects of this nature in the past in a satisfactory manner.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

The advantages and disadvantages of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City to proceed with meeting the requirements for sanitary sewer system improvements, as established in the 2002 Annexation Areas Plan of Services;
- The bid amount of $110,700 for the construction of the 2002 Annexation Areas Sewer System Improvements Project is equitable, as compared to recent construction projects of the same nature;
- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary land disturbance along the proposed sanitary sewer construction corridor.

Staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with Hobson Construction Company, Inc., in the amount of $110,700, for the 2002 Annexation Areas Sewer System Improvements Project.

RESOLUTION BOOK NO. 28 – PAGE 156

F. RESOLUTION NO. 04-58 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH APAC-ATLANTIC, INC., FOR THE PROJECT KNOWN AS CONTRACTED PAVING 2003-04

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with APAC-Atlantic, Inc., Asheville Division, in the amount of $300,025.25, for the project known as Contracted Paving 2003-2004.

The City annually allocates monies to rehabilitate city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff assessed several streets listed on the ITRE report and chose seventeen streets to be resurfaced based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department developed construction plans, documents and specifications for resurfacing Country Club Lane, Herron Avenue, North View Street, Quarry

Road, Vineyard Place, Lucky Lane, Fernbrook Place, Pine Meadows Road, Pine Meadows Drive, Hillcrest Road, Oak Hill Road, Eastview Avenue, Peace Street, Digges Road, Redfern Street, Balsam Avenue, and Clayton Street.

The project was advertised on January 4, 2004. The Engineering Department received bids on Thursday, February 5, 2004. Only one bid was received at this bid opening. The project was re-advertised on February 15, 2004. The Engineering Department held a second bid opening on Tuesday, February 24, 2004. One bid was received and opened. The single bid received was from APAC-Atlantic, Inc., Asheville Division in the amount of $300,025.25.

Money for this resurfacing (paving) contract is currently budgeted in the Public Works Department's operating budget.

The construction time for this project is identified as 120 calendar days in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

The advantages and disadvantages of adopting this resolution are as follows:

- The execution of this contract will allow the City to proceed with rehabilitation of paving surfaces on several City streets that have been identified as needing repair, thus providing a new riding surface for the convenience of all riders;
- Based upon the engineer's estimate for this project of $305,582.00, staff believes the bid submitted by APAC is reasonable. Furthermore, the bid was deemed responsive pursuant the analyses performed by the Office of Minority Affairs.
- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is the temporary inconvenience to City residents that reside within or in the adjacent areas where construction is to take place.

City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with APAC-Atlantic, Inc., Asheville Division in the amount of $ 300,025.25 for the project known as Contracted Paving 2003-2004.

RESOLUTION BOOK NO. 28 – PAGE 157

G. ORDINANCE NO. 3091 – SECOND READING OF AN ORDINANCE GRANTING A FRANCHISE TO DUKENET COMMUNICATIONS, LLC, PURSUANT TO THE CITY'S TELECOMMUNICATIONS ORDINANCE

Summary: The first reading of this ordinance was on February 24, 2004. Because this is a franchise, it requires two separate readings.

ORDINANCE BOOK NO. 21 – PAGE [illegible] 60

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

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A. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED ON COURTLAND AVENUE (FLYNN HOMES) FOR A GROUP HOME DEVELOPMENT OF RESIDENTIAL BUILDINGS AND LIMITED OFFICE

ORDINANCE NO. 3095 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON COURTLAND AVENUE (FLYNN HOMES)

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:07 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of the issuance of a conditional use permit for property located on Courtland Avenue and Houston Street (Flynn Homes) for a group home development of residential buildings and limited office.

The applicant, Flynn Christian Home, is requesting a Conditional Use Permit for a 3.82 acre parcel to allow for the operation of a group home in a RS-8 Residential Single Family High Density District (Attachment to City Exhibit 3 – Block Aerial). The group home will consist of three separate buildings, along with nine required off-street parking spaces, bicycle racks, sidewalks, and landscaping as required by the Unified Development Ordinance (UDO). As a result of discussions with the neighborhood and City staff, the following are changes to the site plan (City Exhibit 4 – Alternate Site Plan). The site plan addresses in part one of the issues that had to do with driveways. Originally the site plan had one large 24-foot wide drive that led to a single large parking area. The revision shows two separate driveways. We are, however, looking at providing three separate driveways at the request of the neighborhood to help the residences appear to be more single-family in style. Also, the parking areas will be separated. There will be individual parking areas behind the buildings with their own individual drive, pursuant to the City's Traffic Engineer. Another site plan revision, still being worked out, deals with the landscape buffer requirements. There is concern from some of the residents about the unnatural appearance of the buffer but still need screening. The neighborhood wants something that blends with the existing wooded lot and with the existing neighborhood. Staff is willing to contemplate an alternative compliance that will help create the screen necessary but group and mass the plants in a more natural configuration.

The group home itself will consist of three separate buildings. The first building is described as an administrative building with limited office space and three residential units for full-time, live-in staff (Building A in City Exhibit 4). The other two buildings are reserved for residents of the group home with the first of the two additional buildings housing up to 8 residents while retaining the lower level as a common area/kitchen space. The second residential building will house up to 16 residents with a common living room on the first floor. The two resident buildings will share the kitchen and larger gathering area in Building A, operating together as a single unit. This single unit, when combined with the individual residences of the full time staff, will total 4 dwelling units. All three buildings will be modular two story construction on block foundations and will be single family in style and operation.

In addition to the 3 residential structures, the preliminary concept plan (Attachment to City Exhibit 3 – Preliminary Concept Plan) showed 14 off-street parking spaces to be provided behind the buildings and screened from view with existing vegetation. This vegetation will be supplemented as required by the landscape ordinance to meet the 15' type 'A' landscape buffer standards. The project also requires sidewalk along all road frontage, bicycle parking, parking lot landscaping, street trees, and architectural standards to ensure the compatibility with adjacent homes in the area. This permit will also restrict the number of beds for the two resident buildings not to exceed 24 in total.

The project site is located within the City limits and is surrounded on three sides by single family homes all zoned RS-8 while the western property line borders unzoned right-of-way for Highways19/23/70. The subject property is a through lot with frontage on both Courtland Avenue and Houston Street with access for the home to be located off of Courtland Avenue. The three proposed structures and parking area are concentrated on the most topographically accommodating portion of the site with the areas of more extreme topography to be undisturbed.

As part of the special requirements applied to group homes as a conditional use in the RS-8 zoning districts per Ordinance No. 3052, the project must meet several conditions for group homes. Staff's review of this project finds that the proposed use does meet all the group development standards as well as the seven conditional use standards. The following are the standards for group homes:

a. Separation requirement: Group homes containing more than eight residents shall be separated from other group homes in RS-8 by a distance of 600 feet as measured from the closest property line of each property containing a group home.
There is well over 600 feet of separation between the proposed site and the next nearest group home (City Exhibit 5 – Digital Survey of the Properties within the 600 foot radius)

b. Parking shall be located in the rear and shall be screened with vegetation from adjacent single family uses. The vegetative screening shall consist of the planting required for a Type A buffer or its equivalent as determined through the alternative landscape compliance process.
Parking is located in the rear and will be screened from view through preservation of existing vegetation (City Exhibit 4), additional landscaping as required for a Type A buffer, and existing topography.

c. It is the intent of these standards to ensure that group home structures resemble other residential structures in the neighborhoods where they are to be located. Pursuant to this intent, a group home structure shall be architecturally compatible with residential structures in the area in which it is to be constructed. Architectural compatibility shall be determined based upon compliance with the following standards:

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The structure shall be oriented on the lot in a manner similar to the residential structures on both sides of the street on the block on which it is to be constructed.
The proposed structures are oriented to the street in a manner very similar to those residences on Courtland Ave. Homes located on the north side of Courtland are oriented towards Courtland Place.

In the RS-8 district, the structure shall have a single front entrance and any other entrances as required under various codes shall be located on the side(s) or rear of the structure.
All three proposed modular structures will be altered to have a single front entrance with other entrances located to the sides or rear.

The height of the structure shall be no more than four feet taller than the height of the tallest residential structure located on the side of the street on the block on which the proposed use is to be constructed.
The proposed structures are two-story and will not be more than four feet taller than the height of the tallest residential structure located on the same side of the street.

The roof design, pitch and materials proposed for the structure shall be similar to the roof design, pitch and materials of the residential structures on both sides of the street on the block on which it is to be constructed.
The roof design, pitch and materials proposed will be similar to those of the existing residential structures on the block.

A front porch shall be provided on the proposed structure if a majority of the residential structures on both sides of the street on the block on which the new structure is proposed have front porches.
Front porches are proposed for all three structures to reflect those of the majority of the homes on the block and in the neighborhood.

The front yard depth for the proposed structure shall be not less than the average front yard depth for the residential structures on the same side of the street on the block on which the new construction is proposed.
The front yard depth is not greater than the average front yard depth for the residential structures on the same side of the block.

In RS-8 districts, the floor area of the group home structure shall not be more than 150% larger than the average floor area of single family residential structures in the same block.
The proposed structures have an approximate floor area of 1,500 s.f. which does not appear to be more than 150% larger than the average on the block.

d. It is the intent of this section that group home uses will be located in areas where employment, goods, and services can readily be reached by a variety of means of transportation. Transit, a sidewalk network, and/or close proximity to employment, goods, and services shall be required for approval of a conditional use permit for a group home unless the intended residents of the group home do not require this service.
Although this stretch of Courtland Avenue is not presently served by sidewalks, the proposed location is in a neighborhood that has an extensive sidewalk network and is in close proximity to employment centers, goods, and services. In addition to being able to utilize the sidewalk network, public transit is available nearby with a bus stop located near the intersection of Courtland and Montford Avenue with short bus rides to other major employment areas in the City.

e. The group home structure(s) and the site on which it is located shall be maintained in accordance with standards established by applicable local and state regulations, including, but not limited to, the City of Asheville Minimum Housing Code. The City Council may require the submittal and implementation of a specific maintenance plan in order to ensure proper maintenance of the property in accordance with this provision. **The proposed structures will meet the City of Asheville minimum housing code regulations and will be within standards of development practice set forth by the City of Asheville and other governmental units.**

At their February 16, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use permit and made a positive recommendation that the project be forwarded to City Council stipulating the condition that a revised site plan addressing minor site plan changes be submitted prior to final approval. If approved by City Council, this project must return to TRC for a more detailed review. Review by the Planning and Zoning Commission is not required for this application.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety. In addition, the proposed development meets the definition of a group home as defined in Ordinance No. 3052(g): "Group home means a residential home provided by an agency, organization or individual for persons who need sheltered living conditions for rehabilitation, but not including mentally ill persons who are dangerous to others as defined in N.C. Gen. Stat. sec.122C-3(11)b (or its successor)." Residents of the home have gone through treatment, are not charged with any crime, and are not considered a threat to the public.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The three proposed structures and their parking areas have been sited in the most buildable portion of the site where existing grades don't exceed 3% in order to minimize grading and other land disturbing. The remainder of the 3.82 acre site's topography forms a ravine with side slopes ranging from approximately 15-75% grades. The side slopes are stable with existing natural vegetation to be preserved along with the vegetation around the periphery of the property to help buffer neighboring properties.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
Historically, the Flynn Christian Home has operated without incident in the Montford neighborhood for over 40 years. The property has been well maintained and has not had an adverse impact on property values in their current location

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where property values have increased dramatically in the last decade. The proposed residential structures are to be single family style structures intended to blend in with the surrounding properties and are not expected to injure property values of adjoining or abutting properties.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located. **The surrounding properties are made up of single family homes and duplexes of various sizes and architectural styles. The proposed homes are to be single family in style, varying somewhat in architectural form from one another, helping them to blend into the character of the existing eclectic neighborhood (City Exhibits 6, 7 and 8). The applicant is exploring options with City Staff, the City's Historic Resources Commission Director, and the neighborhood on additional facade and material alterations to further enhance the structures along with minor site changes to reduce the coverage of the parking area. In addition, the proposed group home meets the architectural standards necessary for group homes in an RS-8 zoning district.**

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City. **The Asheville City Development Plan 2025 describes the need to accommodate and encourage infill housing for a larger proportion of the region's population in areas where existing infrastructure can support new development. This is further supported by City Council's adoption of 'Smart Growth Definition and Policies' in 2000. In addition, this proposal is supported by the City of Asheville's Consolidated Housing and Community Development Plan 2000-2005 which calls for the need to develop affordable housing for low income people with special needs, including those individuals who are recovering from substance abuse.**

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. **The proposed development is located near transportation facilities and other utilities appear adequate. The project area is located within walking distance of downtown, near major road facilities, interstate connections and very near the route 11 bus line that serves Montford. Preliminary review by other utility providers has not revealed any problems for serving the development.**

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard. **The proposed development will not substantially increase the number of cars operating on Courtland Avenue or Houston Street. Most residents of the Flynn Christian Home will be using alternative modes of transportation and off-street parking will be limited to 9 parking spaces for all four residential units. Courtland Avenue and Houston Street are both somewhat narrow and winding; however, the City of Asheville's Traffic Engineer has examined the roads and does not expect the vehicular traffic from the proposed development to significantly impact traffic on either street.**

Approval of this project will allow for the continued operation and expansion of a highly successful, non-profit group home that has provided an extremely valuable service to the larger Asheville community. In addition to supporting this service, the proposed development will meet City of Asheville Smart Growth and other land use goals by encouraging infill development while providing for an alternative housing option for a protected class of citizens in a supportive and well connected neighborhood.

Pros:

1. Allows for the relocation and expansion of a valuable group home in the same neighborhood in which it has operated for over 40 years.
2. Provides valuable housing option for a protected class of citizens.
3. Allows for the development of an appropriate infill project where existing infrastructure can be utilized.
4. Home will be located in excellent proximity to employment, services, goods, and transportation options.
5. Additional sidewalk will be provided in neighborhood.
6. Master Plan will ensure the preservation of open space and much of the existing vegetation.

Cons:

1. The current design of the homes may not match the historic character of the surrounding community.
2. Lose potential for single family home subdivision similar to existing development in the area.

City staff recommends approval of the project with the condition that the applicant meet all the outstanding TRC conditions.

Mr. Harry Giezentanner, Chairman of the Board of Flynn Christian Homes, said that including himself there are two general contractors on the Board. The Board has created a building committee that includes both contractors to develop and build this project. The committee will oversee the development and be responsible for all payables with regard to the project. We will obtain competitive bids for each part of the development. No board member will personally gain any financial consideration for the entire project. He explained that the Flynn Home has been located in the Montford community for 42 years and has always been a good neighbor. The buildings they propose to construct will be assets to the community and the City. They mailed out 63 invitations for their neighborhood meeting and only six members of the community attended. After discussing the plan, there were concerns as to how their project would fit into the neighborhood. They propose to make the buildings totally different in appearance and will build separate driveways from the streets to the parking in the rear. In addition, they had added a buffer along the rear portion of the lot to shield the view of Houston Street. The property is not in the historical district, but they intend to follow some of the guidelines of the Historic Resources Commission (HRC). All handrails and porch details will follow their guidelines. They will ask for assistance from the HRC Director to implement as many of the guidelines as affordable for their project. A concern of a neighbor is the curb-service drug dealing activity on the lower end of Courtland and Houston. He assured Council that with the help and cooperation of the Asheville Police Department they will eliminate this activity at this location. He said this is an excellent location for our home and it is located on a bus route. Being a builder and developer of affordable homes in Asheville, he assured Council that this site is not suitable for single-family homes. With the demand for buildable lots in the City to develop, if this was the case, this land would have long been gone. (Applicant Exhibits 1 and 2 – Photos of Adjoining Homes)

Upon inquiry of Councilman Newman, Mr. Giezentanner said the site is not appropriate for single-family homes because less than ¾ of the 3.8 acres is buildable due to the topography.

The following individuals spoke in favor of a conditional use permit for several reasons, some being, but are not limited to: they have been in existence for 42 years and they haven't

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received any negative press; they have funds to build a nice facility; construction will go quickly because they will be using modular construction; they will blend into the neighborhood; people will be in that area whether the homes are there or not; personal testimonies of how the Flynn Home helps people; existing property is always clean; no disruptions from residents at Flynn Home; the Flynn Home residents are good neighbors and are part of the solutions, not the problems; and problems in the neighborhood were worse before Flynn Homes was built:

Mr. John Gustafson, General Contractor and Board member of Flynn Christian Homes
Mr. Alan Ditmore, Leicester resident
Mr. David Nesbitt, former Flynn Home resident
Mr. Bobby Miller, former Flynn Home resident
Mr. Keith Levy, 28 Woodlawn Avenue
Mr. Shawn Miller, former Flynn Home resident
Mr. Fred English, Haw Creek resident
Mr. Grant Millin, Oteen resident
Mr. Michael Robbins, Manager of Flynn Christian Homes
Mr. Gerald Green, 150 Cumberland Avenue

The following individuals spoke against issuance of a conditional use permit for several reasons, some being, but are not limited to: the area is already infested with drug sellers and drug users and if the Flynn Home is trying to help people, they shouldn't put them so close to the illegal activity; drug activity is coming from Hillcrest and Klondyke right though that area; Courtland Avenue is a narrow road; back in March of 2003, a Mountain Xpress article quoted Executive Director Laurie Tollman saying that "we do not admit sex or violent offenders", however, a search of the N.C. Sex Offender & Public Protection Registry revealed that a sexual offender's address was "182 Cumberlin Ave., Asheville, N.C. (the existing Flynn Home address); safety of area residents is a major concern if the Flynn Home allows registered sex offenders to live there; the project does not fit into the residential character of the neighborhood; petition containing 79 names circulated which reads ""We do not agree with this rehabilitation facility, group home, building larger-scale modular homes in our community that we are working everyday to rise from its existing challenges;" homes and vehicles are being broken into; William Randolph Disciplinary School, a detox and recovery home on Pearson Drive, Klondyke Apartments and Hillcrest Apartments are already located in area; fear for safety of 39 single people living on Courtland Avenue, Houston Street and Courtland Place; density is too high in that area already; safety for people in the neighborhood from those people who are kicked out of the Flynn Home for alcohol, drug abuse or mental illness; concern there is no staff living in the resident buildings which will be like a frat house; odd that they are building a $700,000 project to increase their bed size by only 8; residents of area would prefer a 4-bedroom home built; this is more of a facility than a group home; moving people from a home into a treatment-like facility is not an enhancement; crime in area will increase; safety of children in the two elementary schools in the area; existing lack of timely response when calls are made to the Police Department; the project will increase traffic on the lower end of Courtland Avenue; need for a red light at intersection of Montford Avenue and Courtland Avenue; need for sidewalks starting on Houston, Courtland and Pearson Drive; loud boom-boxes are heard in cars already; marketability of homes will decrease; need for traffic control on Courtland Avenue; prostitution in area; the Flynn Home's property was purchased at a much lower price than other property in the area; there is no such thing as an unbuildable lot; this is a business moving into a residential neighborhood; what are qualifications of the staff to deal with the residents that have substance abuse problems; screening concerns; and one of the structures doesn't have a kitchen so it's not a home:

Mr. Clarence Benton, 184 Courtland Place
Mr. Brendan Merithew, 103 Houston Street (Neighborhood Exhibits 1 and 2)
Mr. Rod Phillips, 125 Courtland Avenue
Ms. Marita Bennett, 196 Courtland Place (Neighborhood Exhibit 3)

Recent resident in Montford
Mr. Bryan Kenrich, resident on Houston Street (Neighborhood Exhibit 4)
Resident on Houston Street
Ms. Heather Smith, 10 Houston Street
Mr. Barry Trahan, resident on Courtland Place
Resident at 68 Courtland Avenue
Ms. Nora Valentine, 131 Courtland Avenue
Ms. Lauri Nichols, 146 Courtland Avenue
Ms. Marsha Shutz, 51 Houston Street
Mr. Barry Nichols, 146 Courtland Avenue
Ms. Kathryn Temple, area resident

Ms. Laurie Tollman, Executive Director of Flynn Christian Fellowship Homes, said the definition of a group home defined in the N. C. Gen. Statutes is "Group home means a residential home provided by an agency, organization or individual for persons who need sheltered living conditions for rehabilitation, but not including mentally ill persons who are dangerous to others." They do not admit persons who would be considered dangerous to others. Regarding the convicted sex offender who is registered living at their current address, she explained how that was an extenuating circumstance. She reviewed the details with Council on how the registered sex offender was allowed to live at their facility. That person is no longer at their facility. She then explained how she reviews each applicant on a case-by-case basis. Since that issue has come up, their Admission Policy (Applicant Exhibit 3) has been amended to deny admission to anyone who has a sexual offense conviction on their criminal record. If that case comes up in the future, they will not be allowed to live in their facility.

Upon inquiry of Councilman Dunn, Ms. Tollman explained the application and interview process of how people are referred to the Flynn Home. She said that they would not admit anyone who would be potentially dangerous, like a violent sex offender. If someone said they had been convicted or had charges pending, she personally would not feel comfortable in admitting them. However, she looks at each individual person on a case-by-case basis as far as the type of criminal activity.

There was a brief discussion on what type of offenses a person would be kicked out or denied admission.

Upon inquiry of Councilwoman Jones, Ms. Tollman said that they have a zero drug and alcohol tolerance policy. They conduct random drug and alcohol tests on a monthly basis. If anyone tests positive, they are immediately discharged. If someone comes into the home with alcohol on their breath, they are tested.

Councilwoman Bellamy asked what are some of the other instances where someone would be evicted. Ms. Tollman said if someone is not working and doesn't pay their rent, if they engage in disruptive behavior (which is often disrespect to staff), non-compliant with the rules, if they come in late for curfew, constantly arguing with staff about the rules, and other instances set out in the Admissions Policy (Applicant Exhibit 3).

Upon inquiry of Councilman Davis, Ms. Tollman said that there will be a staff person living in one of the two buildings assigned for resident quarters. However, there will be staff on the premises 24 hours a day.

Councilman Davis felt the admission of the sex offender to the Flynn Home seemed like it was an arbitrary decision on the part of the Executive Director. Ms. Tollman replied that she would not do that again, even if there are extenuating circumstances. She would abide strictly by the Admission Policy.

Discussion, initiated by Councilman Dunn, centered around the admission of people that have mental illnesses. Ms. Tollman said that if their primary diagnosis is substance abuse they can be admitted. If mental illness is their primary diagnosis, they will not be admitted because their facility is not equipped to handle that.

Upon inquiry of Councilman Newman, Ms. Tollman said the average length of stay in the Flynn Home is 3-4 months, but they can stay up to two years.

When Councilman Davis inquired who approves admission, Ms. Tollman said that she and her manager review the applications and conduct the interviews.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that she talked to Lieutenant Benson, patrolling officer for this neighborhood, and asked for a call history over the past year. She said that there were no disruptive instances reported from the Home within that last year. She then called the crime analysis division that can research further back. There were a variety of calls – a couple disruptive calls, one of which was a resident of Flynn Home was being harassed on someone on the street. There also were calls about intoxicated individuals on the premises, reported by the Home itself. Also, some EMS calls. In the course of 6 years, there were only 3 calls for intoxicated people and 3 calls for disruptive.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tollman said that approximately 20 people have been kicked out for rule violations. She said that they currently house about 9 or 10 residents. She also said that she would feel comfortable staying there herself.

Mayor Worley closed the public hearing at 6:56 p.m.

Upon inquiry of Councilman Newman about the building designs, Ms. Tuch said that the HRC Director has already been consulted and the applicant has agreed to build, where appropriate, to HRC standards even though they are not required to do so.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch explained how the block was determined to come up with the average square feet of the homes (City Exhibit 9).

When Vice-Mayor Mumpower asked about sidewalk construction plans, Ms. Tuch said that this particular site will be required sidewalks from the edge of the third building forward, along their frontage on Courtland Avenue. The City's Traffic Engineer has granted them "a fee in lieu of" for the remainder of the area since it is not part of where the buildings are fronting. She was not familiar with any other sidewalk improvements for the remainder of Courtland Avenue.

Upon inquiry of Vice-Mayor Mumpower, Field Services Coordinator Ed Vess said that this property has been discussed if anyone approaches him looking for that size of City-owned land. This property was a landfill area. There have been some test borings done and there is organic material in there. The Flynn Home is aware of those problems. The property can be built on, but it will be a little more expensive.

When Vice-Mayor Mumpower asked if they could expand on this site, Ms. Tuch said they could not expand under this permit. She said they could come back in the future and try to amend the permit but they would have go through the entire conditional use permit process again.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that our existing guidelines do not limit the number of buildings that can be considered a group home. She said that one of the reasons the Flynn Home is taking the approach they are about having separate buildings is to try to prevent the construction of a large institutional-like looking building.

Councilman Newman asked if there are other group homes in Asheville similar to this. Ms. Tuch said that she is not aware of any but sometimes it's difficult to discern group homes from other structures. She said the Planning Department does not keep records of where group homes are located.

Upon inquiry of Councilwoman Bellamy, Mr. Giezentanner said that the existing structure will be put on the market for sale. He said the Board assures that the Admissions Policy will be followed.

When Councilman Davis asked if there were any plans to add staff, Mr. Giezentanner said that he was not aware of any additional staff to be hired.

Upon inquiry of Councilwoman Jones, Ms. Tollman said they would be open to explore a staff person to reside in each of the residential buildings.

Ms. Tollman responded to Councilman Dunn on why the Flynn Home was not interested in building a large 3-4 bedroom home to house the additional people.

Regarding a question from Councilwoman Jones about traffic calming on Courtland Avenue, Ms. Tuch said that the City's Traffic Engineer is not concerned about the increase of traffic. However, regarding traffic calming, the City would have to weigh that street against the other streets in the City.

Councilwoman Bellamy asked if it would be possible to limit right turns out of the development. Ms. Tuch said that this project will have to return to TRC for final approval and if these are Council's concerns, we can incorporate that into the conditions to be examined by the Traffic Engineer.

Upon inquiry of Councilman Dunn regarding other facilities in the area, Ms. Tuch said that there is the Asheville-Buncombe Community Christian Ministry on Cumberland (not a group home); a counseling treatment facility on or near Pearson; and a battered women and children shelter on the far end of Hillside Street.

Responding to Councilwoman Bellamy, Ms. Tollman explained that after City Council denied their request for a conditional use permit at another location a lady called and said there was some property in Montford that they might be interested in investigating. She said they have not bought the property yet.

Councilman Newman said that he lives off Courtland Avenue and would never do anything that he thought would be a genuine safety problem. He believed the testimony that the Flynn Home has an effective history of taking responsibility of doing business in our community. He used to live closer to the Flynn Home on Montford Avenue and didn't even know the house was a group home showing that they have operated very harmoniously in our community. People have made a convincing case that we have problems with drug activity in this neighborhood, but the Flynn Home doesn't have anything to do with that or that it would make that situation worse. He walks in this area very frequently and feels that having development on this site will be a positive thing in terms of addressing drug dealing or other kinds of criminal activity in that area. The area is now isolated and having development will contribute to the safety of the street and larger neighborhood. He thinks that the project does fit in pretty well with the neighborhood. As the City looks at addressing homelessness in our community, organizations like the Flynn Home fill a very important part of work we will have to do to address the problem of homelessness and related conditions. As a neighborhood resident and as a City Council member who thinks the Flynn Home has followed the standards for a good project, he moved to approve the conditional use permit subject to (1) the applicant meeting all outstanding TRC conditions; and (2) that the

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Flynn Home be prohibited from having on their property the presence of any clients who has a conviction of some sort of sexual offense on their record. This motion was seconded by Councilwoman Jones.

City Attorney Oast reminded Council that this is not a referendum on the Flynn Home or the work they do, although the work they do is relevant to Council's consideration. If it is important to Council that the Flynn Home be the entity that operates this group home, the fact that the City owns the property gives us an opportunity to deed restrict it and make the conditions even more binding than the conditional use permit.

Councilwoman Jones asked if Councilman Newman would be consider amending his motion to include the following additional conditions: (1) that for each building that has living quarters that there be staff presence in the buildings; and (2) that our Engineering staff work with the developer to look at some speed bumps in those problematic areas.

Councilman Newman agreed with the two additional conditions suggested by Councilwoman Jones.

Councilwoman Bellamy asked for a condition that the Traffic Engineer look at the site plan to see if it is feasible to limit right turns from the development.

City Attorney Oast suggested that since issues have been raised issues about traffic and traffic calming measures, perhaps the condition should be that the Traffic Engineer consider additional traffic calming measures during the technical review process, to include limiting right turns out of the development and speed bumps.

Councilman Dunn said that the first condition of the conditional use permit is that the development will not endanger public heath or safety. If the conditional use permit passes and we start having problems with health and safety, does the City have any recourse? City Attorney Oast suggested that Council direct him to make the conditional use permit part of the deed to the Flynn Home (or whoever is the entity that owns it) and that gives the City more enforceability. However, even if the language is not incorporated in the deed, it is in the conditional use permit and we can invoke proceedings to revoke the permit if a condition is violated. Councilman Dunn suggested that the conditional use permit be incorporated as part of the deed.

Councilman Davis is familiar with the Flynn Home and it's good work for the community. He was concerned that the neighborhood has voiced a lot of concern over illegal activity in the area, but the Flynn Home has nothing to do with that. He would be supporting the conditional use permit.

Councilwoman Bellamy said that Council needs to address the issues at are occurring in the neighborhood outside of the Flynn Home, e.g., traffic congestion, street maintenance, etc.

Councilwoman Newman felt the City should institute some process of when a group home is created in our community that they have to fill out some type of permit so we know where the group homes are. They can fit in great, but we don't want one or two neighborhoods to disproportionately have to bear the weight of these types of facilities. Councilwoman Bellamy said her only concern about that was the listing of addresses for domestic violence shelters.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tollman said that a staff member in both buildings would not have a lot of impact to their organization.

Councilman Dunn asked if the neighborhood finds that the Flynn Home is out of compliance with the standards of the conditional use permit, can they bring suit against the City.

City Attorney Oast said that normally the City gets complaints and then they investigate them. If appropriate, the City then takes Code enforcement action. It would be possible for nearby property owners to take action on their own to get the City to take action or could sue the operator of the property directly.

Vice-Mayor Mumpower said that this project does appear to meet UDO requirements. The most compelling argument was the issue of a group home(s) vs. a group facility. The developer has made a good effort to make it the three homes work in the neighborhood but that is a large footprint. He felt this neighborhood does not have adequate police protection. In addition, Asheville does not adequately fight our drug problems in the City. But, he doesn't hear that Flynn Home has a high probability to make things worse. There is even the possibility that having more "eyeballs" on the community makes the community safer.

Councilman Newman and Councilwoman Jones each agreed to include in their original motion (and second) to approve the conditional use permit subject to the following conditions: (1) the applicant meeting all outstanding TRC conditions; (2) that the Flynn Home be prohibited from having on their property the presence of any clients who has a conviction of some sort of sexual offense on their record; (3) that for each building that has living quarters that there be staff presence in the buildings; and (4) the Traffic Engineer consider additional traffic calming measures during the technical review process, to include limiting right turns out of the development and speed bumps (noting this would be an evaluation by staff with the final decision being made according to technical criteria).

Councilman Dunn moved to amend the original motion to direct the City Attorney to incorporate the conditions of the conditional use permit into the deed to the Flynn Home (or whoever is the entity that owns it). This motion was seconded by Vice-Mayor Mumpower and carried on a 6-1 vote, with Mayor Worley voting "no."

The amended motion carried unanimously.

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At 7:47 p.m., Mayor Worley announced a short break.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3094 –ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A PROPOSED 55 LOT SUBDIVISION LOCATED ON SAND HILL ROAD (HABITAT FOR HUMANITY)

Mayor Worley said that the public hearing and adoption of this ordinance was held on February 24, 2004. At the City Attorney's request, this ordinance is being brought back for approval of the wording of the order only.

City Attorney Oast said that this is the consideration of the form of the Conditional Use Permit for subdivision on Sand Hill Road.

On February 24, 2004, City Council, on second reading, voted to issue a conditional use permit for a 55-lot subdivision off of Sand Hill Road as part of a conditional use rezoning of the property. Issuance of the permit has been approved, but because the number of lots was reduced and some conditions added, changes to the site plan were necessary and Council wanted to review it in connection with approving the final form of the order.

If Council is satisfied with the language of the order, the appropriate motion would be to approve the form of the order.

Urban Planner Carter Pettibone said that following Council's first reading on the issue of the approval of the Conditional Use Permit for the Habitat for Humanity subdivision on Sand Hill Road, the applicant has revised the proposed site plan to comply with conditions as set by Council. Included in the revisions to the plan are:

-Reduction of total lots from 59 to 55 (City Exhibit 7)
-Reduction in the number and increase in the size of lots located closest to the Captain's Drive development
-Reduction in the number and increase in the size of lots located along the western edge of the subdivision's main street closest to Hominy Creek.
-The pedestrian access to the Buncombe County Park land has been widened to 20 feet wide
-The addition of a pedestrian access to off-site open space between the development and Hominy Creek.

While the applicant has satisfied a number of Council's conditions, in order for the revised site plan to comply with the conditions set by Council in its approval the applicant will need to revise the final site plan:

- The buffer between the development and Captain's Drive is supplemented to a 'D' type buffer as described in the UDO (plan indicates 'C' type buffer).
- Final location and amount of off-site open space is to be determined prior to final administrative approval of the subject plat and the issuance of any construction permits.

Mr. Pettibone also said that in a letter dated March 4, 2005, Mr. Martin Lewis, for Fletcher Partners, Inc., said that they would "donate property adjacent to the subdivision to Habitat for Humanity which should be sufficient to meet the open space and recreational needs of the children and other residents of the subdivision. The property to be donated to Habitat is in the area located west of the proposed subdivision and adjacent to Hominy Creek. The property we will donate will be between one and five acres and should be sufficient to provide for the open space and recreational needs of the subdivision's residents." (City Exhibit 8)

Upon inquiry of Councilman Davis, Mr. Pettibone explained the differences of a 'C' type buffer vs. a 'D' type buffer.

When Councilman Davis asked who would take care of open space, Mr. Lew Kraus, Executive Director of Habitat from Humanity, said that it's Habitat's wish and intent to maintain ownership and maintenance of all common area in the subdivision.

In response to Councilman Dunn, Mr. Kraus said that it was his understanding that homeowners associations are required when the homeowners themselves have common property that they are attending to, however, at this point Habitat will undertake the cost of the maintaining all the common areas.

In response to Councilman Newman, Mr. Kraus said that the additional acreage that Fletcher Partners is donating an open field area and not wooded.

City Attorney Oast said that the site plan will be incorporated into the conditional use permit.

City Attorney Oast asked Council if they wanted included in the conditional use permit that Habitat would retain responsibility for maintenance of the common areas in the buffer. Mayor

Worley's inclination was not to include that in the conditional use permit. He explained that it is good that Habitat will do that, but in the future the neighborhood may develop to the extent that Habitat deems it reasonable to create the homeowners association and deed that property over. He wouldn't want that to inhibit that kind of future action.

Vice-Mayor Mumpower said that there have been some real improvements from the beginning, however, he didn't feel that conditions 3 and 4 have been met. He has concerns about the potential for substantial injury to the property values of the adjoining property owners and he does not feel that the development is in harmony with the scale, bulk, coverage, density and character of the neighborhood.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3094. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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V. NEW BUSINESS:

A. RESOLUTION NO. 04-59 - RESOLUTION OF CONSIDERATION IDENTIFYING AREAS WITH POTENTIAL FOR FUTURE ANNEXATION

Urban Planner Carter Pettibone said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation.

State law provides that a Resolution of Consideration may be adopted by cities as a preliminary step in the annexation process. The Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the city may, within the reasonably near future, be subject to annexation. After being in effect for a least 1 year, the Resolution of Consideration also has the benefit of reducing the time period required between adoption of the annexation ordinance and the effective date of that ordinance from a minimum of 1 year to a minimum of 70 days. Each Resolution of Consideration is effective for 2 years, and since the City's first was adopted on April 9, 2002, it is now time to consider the next resolution.

The map staff has prepared in connection with this Resolution of Consideration includes areas previously identified by the last Resolution as well as areas within the proposed Joint Planning Area (JPA). These are areas with the potential for urbanization, such as the areas along major thoroughfares, areas within the City's extraterritorial jurisdiction, areas with existing infrastructure or areas where utility extensions are feasible and other areas with potential for urban development.

The map includes many areas that may not experience urban development in the near future, because the boundaries are drawn to be expansive enough so that any possible near term (1-5 years) annexation areas will be within the boundaries.

Advantages:

- Gives residents and property owners within the area advance notice of possible annexation.
- Allows time period between passage of annexation ordinance and effective annexation date to be shortened to a minimum of 70 days.
- Revised area includes the area identified as the proposed JPA.
- The City can still conduct smaller, incremental annexations within the area.

Disadvantage:

- The possibility of annexing some parts of the area may not be realized for a number of years.

City staff recommends that the Resolution of Consideration be adopted.

Upon inquiry of Councilman Newman, Mr. Pettibone explained how the map was developed stating that it is an expansion of the 2002 map. He said that to correspond to the JPA, they looked at a mile and tried to include all the areas within a mile, trying to use streams, topography and streets.

Upon inquiry of Councilman Davis, City Manager Westbrook explained that the General Assembly developed this process in 1989 because people kept asking about future annexation plans. The process was based on the areas that are urbanized and areas the city might think that in a long period of time they might consider annexation. It was more to make the public aware of what future plans may be. He explained this is a broad look into the future.

Councilman Davis felt it was very striking to see the small number of people that the City has annexed over a long period of time compared to larger cities. This is an equity and educational tool for the residents living beside the City now.

Upon inquiry of Councilman Dunn, Mr. Shuford explained the area is large because we don't know what five years will bring. There are areas around Asheville that are growing rapidly. The areas outlined are the ones identified in the extraterritorial jurisdiction expansion, areas that will probably urbanize, and areas covered by the JPA.

Mr. Fred English, Haw Creek resident, said he was annexed in 1960 and his area still has no sidewalks.

Ms. Betty Williams, Asheville resident, was opposed to annexation because of the impact it would be on affordable housing.

Mr. Alan Ditmore, Leicester resident, felt the pros of annexation is the increase of tax base and the cons of annexation is the expansion of zoning.

Councilman Newman was concerned that people may misinterpret this map and pointed out that only a very small percentage of the land will probably be annexed.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Davis moved for the adoption of Resolution No. 04-59. This motion was seconded by Councilwoman Jones.

Councilman Dunn felt that a healthy county economy is good for the City. The more money the County has they will spend it in the City. He felt we need to look at other sources to improve our tax base, e.g., room tax, merging City services with Buncombe County, fixing the Water Agreement, etc.

Vice-Mayor Mumpower felt in terms of the procedural process this is a fair tool. However, annexation is forced participation without representation. He felt this is a particularly vulnerable time to adhere to the City's policy of annexing manufacturing industries. He personally felt we have room to grow and improve within our own borders.

Councilman Newman felt the whole issue of annexation is basically a fair way to pay for and finance the infrastructure that is critical to the City of Asheville and also critical to the economy of Buncombe County and western North Carolina. Right now, the residents and business that are located in the City of Asheville have a very unfair, disproportionate percentage of the taxes put on them to pay for the infrastructure that is used by people living all around the City and outside of Buncombe County as well.

Councilwoman Jones felt it would be irresponsible to not adopt such a plan if we have the ability to let people know and to not share this information with residents and developers is unconscionable.

The motion made by Councilman Davis and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no." .

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VI. OTHER BUSINESS:

Councilwoman Bellamy updated City Council on some meetings of the Eagle-Market Streets Development Corporation and invited City Council and the public to a community forum on Monday, March 22, 2004, at 6:00 p.m. at the YMI Cultural Center to share ideas for the Eagle-Market Street area.

Vice-Mayor Mumpower thanked City staff for the new City Council dais in the Council Chamber.

Vice-Mayor Mumpower recognized the principal at T.C. Roberson for making tentative directions toward drug screening in that school. He has shown a lot of courage and leadership in taking this step.

Vice-Mayor Mumpower announced a vacancy on the Asheville-Buncombe Historic Resources Commission. He encouraged people from all walks of life to apply for our boards and help City Council make Asheville a better place

The following claims were received by the City of Asheville during the period of February 14-26, 2004: Brian Tribble (Water), BellSouth (Water), Susan Gilliam (Police), James Cain (Water), Pam Holcombe (Water), Ann Weidie (Parking Services), Anna Axelsson (Sanitation) and Brunk Auctions (Water). These claims have been referred to Asheville Claims Corporation for investigation.

The following claims were received by the City during the period of February 27-March 4: Katherine Manouzi (Police), Jeremy Stafford (Water), Elizabeth Baldwin (Streets), Robin Roemisch (Streets), Allen O'Donnell (Sanitation), Victor Solesbee (Streets), Cherokee & Terrace Roads (Sanitation), Nadine Woods (Police), Mary Lynn Linder (Water), Cecil Mitchell (Sanitation) and Mark Domby (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English commented on the Christians for the Sanctity of Marriage rally that has held at the City-County Plaza on March 6, 2004.

Mr. Howard McGlohon, President of the South Pack Square Association, presented and reviewed with City Council the minutes of their March 4, 2004, meeting. The next meeting of the Association will be held on March 18, 2004, to approve alternative design redevelopment plans for the Eagle-Market Streets area.

Brother Christopher Schemata spoke about the need to encourage the homeless to unite to come up with ways to eliminate homelessness.

Mr. Alan Ditmore, Leicester resident, suggested Ms. Valerie Collins as Asheville's new police chief.

CLOSED SESSION:

At 9:05 p.m., Councilman Newman moved to go into closed session to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Frances C. Briggs, et al., Carolina Power & Light Company and the City of Asheville. The statutory authorization is contained in G.S. 154-311 (11) (a) (3). This motion was seconded by Councilman Dunn and carried unanimously.

At 9:50 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:50 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 16, 2004 - 3:00 p.m.

Worksession

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Grant from N.C. Emergency Management

Summary: The consideration of a budget amendment, in the amount of $21,739, to receive grant money from the U.S. Dept. of Justice (DOJ), sub-granted through the N.C. Division of Emergency Management, for procurement of emergency response and preparedness equipment for Asheville Fire and Rescue Department.

The City of Asheville Fire and Rescue Department requested $21,739 from the NC Division of Emergency Management for equipment to better prepare the City for a hazardous materials or terrorism incident. Staff was successful in obtaining those funds. Twenty-three North Carolina cities received the $21,739 grant. The City of Asheville received the grant in order to purchase a fire suppression and decontamination device that uses compressed air, water and foam.

Pros: (1) This unit is available at no cost to the City of Asheville; (2) No matching funds are required; (3) This unit will significantly enhance our ability to effectively manage car fires in our parking decks with the use of a quick response vehicle (QRV) as well as efficiently deal with brush and trash fires; (4) Currently, to provide fire service within the approximate 20 parking structures that are in the city, we park our large fire engines and must pull hand lines to reach vehicle and trash fires within the structures. This unit would allow us to drive directly to the fire in approximately 13 (or 65%) of those parking structures with a vehicle and minimize our response time and thus minimize damage from car and trash fires in those structures; (5) The unit that we recommend purchasing uses new technology to provide the effectiveness of 2,000 gallons of water with only 100 gallons of water (20:1 ratio) and foam. This allows for a relatively small fire unit that can be placed on a pick up type vehicle and operate efficiently and in tight, restricted areas; (6) When extinguishing woods and brush fires that are off the road, we use a brush truck vehicle with 150 gallons of water. This unit will offer 13 times that amount of fire extinguishing power due to the technological use of compressed air and foam; (7) The unit can also be used to decontaminate people and equipment as needed. This can be very effective in hazardous materials situations; (8) This unit is planned to be placed into service operating out of the downtown fire station, so that it is centrally located; (9) Cost of operating this unit on a QRV is significantly less than the cost of operating a full size fire engine; and (10) The unit is environmentally responsible.

Cons: (1) When we purchase our next pick up truck, it will need to be of sufficient size and strength to accommodate this unit. However, this additional cost is offset by a savings in costs to operate in this method versus cost of operating a full size fire engine or ladder truck; and (2) We will incur full replacement cost of the unit when it has served it's useful life. We would project the life cycle of this unit to be 10+ years.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

Contract with NC DOT for Operation of Black Mountain Routes and Associated Budget Amendment

Summary: The consideration of (1) a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain; (2) a resolution authorizing the Mayor to enter into an agreement with Buncombe County and the Town of Weaverville to provide transit services to the Town of Weaverville; and (3) an associated budget amendment, in the amount of $433,294.

The Asheville Transit System has received funding for the operation of a route to Black Mountain through a contract signed by the Mayor last year. The unexpended funds have allowed some operation into this year. The City will receive these funds again this year enabling it to continue these routes through June 30, 2004, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. There are no City funds in any of these operations, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes.

The Asheville Transit system also received operational assistance in excess of the amount originally budgeted for Fiscal Year 2004.

Mountain Mobility will also fund the operation of a route to Weaverville, using federal Job Funds received by the state and granted to Mountain Mobility. The Town of Weaverville will also contribute $10,000 to the operation. There will be no City money involved in the operation of this route. The funding is sufficient to operate through October of 2004. This will allow the route to be tested, and if warranted, an application made to the state for continued funding through Fiscal Year 2005.

The budget amendment represents state funding of all Black Mountain operations, funds from Mountain Mobility for Weaverville Route, and an increase in state operating funding over the budgeted amount.

The benefit to the City of Asheville is:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville

There are no disadvantages to the City of Asheville.

City staff recommends City Council to authorize (1) a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain; (2) a resolution authorizing the Mayor to enter into an agreement with Buncombe County and the Town of Weaverville to provide transit services to the Town of Weaverville; and (3) an associated budget amendment, in the amount of $433,294.

N.C. Dept. of Environment & Natural Resources Agreement and Budget Amendment to Allocate Grant for Compressed Natural Gas Fueling Station

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a pilot compressed natural gas (CNG) fueling station; and (2) an associated budget amendment, in the amount of $455,000.

Almost a decade ago, North Carolina committed to funding the construction of rapid fill compressed natural gas fueling stations along the Interstate 40 corridor. The construction of such a station in Asheville will complete this vision and accommodate CNG fuel needs from the Atlantic Coast to Knoxville, Tennessee (and further West).

On November 14, 2000, City Council authorized city staff to apply for a grant to construct a fast-fill CNG fueling station and provided $100,000 to defray 'incremental' costs of CNG-powered vehicles.

In June 2003, the City received notification from the NCDENR (Mobile Source Emissions Reduction Grant) awarding the City a total of $400,000. Of the 400,000, $300,000 will be used for constructing a CNG fueling station on City property for fleet and public use. The additional $100,000 will be to fund the incremental price increase for the purchase of CNG-powered vehicles, which cost about 20% more than conventional vehicles, for the City and its key partners (Mission St. Joseph's and Buncombe County).

The City's cash match is $55,000, which includes $35,000 for a public-access card reader system (which will also be used by fleet) and a $20,000 contingency for concrete, security, fencing, etc. This cash match will have to be appropriated from fund balance.

- Advantages
    - CNG fueling station will complete North Carolina's CNG station master plan
    - Public access for CNG-powered vehicles
    - City's cash contribution is only 13.75%
    - Staff (and partners) will gain valuable experience regarding high-pressure fuel systems.
    - Staff will gain experience in alternative fuel technologies
    - City (and partners) are taking a leadership role regarding CNG, alternative fuel vehicle technologies and emissions reductions

- Challenges
    - Cash match of $55,000
    - Higher (incremental) costs of vehicles (about 20%)
    - Requires additional training for maintenance staff
    - Public access to CNG fueling system

Staff recommends the adoption of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a pilot compressed natural gas (CNG) fueling station and funding for the incremental cost of purchasing CNG vehicles; and (2) an associated budget amendment, in the amount of $455,000.

Councilwoman Bellamy thanked former Councilman Chuck Cloninger for his hard work on this matter.

Property Transfer to the Health Adventure

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with The Health Adventure to transfer 1.14 acres of City-owned property located at the corner of Catawba and Broadway in exchange for a .89 acre greenway easement and construction of a greenway across their property.

For the past several months, City staff has met with representatives from The Health Adventure to discuss the transfer of 1.14 acres of property located at the corner of Catawba and

Broadway known as the "Leaf Pile." This property was formerly part of the Penick Property, which was donated to the City several years ago. During these discussions, staff expressed the need for the continuation of the Reed Creek Greenway to occur through this property and across The Health Adventure property to connect to the Glenn Creek Greenway on Weaver Boulevard. The final determination in regard to this transfer includes The Health Adventure granting an easement representing .89 acres adjacent to Broadway Avenue. In addition, the Health Adventure has agreed to pay for and construct the greenway across this property from the comer of Catawba to the intersection of Broadway and Weaver Boulevard. The greenway will be constructed to the standards established by the Greenway Master Plan with final approval of the design by the Greenway Commission and City staff. In addition, The Health Adventure will work with the Public Works Department to continue the use of the "Leaf Pile" until actual construction occurs for the proposed Health Adventure facility. City staff wishes to ensure that the property remain for public use as much as possible, and the City will work with The Health Adventure to ensure that the property is open to the general public as feasible. In addition, if for some reason The Health Adventure fails to build their facility on this site and they wish to resell the property, the 1.14 acres should revert back to the City of Asheville to remain as public space. City staff will be working with representatives of The Health Adventure to develop and agreement that will incorporate all of the above issues.

Upside:

- The City of Asheville will be able to continue development of the greenway from Catawba to the entrance at Weaver Boulevard at no cost to tax payers.
- Greenway design and construction will be approved by the Greenway Commission and City staff.
- The City retains property in the future if The Health Adventure wishes to resell the property.
- The City and The Health Adventure will work together on design elements on and around the Greenway.

Downside:

- The City will lose the use of the "Leaf Pile" for public use.
- Some restrictions may occur with the use of the former property by the public due to accessibility issues with The Health Adventure operations.

The Parks and Recreation Department recommends that the Mayor enter into an agreement with The Health Adventure for the transfer of 1.14 acres of City property in exchange for a greenway easement of .89 acres and the construction of a greenway on Reed Creek.

Vice-Mayor Mumpower asked this not be placed on the Consent Agenda at the next formal meeting.

Municipal Agreement with the N.C. Dept. Of Transportation for Passenger Rail Facility

Summary: At the February 17, 2004, Council meeting, this item was tabled until Council had the opportunity to gather more information including more discussion with N.C. Dept. of Transportation (NC DOT) officials.

Efforts to arrange a meeting between members of Council and NC DOT before March 16 were not successful. However, the date of Friday, April 30 has been established for that meeting. The item will brought back up for formal Council action on May 11, the first formal meeting following the April 30 visit to Raleigh.

Application for Grant from US Dept. of Homeland Security

Summary: The consideration of a resolution authorizing the Fire and Rescue Department to apply for Federal funds available from the U.S. Department of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) Fiscal Year 2005 Assistance to Firefighter's Grant Program, for procurement of computers for fire apparatus, portable radios (walkie-talkies) and two portable radio repeaters.

The City of Asheville Fire and Rescue Department, with endorsement of the Asheville City Council in March 2003, requested $122,205 from the U.S. Department of Homeland Security to replace 44 of the department's self contained breathing apparatus (air packs) and 24 of the department's VHF portable radios (walkie-talkies). The Federal grant was for 70% of the costs with the city to match 30%, or $52,373. Staff was successful in obtaining those Federal funds. We again have an opportunity to apply for the grant program in order to fund laptop computers for fire apparatus, portable radios for firefighters and two portable repeaters.

The computers and walkie-talkies will be used daily by firefighters and are used on virtually every emergency that occurs within the city. The portable repeaters will be used often. Computers are used though the city's existing Geographical Information Systems (GIS) database to provide street, water line, hydrant, building, pre-incident plans, aerial photography, resource listings and other information to firefighters on a daily basis when responding to and managing emergencies. Additional walkie-talkies would allow each firefighter "seat" to have a portable radio. Currently, only the fire officer and fire engineer on each apparatus have portable radios. This would improve firefighter safety. The two vehicle repeaters would allow firefighters to better communicate in dense or "heavy" buildings, such as the hospitals, the malls, etc.

Staff desires to apply for grant in the amount of $141,300. Seventy percent ($98,910) will be Federal dollars and 30% ($42,390) will be the City's match. The City's match will come from Fund Balance.

PROS:

- The computer equipment would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day. We have field-tested a laptop already for two months and it works great in the field.
- The portable radios would increase firefighter safety on emergency scenes.
- The portable repeaters would allow firefighters to communicate in locations where the current system is very limited such as the hospital, mall and other "heavy" buildings.
- If the grant is approved, 70% of the funds, would be supplied by the Federal Government.

CONS:

- In order to maintain the same level of service, computer equipment and radio equipment would have to be replaced by the city when it is worn out. Live expectancy would be approximately five (5) years.
- If the grant is approved, the city would have to contribute 30% of the funds for the project.

City staff recommends City Council approve the resolution authorizing staff to apply for the 2004 Assistance to Firefighters Grant from the U.S. Department of Homeland Security.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

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DOWNTOWN SOCIAL ISSUES TASK FORCE

Mr. Pat Whalen said that the Downtown Social Issues Task Force is recommending that a joint City County Task Force be appointed to develop a Ten-Year Plan to End Homelessness.

The Downtown Social Issues Task Force has been working over the last year on developing recommendations on a number of issues affecting downtown: graffiti, homelessness, panhandling and public drunkenness. The Task Force split into committees and one committee, called the Conditions committee, sought solutions to the causes of some of these entrenched problems.

This committee examined issues related to homeless youth, discharge planning (when persons are discharged from the jail, foster care, hospital, treatment centers) and chronic homelessness. Several themes emerged from their research. The chronic homeless population is being continually revolved through service agencies, which ends up being quite costly. These services include City police, County Detention Center, the courts, County EMS, and Mission Hospitals. It has been estimated that, over a 2-year period a small group of people in our downtown cost the City, County and the hospital system over a half million dollars. There are programs that have worked in other cities, that place hard to serve individuals in permanent housing with supportive services, and there has been a cost savings since these individuals are no longer moving through the justice and hospital systems. It is clear that both the City and the County have a stake in changing this pattern of service-usage in our community.

Not only are the chronic homeless of concern, but homeless youth and discharge practices are of concern as well. The Task Force is aware that the current services are working well for a large number of the homeless, and need continued support. With coming changes in the mental health system though, it is anticipated that problems could worsen. After assessment of the issues, it became clear that to make a significant impact a comprehensive plan for homelessness is needed with the buy-in of both County and City agencies as well as the business community and service providers. Similar planning is under development at the State level.

Mr. Bill Byrne, member of the Downtown Social Issues Task Force, presented City Council with the details of their recommendation and summarized the following recommendations:

1. The City of Asheville and the County of Buncombe develop a Ten-Year Plan to End Homelessness that includes initial priority on the chronic homeless population, the sub-population most visibly present in the downtown area.

2. Leadership roles and positions within the steering committee be defined and;

3. Funds for staff time be allocated so that the plan can be carried out and written in a timely manner.

City staff is estimating that it will cost up to $10,000 to hire someone to write the plan. This cost, however, can be built into this years' HOME allocation, and would not require funding directly from the City.

A joint resolution forming the City County Task Force, with a list of suggested Task Force members will be presented to Council in the near future. City Council and the Buncombe County Commissioners will be asked to appoint members.

The Task Force is planning on presenting this recommendation to the Buncombe County Board of Commissioners in April.

Advantages:
- A ten-year plan will fit in well with HUD's growing concern for seeing cities deal with the issue of chronic homelessness. The City's Community Development Division is expecting a requirement for a ten-year plan to end chronic homelessness to be imposed in the next few years.
- New HUD funding for homelessness is expected to favor or even to be restricted to those communities that have a ten-year plan.
- A broad task force that includes stakeholders from the business community, local governments, as well as the service providers is necessary build consensus for a plan dealing with complex issues.
- With plan implementation, there are potential cost savings for the City and the County due to decreased demands on high cost services (Police, EMS, Detention Center).

Disadvantage:
- Funding for writing the plan could cost up to $10,000, but these monies could come from HOME funds and not general funds.

City staff recommends support of the recommendations that a joint City County Task Force be appointed to develop a Ten-Year Plan to End Homelessness.

Vice-Mayor Mumpower asked for hard data on how the successful models have been operating, e.g. Indianapolis, Indiana, including the upsides and downsides of the models.

Discussion surrounded how this plan can dovetail with other agencies and other plans.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

PACK SQUARE CONSERVANCY UPDATE

Ms. Carol King, Chair of the Pack Square Conservancy, said the Pack Square Conservancy is requesting consideration of plan revisions to Pack Square Conservancy Plan and approval of allowing the Conservancy to manage naming rights for the park features.

The Pack Square Conservancy (PSC) recently held a design charette to receive and respond to public input concerning redesign of the middle section of the Pack Square Renaissance project. This was necessitated by the withdrawal of the Grove Park Inn's proposed building at this site. City Council has previously received a copy of the recommended plan by the PSC. This plan substitutes a smaller building for the large mixed-use structure proposed by Grove Park Inn (GPI).

As our experience with GPI indicates, there are currently existing development constraints at this site that complicate certain types of large-scale development. These constraints include the expense of underground parking and the need for expensive relocation of existing utilities (estimated by professional contractors at approximately $450,000).

The PSC is also requesting the ability to manage naming rights for park features as a fund-raising/marketing tool. City Council has previously been provided a copy of the naming rights policy by the PSC.

In addition, the designer has also designed into the park a very innovative recycling program called "integrated stormwater collection system."

Additionally, please note that Engineering staff will present a redesign for College Street for your consideration in April. This redesign will complement the PSC project but was identified as a public safety and capital project need (and was under design & development) prior to the PSC plan.

Plan Approval:
Pros:

- Public acceptance of the new design
- Allows fundraising for the park to continue without public controversy and for park development to continue on schedule
- Maintains a building at the park edge as an urban design component and revenue source

Cons:

- Potential loss of a larger scale infill redevelopment opportunity and resultant public revenue

Naming Rights:
Pros:

- Allows opportunity for greater private fundraising for the park

Cons:

- None noted.

City staff recommends City Council consider plan revisions to Pack Square Conservancy Plan and consider approval of allowing the Conservancy to manage naming rights for the park features.

Vice-Mayor Mumpower initiated discussion about the City's cost of infrastructure in this plan, noting that we had a dedicated revenue stream to pay for the City's portion and that stream is now lost. Mr. Shuford could not attach monetary figures and felt we would know better when Engineering brings the redesign of College Street to Council in April. However, he felt there would not be a lot of major off-site costs directly associated with this project. He would try to give Council some ballpark figures before the formal meeting next week. He did point out however, that the Conservancy is offering the City a $6-7 Million private sector investment in our downtown park.

Discussion then surrounded the view corridor and making Spruce Street a two-way street.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

APPROVAL OF AIR QUALITY IMPROVEMENT INITIATIVE 2004

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing adoption of the Air Quality Improvement Initiative 2004 as a tool to improve air quality in the City of Asheville

In December 2002, City Council adopted a resolution to enter into an Early Action Compact (EAC) along with Buncombe County and other local governments. The first step in the process was to develop a list of measures that can be taken by each of the local governments to reduce air pollution. In an effort to develop this list, EPA recommended that a group of stakeholders be created to make recommendations to local governments. City Council reviewed and approved the stakeholders in March 2003.

Due to the differences in size and economic base, it was agreed that each county would identify local control measures individually. This process allows greater stakeholder participation and allows each jurisdiction to evaluate local resources and determine if county-specific control measures can reasonably be implemented.

This group of stakeholders representing the City of Asheville and Buncombe County developed a list to City Council in June 2003. Since that time, no major changes in the measures has been made by the stakeholders.

Since the June 2003 update to City Council, the City has received information that indicates that our area will not be considered for non-attainment status in the next review largely due to the wet summer and fall we experienced in 2003 as well as some major changes that Progress Energy is making in their process at the Lake Julian site.

The stakeholders met to discuss this issue and recommend that the City approve this plan as an effort to improve air quality regardless of the threat of becoming non-attainment. The stakeholders indicated that they would like to see a more aggressive approach to improving air quality particularly in the area of educating the public of measures they can take to reduce pollutants.

Buncombe County along with the City of Asheville held a public meeting on January 8, 2004, to solicit input on the plan. The comments were good but many participants requested that the measures in the plan be mandatory as opposed to optional.

The Southern Environmental Law Center has indicated they will file suit against EPA if they allow communities to use the Early Action Compact as a method of avoiding non-attainment status. EPA has indicated they will not challenge this suit. This means that adopting an Early Action Compact may not allow communities to avoid the non-attainment designation. This area is not affected by this challenge because we would not be considered for non-attainment status for the reasons described above. For that reason many of the counties in the surrounding area have chosen not to adopt an air quality improvement plan.

Rather than passing this plan as an "Early Action Compact" Plan, staff recommends that we refer to it as an "Air Quality Improvement Initiative 2004" to avoid any possibility of being involved in the possible lawsuit mentioned above.

Most of the measures in the imitative do not cost money, they simply state that we will try to take measures that have been proven to reduce pollutants. The only initiative that cost money is developing and implementing an educational/public relations plan. The Engineering Department has requested $15,000 in the Fiscal Year 2004-05 budget to cover these expenses.

Staff recommends that City Council adopt the Plan under the title of Air Quality Improvement Initiative 2004 to improve air quality in the City.

Councilman Davis spoke highly of this plan and felt this may be a good opportunity to involve the Clean Air Trust Board.

Councilman Newman felt that the entire plan was important, but felt that Council should look at all the measures and then zero in on some parts of the plan that can make the most significant difference. If funding is going to be allocated, he wondered if it would be best to do it in-house or best to work through the Clean Air Trust Board.

Councilman Davis agreed with Councilman Newman and stated that we don't want to lose site that this started out as a regional initiative. We will continue to work with our neighbors. He agreed that we do need to isolate some points that we can work on locally and then work regionally on other issues.

At the suggestion of Councilwoman Bellamy, Mayor Worley appointed Councilman Davis as Chair, Vice-Mayor Mumpower and Councilman Brownie to a subcommittee to work on what initiatives the City of Asheville should first focus on. The subcommittee will also see how we can better work with the Clean Air Trust Board. The subcommittee was asked to report back to Council after they have had a chance to meet.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON HAYWOOD ROAD RECOMMENDED TRANSPORTATION IMPROVEMENTS

City Traffic Engineer Anthony Butzek said that this is the consideration of a resolution supporting the recommendations of the Haywood Road Traffic Study dated March 2004.

Improvements to Haywood Road, the "Main Street" of West Asheville, have long been identified as a critical desire of the residents of Asheville. This traffic study proposes modifications developed based upon public input and technical analysis, with the intent of improving the corridor's role as an urban commercial district while enhancing traffic flow. The modifications can be implemented almost entirely by restriping the pavement, at a very low cost.

Based upon years of input from citizens, businesses, and political leaders, and significant investment in community planning, the report requests the proposed modifications to Haywood Road be implemented by N.C. Dept. of Transportation (NC DOT) as part of the proposed resurfacing (currently scheduled for 2004). The proposed modifications would address a number of goals intended to support the viability of West Asheville's community business district, including improving facilities for pedestrians, bicyclists, transit users, and vehicles, and better providing and clearly marking on-street parking spaces. The modifications should clean up what can be a very confusing street on which to drive.

The corridor study proposes one through lane in each direction with turn lanes where appropriate and marked on-street parking. The proposal would eliminate the confusing pattern of lane-adds and lane-drops, as well as the existing condition of cars parking in a travel lane. The proposal would also relieve the bottleneck at the intersection of Haywood Road with Dorchester, State, and Majestic by removing Majestic from the traffic signal (this will also reduce Majestic's use as a cut-through). In summary, the proposal maintains current level of service for traffic while improving the corridor for businesses, pedestrians, bicyclists, and transit users.

Pros:

- Support of revitalization through improved environment for pedestrians, bicyclists, and transit users.
- Elimination of traffic bottleneck at Dorchester/State/Majestic.
- Expected reduction in crashes due to elimination of confusing lane adds and drops and elimination of parking in travel lanes.
- Implementation of a plan developed with significant community input.
- Minimal cost of implementation by coordinating with scheduled resurfacing.

Cons:

- NC DOT may not approve proposal due to reduction in number of lanes in certain areas and addition of some on-street parking.

- Minimal cost of installation includes minor traffic signal modifications at Dorchester/State/Majestic and installation of several concrete islands.
- City may need to accept maintenance responsibility in order to implement if NC DOT rejects proposal.

City staff requests City Council adopt a resolution supporting the recommendations of the Haywood Road Traffic Study (dated March 2004) and the forwarding of said resolution to the NC DOT.

Mr. Butzek answered various questions/comments from Council, some being, but are not limited to: what is the level of service of the corridor and will that change if recommendations are implemented; has the NC DOT representatives been involved in this process; will new parking spaces be metered; will two lanes improve traffic flow; will the intersections be improved; will there be a temptation for speeding; will there be problems for emergency vehicles; what is the standard width for lanes; and what is the sentiment of the community.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

Councilman Davis left the Council meeting due to a presentation he was going to make to the Buncombe County Commissioners.

OPERATIONAL RELOCATION ASSISTANCE POLICY AMENDMENT

Community Development Director Charlotte Caplan said that this is the consideration of a resolution adopting a revised Optional Relocation Assistance Policy.

When federal funds, such as Community Development Block Grant (CDBG) or HOME, are used in a project in which people are involuntarily displaced from their homes, there are strict regulations for providing adequate relocation assistance to the displaced households. CDBG funds can also be used "optionally" to provide assistance in cases not covered by these regulations. The City adopted such an optional policy in December 2000 in response to the closure of the Merrimon House. It provides for CDBG-assisted relocation when tenants are displaced by City housing code enforcement action.

Staff has found that the current the policy is not very effective in emergency situations because it requires Council approval for each case. We have also started to encounter cases of need not covered by the original policy.

A recent code enforcement case made us aware of the need to provide relocation assistance quickly in emergencies. The City's Housing Code Coordinator issued an immediate Notice to Vacate to a household consisting of an owner and tenants whose health and safety were at risk because the property lacked a sanitary sewer. The residents had minimal financial resources. Due to the urgency of the situation, staff authorized CDBG Emergency Relocation funding to enable the Affordable Housing Coalition to provide advice and financial aid. Without such assistance, the residents might have become homeless.

In addition, participants in the City's homeowner rehabilitation program are sometimes required to temporarily relocate during the rehabilitation process to protect their health and safety. This has presented problems for some applicants who cannot afford to pay for rent and moving costs in addition to their regular mortgage payment.

These cases are fairly unusual, averaging one or two a year, although, as with the Merrimon House, several households may be relocated in one case.

The revised relocation policy would allow staff to approve CDBG relocation assistance up to $2,000 per household, and would extend assistance to homeowners displaced by code enforcement action and to participants in the homeowner rehabilitation program. In every case there would have to be clear evidence of financial hardship. The number of cases is expected to increase to an average of 2-4 a year.

The Housing and Community Development Committee has reviewed the policy. The Committee was not unanimous in recommending it. Some members expressed the view that the HCD Committee should have a role in reviewing and approving optional relocation cases. An alternative revised policy to increase the HCD Committee's responsibilities has been drafted.

The advantages of adopting the revised policy as drafted are:

- Allows rapid response to emergency needs, preventing possible homelessness;
- Extends benefits to homeowners displaced by code enforcement action, as well as tenants;
- Allows low-income homeowners to participate in the FAIR program without fear of hardship if they have to relocate temporarily;
- Avoids involvement of Council Members in administrative decisions involving small expenditures;
- Avoids public discussion of cases, which may be embarrassing for the individuals involved; and
- Avoids setting a precedent for administrative (as opposed to advisory) action by the HCD Committee.

Disadvantages include:

- Removes cases from direct Council oversight; and
- By extending benefits to more people, marginally increases the possibility of abuse.

Staff recommends adoption of the Revised Optional Relocation Assistance Policy in which the City's Housing Code Coordinator and Community Development Director determine the relocation assistance is necessary to mitigate hardship (not the Housing & Community Development Committee).

Upon inquiry of Councilwoman Bellamy, Ms. Caplan said that if staff does make any allocations, that the Housing & Community Development Committee will be apprised.

There was a brief discussion on why the Housing & Community Development Committee was not unanimous in recommending the revised policy.

It was the consensus of Council to support the Revised Optional Relocation Assistance Policy in which the City's Housing Code Coordinator and Community Development Director determine the relocation assistance is necessary to mitigate hardship.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

At 4:50 p.m., Mayor Worley announced a short recess.

BANNER POLICY

Director of City Development Sasha Vrtunski said that this is the consideration of a resolution adopting a policy governing banners on lights poles in the City of Asheville.

Requests for placing banners on City light poles have been increasing over the past few years. City staff needs a policy to guide how this program should work.

The City of Asheville reserves the right to install its own banners for special events, holidays or other purposes. There are two categories of banners provided for in the policy for other participants:

- District Identification – Banners can be used to identify specific neighborhoods or business districts, which will also assist visitors with way finding. These banners may be displayed for up to a year, and are renewable.

- Co-Sponsored Events – Events that are co-sponsored by the City of Asheville may want to promote their event with banners for a month preceding the event date. Examples of such banners could be Bele Chere, the Greek Festival or Goombay.

Sponsorship is allowed on 20% of a banner to identify private businesses or individuals who have contributed funds towards supporting the banners. This sponsorship can appear on the banner itself or on a hang down piece that will be no greater than 20% of the banner area. The hang down option gives participants the ability to produce banners for multiple uses, while changing sponsorships.

The policy outlines standard size requirements for banners. The size of 30" x 60" is a standard size for city streets, as well as a standard manufacturing size. In the case of larger profile roads, such as Patton Avenue in West Asheville, a longer banner could be allowed.

Advantages:

- Individuals or groups will be able to put up banners recognizing business districts or neighborhoods of the city.
- Events co-sponsored by the City will be able to promote their event for a month prior to the event.
- Event Banners will reflect events that benefit the entire community.

Disadvantages:

- The policy does not allow for other types of banners to be put up, which may seem restrictive, but should prevent community division over the content of the banners.

City staff recommends the adoption of the policy governing banners on light poles in the City of Asheville.

Councilwoman Bellamy suggested no political banners be allowed. Ms. Vrtunski said that they couldn't prohibit those banners due to First Amendment rights. She did state, however, that they have not tried to legislate the sponsorship.

City Attorney Oast said that said that our recommendation is that we leave that sponsorship available to whoever wants to do it. We are comfortable the district identification and the co-sponsorship events categories of content for the sign. He doesn't think that the City can limit who buys the banners.

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Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

REVISION OF COUNCIL RULES REGARDING THE CONDUCT OF MEETINGS

City Attorney Bob Oast said that this is the consideration of amendments to Council Rules regarding the conduct of meetings.

One of Council's continuing concerns has been the length of council meetings and the conduct of public comment sessions, including public hearings. The public shares and frequently has expressed this concern. The law is clear that Council may establish rules for the conduct of its meetings and public hearings. In the conduct of some required public hearings and quasi-judicial hearings, due process is also a concern.

Most public hearings or public comment periods are concluded quickly, but there are some matters that require special attention, and the ability to establish special procedures. Accordingly, some revisions to Rule 7 are proposed to deal with general public address to the Council and a new Rule 7.5 is proposed to deal with special matters with respect to which, due to their nature or anticipated length, it may not be possible or desirable to conduct them within the framework of the normal rules.

The proposed revisions to Rule 7 establish general rules of decorum, applicable to all public comment, and recognize the Mayor's power, as the presiding officer, to control proceedings.

The proposed new Rule 7.5 establishes some procedures, such as the maximum time allotted and the manner of submitting documents that will apply to all public hearing/comment items. The proposed new rule also provides for the establishment of rules and procedures applicable to particular matters. These include: recognition of spokespersons, order of presentation, and rulings on relevance and repetition of information. Due process will be taken into consideration in establishing any special rules.

The following considerations should be recognized:

- There may be other proposed amendments that come out of Council's recently completed goal-setting process.
- There will need to be some break-in period for these rules, while the public and Council become accustomed to them.
- Staff will attempt to recognize those matters where special procedures may be appropriate, and will work with the affected citizens to establish appropriate special procedures in advance of hearings.
- Respect for any rules and procedures is essential to their effectiveness.

City Attorney Oast then reviewed the revisions as follows to Rule 7 and the entire new Rule 7.5:

7. PUBLIC ADDRESS TO THE COUNCIL

Citizens desiring to address the council shall be given the opportunity to do so as follows:

(a) Any individual or group who wishes to address the council may make a request to be on the agenda to the city clerk. The mayor and city manager shall determine when preparing the agenda for the meeting whether the matter will be placed on the agenda.

(b) Subject to the time limitations set forth in paragraph (c), below, the public shall be allowed to comment on matters under consideration by the council prior to a final vote on the matter by the council. Public comment shall generally be taken regarding such matters under consideration by the council during the formal~~"regular" 5:00 p.m.~~ meetings of the council as referenced in Rule 1. Public comment will not be taken during the "worksession" discussions of the council except in those instances where a final vote of the council is being taken during a worksession. In such instances, public comment shall be allowed in accordance with the time limits set forth hereinafter.

(c) Any person addressing the council shall be limited to a three minute presentation except that any group making a presentation to the council may have a single spokesperson who will be allowed ten minutes to address the council, provided that at least three other members of that group are present in the Chamber, and relinquish their opportunity to speak. The council will receive written information from any individuals or groups that cannot conclude their presentations within these time limitations.

(d) At each "regular" meeting ~~and each "worksession"~~ of the Council, under the "Informal discussion and public comment" section of the agenda, any group or person wishing to address the Council on any matter not previously considered during the meeting may do so. For matters coming before Council pursuant to this paragraph, and with respect to which the Council may not act, the following limitations apply:

(i) No more than three persons (one at a time) may address the Council, and no person may take longer than three minutes to complete a presentation.

(ii) In lieu of the limitation set forth in (i) above, a group may elect to designate a spokesperson who may take no longer than ten minutes to complete a presentation.

As used herein, "presentation" means all forms of address, including speaking, use of audio or video materials, and distribution of literature. For presentations that cannot be completed within the limitations of this paragraph, written comments or other information may be delivered to the Council through the City Clerk.

(e) Persons addressing the Council are expected to observe the decorum of the Chamber, to be respectful of the Council and the public, to refrain from the use of profanity or foul language, to refrain from personal attacks and commentary on political candidates.

(f)~~(e)~~ The mayor (or the vice mayor, in the absence of the mayor) shall be authorized to allow additional comments and time for comments as he or she may deem appropriate for the orderly conduct of business.

(g) Pursuant to Rule 9(b), the mayor or presiding officer may rule out of order any comments made under this part of the agenda if such comments are unruly, repetitive of information previously received by council on the same subject at the meeting then in session or at previous meetings. The mayor may also rule out of order any comments made during this part of the agenda that are vexatious or intended to harass, and is authorized to take reasonable and appropriate measures to ensure compliance with these rules.

7.5 SUPPLEMENTAL RULES AND PROCEDURES

A. The time limit applicable to public hearings or public comment periods on any agenda item shall be one hour. This time limit shall be exclusive of staff presentations and any structured Council debate. This time limit may be shortened or extended by the Mayor, with the concurrence of Council.

B. In addition to the rules set forth in Rule 7 and herein, the Mayor may, in consultation with the City Attorney and with the concurrence of Council, establish supplemental rules and procedures applicable to particular public hearings or public comment periods in order to facilitate the receipt of relevant information by Council, while affording appropriate due process. Without limitation, such rules and procedures may include:

1. The order of presentation;

2. The length of individual or group presentations;

3. Recognition of a primary spokesperson or representative to provide information or respond to a particular question.

4. The maximum time allotted for the public hearing.

5. Relevance of information and repetition of information previously received; and

6. Determining when new information has been presented.

C. The Mayor may, with the concurrence of Council, determine when sufficient information has been presented at any public hearing or public comment period, and is ready for action by Council.

D. Any documentary information that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in electronic format or 15 copies thereof. This rule may be waived for good cause.

E. In order to facilitate the efficient use of time, citizens are encouraged to coordinate their presentations with others who have similar positions, and to designate a spokesperson, where practicable, to speak for the group.

At the request of Councilwoman Bellamy, City Attorney Oast said that he would try to find another word instead of "vexatious" because some people may not know what that means.

At this time, Councilman Davis re-entered the meeting.

Councilwoman Bellamy suggested language be inserted that City Council does not discuss personnel issues.

Mayor Worley said that he would let the people know at the beginning of the public hearing how much time will be allowed for public input.

Vice-Mayor Mumpower suggested that either the phrase "Mayor or presiding officer" or "Mayor or Vice-Mayor" be used for consistency.

Discussion surrounded if all members of a group have to relinquish their opportunity to speak if they are not in agreement with their group spokesman. City Attorney Oast said that after listening to Council's concerns, he would try to address that in different language. In addition, he said that he would work with our Planning Department to try to come up with a process by which we can identify what we think will be a controversial public hearing item. We can try to get a special order to Council to be adopted at the worksession prior to the formal meeting and get that information out to the people who might wish to speak at the public hearing.

Discussion then occurred about the institution of a sign-up sheet procedure. Questions and comments surrounded when they would sign up, if City residents would be given preference, if there would be a close-out period of time for signing up, and who would be signing them up to speak.

Mayor Worley said that the length of Council meetings are not always driven by public hearings, but are driven by Council members themselves. He said ways to shorten meetings will be to take more control over public comments and to exercise more self-discipline in ourselves.

Discussion surrounded Councilwoman Bellamy's concern about the inconsistency of who gets "wanded" by our police officers prior to entering the City Council meetings and suggested a clear policy be adopted. City Manager Westbrook said that he provide Council with information on how police officers make a determination.

City Attorney Oast said that he would incorporate Council's comments into another draft amendment and place it on upcoming formal meeting.

Councilwoman Jones said that after this is adopted, she would like to find a way to see if the rule changes make a difference.

UPDATE ON THE JOINT PLANNING AREA

City Attorney Bob Oast said that following the initial presentation of our draft of the Joint Planning Area (JPA) Interlocal Agreement to Council on February 17, 2004, we had some discussion with County planning staff.

The following points were discussed:

County Planning Board Certification. Under State law, N.C.G.S. 153A-344, the County planning board must certify any proposed initial zoning ordinance to the Commissioners before the Commissioners can hold public hearings. The same law also provides that amendments must be referred to the County Planning Board and prescribes a minimum period of 30 days for the board to take action.

As to the question of initial adoption, the JPA Agreement may not provide that the planning directors' recommendations are automatically transmitted to the Board of Commissioners if the Planning Board does not act on them within a specified time. However, the Agreement can provide that if the Planning Board does not certify an ordinance to the Board of Commissioners within the specified time, then the City may terminate the Agreement. The other option would be to leave the time period for the County Planning Board's certification open-ended.

Review of Subdivision Plats. The City's draft JPA Agreement provided that one of the duties of the joint planning agency would be to review subdivision plats. The County wishes for this function to be performed by the County Planning Board. This was probably the most significant point of disagreement. With respect to this, several considerations are important: First, a subdivision is a powerful form of land use regulation; second, whatever agency administers subdivisions will have to follow the JPA regulations, which are adopted by both the City and County; and third, subdivision regulation can occur whether zoning exists or not - the County already administers subdivision regulations in the unzoned areas of the County.

One possible solution might be to provide for a two-step process whereby appeals from subdivision decisions in the JPA were reviewable by the joint planning agency, or by the governing boards.

There were some other issues regarding the functions of the joint planning agency, but they were primarily clarifications.

Enforcement. The proposed agreement provides for the City to request the County to take enforcement action within the JPA, and if no action is taken by the County, for the City to take the action and be reimbursed by the County. The County recognizes the importance of prompt and effective enforcement action within the JPA, but had some questions about this provision, and requested that it be reconsidered.

Some method needs to be available to enforce the JPA regulations, and to address situations where the entity charged with enforcement can be required to take appropriate action.

He said we are continuing to discuss the provisions of the Agreement with the County. When he has developed some revisions to the applicable provisions and reviewed them with the County, he will bring the Agreement back to Council for consideration and possible action. If agreement on particular language is not obtained, he will report that to Council as well.

It was the consensus of Council to have the City Attorney continue to update Council on the JPA and when appropriate, bring the agreement to Council for consideration and action.

STATE AND FEDERAL LEGISLATIVE AGENDAS

City Attorney Bob Oast said that last year's legislative session adjourned in late July. It was an unusually abbreviated regular, or "long", session; long sessions in recent years have usually gone into August or later. In fact, the 2003 "long" session may have been shorter than the 2002 short session, which was protracted because of the State's fiscal problems, and adjourned in December. The State's fiscal problems continued to be a big part of the legislature's agenda in 2003, and much of the general legislation adopted reflect that focus. Some items did affect municipalities, including Asheville.

LOCAL LEGISLATION

City legislative initiatives. The City of Asheville's package of legislative requests was modest, including 4 items. Those items were:

1. A blank bill for a funding source for the Civic Center.

2. A bill to reduce the terms of the Housing Authority members from 5 to 3 years.

3. A bill to authorize the City to require the posting of pre-towing notices on private parking lots.

4. A bill for a charter amendment to allow the City to limit contributions to candidates for City Council.

Of these, the only one introduced was the bill to require the posting of pre-towing notices. This bill passed as written, and is now a City ordinance. There were three "blank" bills introduced with no subject designated: two for local legislation for the City of Asheville and Buncombe County, and one for the City of Asheville only. The purpose of such bills is usually to "hold the place" for a substitute bill that contains substantive language. Presumably one of those bills was holding the place for a bill for a civic center funding source, but no substitute bill was ever introduced.

The other requested bills were not introduced either because they did not have the support of our delegation, or because they did not receive a unanimous vote from the Council, which caused our legislators some hesitation.

One item was initially approved for submission of a request, but was ultimately not transmitted to our delegation:

Authorization to use photographic equipment to enforce red light violations. This legislation has been adopted for several cities across the State, but is not yet general legislation. It enables cities to set up cameras at certain problem intersections, take a photograph of vehicles that run red lights, and use that photograph as the basis for imposing a civil penalty.

Other local legislation of note: A legislative item that the City had significant interest in was the bill to incorporate the Town of Mills River. We were concerned because of the size of the geographic area that the town would cover, and expressed that concern to the legislative commission that considers such requests, but we did not oppose the incorporation. The town was incorporated, and the effective date was June 24, 2003.

STATEWIDE / OTHER LEGISLATION OF NOTE

1. Budget / Finance. Local governments were successful in getting a commitment from the legislature not to disturb sources of local revenue, which caused such a big problem in 2002. This "hold harmless" commitment will continue through 2012.

2. Campaign Finance. Although the City's campaign finance reform bill was not introduced, a bill passed in the Senate that would permit larger cities (including Asheville) and counties (including Buncombe) to appropriate funds for grants to candidates for local elected officials. Because it passed one house, it is eligible for consideration in the 2004 session.

3. Economic Development.

    a. Local Government Project Development Financing. This would allow local governments to use the differentials in property tax revenues (developed versus undeveloped property) to pay for certain improvements to redeveloped land. This is similar to tax increment financing that is available in all but one other state in the country. This bill requires a constitutional amendment to become law, which will require a vote of the people. It will be on the ballot in the 2004 general election.

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b. Interlocal Economic Development Cooperation. Authorizes two or more local governments to enter into an agreement to undertake infrastructure projects that will encourage business and industrial development.

4. Other Legislation. Other legislation of general interest to municipalities was introduced, and some of it passed. This legislation has broader application than just local government, e.g. ABC laws and environmental laws, and will not be summarized in this staff report. Information on these bills and laws is available by contacting my office. However, one such item was of interest to Asheville because of our particular operations:

> Skateboard Park Liability. This legislation enables local governments who operate facilities for skateboarding and similar activities to limit their liability for injuries, provided that the use of protective equipment at such facilities is required by ordinance. The City of Asheville adopted an ordinance effective at the Food Lion Skate Park.

LOCAL LEGISLATION FOR 2004. This year's session is a "short" session. Short sessions usually convene in May, and usually adjourn no later than July. The convening date for this year is May 10. The deadline for submission of local bills to Bill Drafting is May 19, which means that any requests from us must be in our legislators' hands a few days earlier. Also, local bills must be certified as non-controversial by the introducer, which limits what can be introduced.

The possibilities for the City's legislative requests include:

1. Technical Amendment to Civil Service Law to specify two-year term. Two years has always been the term for Civil Service Board members, but for some reason, the 1999 amendments to Civil Service law deleted it. I have already spoken with one member of our delegation about this, and amending it should not be a problem.

2. Film Industry Incentives. The State of North Carolina Economic Development Board appointed by Governor Easley and the 600 members of the North Carolina Economic Developers Association have made film incentives a priority for 2004. The direct and indirect benefits to the State from filmmaking are substantial both in tax revenue generation and new job creation. The competition from other states and other countries has made the need for incentives paramount if North Carolina intends to remain third in the nation in film production. Failure to take quick and appropriate legislative action will ensure that filmmakers will continue to choose venues outside of North Carolina. Film production has the unique opportunity to create new investments in the State within a short period of time. If appropriate incentives are passed the return on the investment can be immediate.

3. Planning. Special legislation (or support of general legislation) to provide the City with more options for meeting Council-established planning objectives, such as economic development and affordable housing. These may be more appropriate for the 2005 long session, but it is not too early to begin discussing them.

4. Alcoholic Beverage Control Board. Increase the Alcoholic Beverage Control Board membership from 3 members to 5 members.

OTHER LOCAL LEGISLATIVE EFFORTS. The Asheville Chamber of Commerce legislative task force has been meeting for several months, and has formulated an agenda for local legislative priorities that it proposes to support. The legislative task force also adopted agendas of State and federal priorities. Although more regional in scope, some of these items have potential effects for Asheville.

Upon inquiry of Councilman Dunn, Mayor Worley explained why legislative requests are sent to our legislators if they are not unanimously supported by City Council.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that we are exploring the possibility of asking for authority to set limits on how much towings can cost.

Councilman Newman said that there are a number of issues that the General Assembly is dealing with that are relevant to cities across the state. He would be interested in having an opportunity for Council to talk about some of those issues and see if we want to take a position on them one way or another. Some are unlikely to be resolved in the Short Session, but it's never too early to get ideas out there. Some items he would like discussion on is the issue regarding campaign finance reform that is specifically about giving local governments the authority to enact local campaign finance reform. That is relevant to Asheville. We have talked to them about the Water Authority and if we want resolution of that, it will take legislative action. In addition, there is the Civic Center financing. How some of the property tax exemptions for some of the non-profit retirement centers in our community need to be discussed. There are efforts at the state level to look at some of the state's transportation policies with the idea of giving local governments greater ability to decide how those dollars are spent and having more flexibility. He suggested a date by which Council can, as a group, resolve some issues so we can have our position on those items and our legislative agenda sent to our legislators.

Vice-Mayor Mumpower was very interested in exploring some of the items mentioned by Councilman Newman but was concerned that there may not be enough time with just one worksession in April.

City Attorney Oast said that the convening date is May 10 and the deadline for submission of local bills to Bill Drafting is May 19. He said that he would bring back the legislative agenda for Council review in mid-April, for adoption at the end of April.

FEDERAL INITIATIVES

Economic Development Director Mac Williams said that this is the federal budget process is underway for Fiscal Year 2005. An official city agenda is needed to ensure that important city projects are considered by legislators during the appropriations process.

Input has been solicited from members of City Council, city staff, as well as from the City of Asheville federal lobbyist, Ball-Janik, to help determine a prioritized list of projects for inclusion on the City's Fiscal Year 2005 official federal agenda.

Based on input received to date and on recommendations from Ball-Janik, the following are recommended as priorities for the Fiscal Year 2005 federal agenda:

Appropriations Requests:

Economic Development	- Renovation of Pack Square - $1.5 million
Transportation	- City Bus Fleet Replacement – 30 ft. bus - $290,000 - Asheville Riverway – PE and Design - $600,000
Homeland Security	- Digital Platform Upgrades for Police/Fire Comm. - $2.75 million
Public Health	- Water System Infrastructure Upgrades - $600,000

Non-Appropriations Requests:

Transit Issue	- Section 5307
S. 150	- Internet Tax Non-discrimination Act

Staff recommends City Council approve the above items as the priority items for the official Fiscal Year 2005 City of Asheville federal agenda.

Mr. Williams explained that Vice-Mayor Mumpower's issue regarding the Civic Center designation is not specifically noted, but it is an issue on the lobbyist's agenda should we pursue it for technical assistance.

Upon inquiry of Vice-Mayor Mumpower, Mr. Williams explained the Memorial Stadium effort was a staff presentation to the lobbyist. It was his understanding from the lobbyist that we had to go back through and pare down what we thought was important, given that there were 4-5 of those similarly related projects. He believed that they looked at the Memorial Stadium effort as a project that needed a little more support from other resources and perhaps a designation from an historic agency. Mayor Worley also noted that he talked with the lobbyist and one of the major concerns was there was no historic designation that would put it in a much better position to receive federal funding. Vice-Mayor Mumpower felt Congressman Taylor was going to pursue this effort and would be interested in hearing thoughts on what the lobbyist thinks we need to do as homework.

Councilwoman Jones felt that the City Council's federal legislative agenda should be agreed on by the entire body. Furthermore, perhaps Council needs to discuss what we, as a City, are going to ask our congressmen and our senators to do.

Information was shared about the appropriations and non-appropriation requests.

Upon inquiry of Vice-Mayor Mumpower regarding the $1.5 Million for the renovation of Pack Square, City Manager Westbrook said that the City will revise that amount down as the project develops in the near future. The appropriate request may not be that much, but if it is an issue we feel, with the private sector part, lines up well with the federal goals and priorities.

Vice-Mayor Mumpower felt some items on the federal agenda have real substance, but he saw some padding. As someone who spoke against hiring a lobbyist, he was not encouraged by what the City has gotten for our money.

Councilwoman Jones spoke in support of the high integrity and hard work our lobbyists are doing on Asheville's behalf.

City Engineer Cathy Ball responded to Councilman Newman's suggestion regarding traffic signalization funding.

There was a brief discussion, initiated by Vice-Mayor Mumpower, about grants or funding available for drug interdiction.

At 7:12 p.m., Mayor Worley announced a short recess.

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

MID-YEAR BUDGET ADJUSTMENTS

Mayor Worley said the Fiscal Year 2003-2004 Annual Budget Ordinance included an appropriation of $563,146 for the City to begin making financial contributions to the Social Security system on behalf of firefighters. This contribution, however, was contingent upon a majority of firefighters formally voting to participate in the system. On October 27, 2003, firefighters voted not to participate in Social Security. This leaves $563,146 in the budget that can theoretically be used for other priorities.

Recently, a few members of Council have expressed an interest in reallocating the Social Security appropriation to other projects (a list of possible projects as identified by Council is below, totaling $130,000). Before any decisions are made in this regard, he feels that it is necessary to remind Council that a large portion of the firefighters' Social Security budget was funded with a fund balance appropriation. Specifically, Social Security was funded in the following manner:

Funding Sources:	
Appropriated Fund Balance	$315,000
General Fund Revenue	$248,146
Total	$563,146

Since the fund balance is typically only used for emergencies, unforeseen mandates or other critical, unanticipated needs, and does not represent a permanent revenue source, the portion of the firefighters' Social Security appropriation that was supported by fund balance ($315,000) should not be reallocated to new programs, but allowed to revert back to the fund balance in order to provide a buffer for future uncertainties.

If a majority of Council wishes to use the remaining $248,146 of the firefighters' Social Security appropriation, which is supported by true general fund revenue, he recommended that it be allocated in a manner consistent with the priorities established in the Fiscal Year 2003-2004 budget. The following Council members explained why they felt their suggested adjustments had merit:

Terry Bellamy:

- Adding additional funds for our sidewalk fund. Engineering is currently looking at a reengineering plan to add more manpower, so additional funds would be needed. - No specified amount recommended (N/A)

- Develop a new plan for the South Pack Square district. Current plan is over ten years old and needs to be updated. If Council made it a priority, City Planning would respond. - N/A

- There is interest from the community in improving W.C. Reid Center. Some improvement over the next few years is provided for in the current CIP. Would like to see a master plan for improvements. - N/A

Joe Dunn:

- A portion should go to renovation of Hall Fletcher playground ($80,000). Does not see a great need to spend it all in the first place - $80,000

Holly Jones

- Requests a $25,000 grant to the WNC Veterans Memorial Association to support their Memorial effort on Pack Square - $25,000

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Brownie Newman:

- Prefers not to make major budget amendments at this point, but supports idea to renovate the Hall Fletcher playground - N/A

Carl Mumpower:

- $50,000 to cover cost of two new Quick Response Vehicles (QRV) for fire department. - $50,000
- Consideration of ongoing funding for APD public housing and street level drug interdiction initiatives – most specifically compensation for loss of anticipated $132,131 due to the recent denial of a COPS Homeland Security Overtime Grant - $132,131
- Actively work to maintain fund balance at current levels. - N/A
- Gym equipment at fire/police station is in need of upgrade and improvement. Some near-term consideration of this expenditure might be worthy of further discussion. - N/A

Regarding Vice-Mayor Mumpower's request about the denial of a COPS grant, City Manager Westbrook explained that we budgeted for the work in the Housing Authority projects and then applied for the grant. Even though we did not get the grant, it won't stop the work we are doing in those areas. However, there are at least four activities that will have a significant impact on the Police Department's overtime budget (approximately $60,000) but we won't know that figure until we get close to June 30 and then if necessary, a budget amendment may be necessary. Vice-Mayor Mumpower then adjusted his suggested amount to $60,000 instead of $132,131, which covered the entire grant.

Discussion then surrounded each request and members of Council either spoke in support of the expenditure or why they did not feel the expenditure was appropriate at this time.

After discussion, the following directions were given to City staff:

- $93,000 of additional funds for our sidewalk program. Show of hands showed the adjustment would not be prepared. 3-4 vote with Councilwoman Bellamy, Councilwoman Jones and Councilman Dunn voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Newman voting "no."
- $80,000 for renovation of Hall Fletcher Playground. Show of hands showed the adjustment would be prepared. 4-3 vote with Councilwoman Bellamy, Councilwoman Jones, Councilman Dunn and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower and Councilman Davis voting "no."
- $50,000 for two new QRV's for Fire Department. Show of hands showed the adjustment would be prepared by a unanimous vote.
- $25,000 for WNC Veterans Memorial Association for their memorial effort on Pack Square. Show of hands showed the adjustment would be prepared. 5-2 vote with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones, Councilman Dunn and Councilman Newman voting "yes" and Vice-Mayor Mumpower and Councilman Davis voting "no."

Mayor Worley asked that the record show that City Council received this information and instructed the City Manager to place this item on the next formal City Council agenda.

BOARDS & COMMISSIONS

It was the consensus of City Council to arrange interviews for the following people for a vacancy on the Asheville-Buncombe Historic Resources Commission: Marsha Shortell and Diane Duermit.

CLOSED SESSION

At 8:12 p.m., Councilman Dunn moved to go into closed session for the following reason: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Eugene Ellison and Howard McGlohon; Texas Roadhouse Holdings, LLC; Paul M. Young; Trustees of Biltmore Masonic Lodge; and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3). The motion was seconded by Councilwoman Bellamy and carried unanimously.

At 8:34 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:34 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – March 23, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 2004 AS "CHILD ABUSE PREVENTION MONTH"

Mayor Worley read the proclamation proclaiming April 2004, as "Child Abuse Prevention Month" in the City of Asheville. He presented the proclamation to Mr. Bill McGuire, who briefed City Council on some statistics of child abuse and some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 2004, AND THE WORKSESSION HELD ON MARCH 16, 2004

This matter was pulled off the Consent Agenda for discussion.

B. ORDINANCE NO. 3096 - BUDGET AMENDMENT TO RECEIVE GRANT MONEY FROM THE N.C. DIVISION OF EMERGENCY MANAGEMENT FOR PROCUREMENT OF EMERGENCY RESPONSE AND PREPAREDNESS EQUIPMENT FOR ASHEVILLE FIRE & RESCUE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $21,739, to receive grant money from the U.S. Dept. of Justice (DOJ), sub-granted through the N.C. Division of Emergency Management, for procurement of emergency response and preparedness equipment for Asheville Fire and Rescue Department.

The City of Asheville Fire and Rescue Department requested $21,739 from the NC Division of Emergency Management for equipment to better prepare the City for a hazardous materials or terrorism incident. Staff was successful in obtaining those funds. Twenty-three North Carolina cities received the $21,739 grant. The City of Asheville received the grant in order to purchase a fire suppression and decontamination device that uses compressed air, water and foam.

Pros: (1) This unit is available at no cost to the City of Asheville; (2) No matching funds are required; (3) This unit will significantly enhance our ability to effectively manage car fires in our parking decks with the use of a quick response vehicle (QRV) as well as efficiently deal with brush and trash fires; (4) Currently, to provide fire service within the approximate 20 parking structures that are in the city, we park our large fire engines and must pull hand lines to reach vehicle and trash fires within the structures. This unit would allow us to drive directly to the fire in approximately 13 (or 65%) of those parking structures with a vehicle and minimize our response time and thus minimize damage from car and trash fires in those structures; (5) The unit that we recommend purchasing uses new technology to provide the effectiveness of 2,000 gallons of water with only 100 gallons of water (20:1 ratio) and foam. This allows for a relatively small fire unit that can be placed on a pick up type vehicle and operate efficiently and in tight, restricted areas; (6) When extinguishing woods and brush fires that are off the road, we use a brush truck vehicle with 150 gallons of water. This unit will offer 13 times that amount of fire extinguishing power due to the technological use of compressed air and foam; (7) The unit can also be used to decontaminate people and equipment as needed. This can be very effective in hazardous materials situations; (8) This unit is planned to be placed into service operating out of the downtown fire station, so that it is centrally located; (9) Cost of operating this unit on a QRV is significantly less than the cost of operating a full size fire engine; and (10) The unit is environmentally responsible.

Cons: (1) When we purchase our next pick up truck, it will need to be of sufficient size and strength to accommodate this unit. However, this additional cost is offset by a savings in costs to operate in this method versus cost of operating a full size fire engine or ladder truck; and (2) We will incur full replacement cost of the unit when it has served it's useful life. We would project the life cycle of this unit to be 10+ years.

City staff recommends City Council approve the budget amendment to receive grant money from the NC Division of Emergency Management.

ORDINANCE BOOK NO. 21 – PAGE 91

C. RESOLUTION NO. 04-60 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FUNDING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROVISION OF TRANSIT SERVICES TO THE TOWN OF BLACK MOUNTAIN

Summary: The consideration of (1) a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain; (2) a resolution authorizing the Mayor to enter into an agreement with Buncombe County and the Town of Weaverville to provide transit services to the Town of Weaverville; and (3) an associated budget amendment, in the amount of $433,294.

The Asheville Transit System has received funding for the operation of a route to Black Mountain through a contract signed by the Mayor last year. The unexpended funds have allowed some operation into this year. The City will receive these funds again this year enabling it to continue these routes through June 30, 2004, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. There are no City funds in any of these operations, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes.

The Asheville Transit system also received operational assistance in excess of the amount originally budgeted for Fiscal Year 2004.

Mountain Mobility will also fund the operation of a route to Weaverville, using federal Job Funds received by the state and granted to Mountain Mobility. The Town of Weaverville will also contribute $10,000 to the operation. There will be no City money involved in the operation of this route. The funding is sufficient to operate through October of 2004. This will allow the route to be tested, and if warranted, an application made to the state for continued funding through Fiscal Year 2005.

The budget amendment represents state funding of all Black Mountain operations, funds from Mountain Mobility for Weaverville Route, and an increase in state operating funding over the budgeted amount.

The benefit to the City of Asheville is:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville

There are no disadvantages to the City of Asheville.

City staff recommends City Council to authorize (1) a resolution authorizing the Mayor to enter into a funding agreement with the N.C. Dept. of Transportation (NC DOT) for the provision of transit services to the Town of Black Mountain; (2) a resolution authorizing the Mayor to enter into an agreement with Buncombe County and the Town of Weaverville to provide transit services to the Town of Weaverville; and (3) an associated budget amendment, in the amount of $433,294.

RESOLUTION BOOK NO. 28 – PAGE 160

D. RESOLUTION NO. 04-61 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY AND THE TOWN OF WEAVERVILLE TO PROVIDE TRANSIT SERVICES TO THE TOWN OF WEAVERVILLE

Summary: See Consent Agenda Item "C" above.

RESOLUTION BOOK NO. 28 – PAGE 161

E. ORDINANCE NO. 3097 – BUDGET AMENDMENT TO FUND TRANSIT ROUTES

Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 21 – PAGE 93

F. RESOLUTION NO. 04-62 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A MOBILE SOURCE EMISSIONS GRANT TO CONSTRUCT A PILOT COMPRESSED NATURAL GAS FUELING STATION

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a pilot compressed natural gas (CNG) fueling station; and (2) an associated budget amendment, in the amount of $455,000.

Almost a decade ago, North Carolina committed to funding the construction of rapid fill compressed natural gas fueling stations along the Interstate 40 corridor. The construction of such a station in Asheville will complete this vision and accommodate CNG fuel needs from the Atlantic Coast to Knoxville, Tennessee (and further West).

On November 14, 2000, City Council authorized city staff to apply for a grant to construct a fast-fill CNG fueling station and provided $100,000 to defray 'incremental' costs of CNG-powered vehicles.

In June 2003, the City received notification from the NCDENR (Mobile Source Emissions Reduction Grant) awarding the City a total of $400,000. Of the 400,000, $300,000 will be used for constructing a CNG fueling station on City property for fleet and public use. The additional $100,000 will be to fund the incremental price increase for the purchase of CNG-powered vehicles, which cost about 20% more than conventional vehicles, for the City and its key partners (Mission St. Joseph's and Buncombe County).

The City's cash match is $55,000, which includes $35,000 for a public-access card reader system (which will also be used by fleet) and a $20,000 contingency for concrete, security, fencing, etc. This cash match will have to be appropriated from fund balance.

- Advantages
  - CNG fueling station will complete North Carolina's CNG station master plan
  - Public access for CNG-powered vehicles
  - City's cash contribution is only 13.75%
  - Staff (and partners) will gain valuable experience regarding high-pressure fuel systems.
  - Staff will gain experience in alternative fuel technologies
  - City (and partners) are taking a leadership role regarding CNG, alternative fuel vehicle technologies and emissions reductions

- Challenges
  - Cash match of $55,000
  - Higher (incremental) costs of vehicles (about 20%)
  - Requires additional training for maintenance staff
  - Public access to CNG fueling system

Staff recommends the adoption of (1) a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Environment and Natural Resources (NCDENR) for a mobile source emissions grant to construct a pilot compressed natural gas (CNG) fueling station and funding for the incremental cost of purchasing CNG vehicles; and (2) an associated budget amendment, in the amount of $455,000.

RESOLUTION BOOK NO. 28 – PAGE 162

G. ORDINANCE NO. 3098 – BUDGET AMENDMENT TO ALLOCATE A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A COMPRESSED NATURAL GAS FUELING STATION

Summary: See Consent Agenda Item "F" above.

ORDINANCE BOOK NO. 21 – PAGE 95

H. RESOLUTION NO. 04-63 – RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR COMPUTERS FOR FIRE APPARATUS, PORTABLE RADIOS AND TWO PORTABLE REPEATERS FOR THE FIRE AND RESCUE DEPARTMENT

Summary: The consideration of a resolution authorizing the Fire and Rescue Department to apply for Federal funds available from the U.S. Department of Homeland Security (DHS), sub-granted through the Federal Emergency Management Agency's (FEMA) Fiscal Year 2005 Assistance to Firefighter's Grant Program, for procurement of computers for fire apparatus, portable radios (walkie-talkies) and two portable radio repeaters.

The City of Asheville Fire and Rescue Department, with endorsement of the Asheville City Council in March 2003, requested $122,205 from the U.S. Department of Homeland Security to replace 44 of the department's self contained breathing apparatus (air packs) and 24 of the department's VHF portable radios (walkie-talkies). The Federal grant was for 70% of the costs with the city to match 30%, or $52,373. Staff was successful in obtaining those Federal funds. We again have an opportunity to apply for the grant program in order to fund laptop computers for fire apparatus, portable radios for firefighters and two portable repeaters.

The computers and walkie-talkies will be used daily by firefighters and are used on virtually every emergency that occurs within the city. The portable repeaters will be used often. Computers are used though the city's existing Geographical Information Systems (GIS) database to provide street, water line, hydrant, building, pre-incident plans, aerial photography, resource listings and other information to firefighters on a daily basis when responding to and managing emergencies. Additional walkie-talkies would allow each firefighter "seat" to have a portable radio. Currently, only the fire officer and fire engineer on each apparatus have portable radios. This would improve firefighter safety. The two vehicle repeaters would allow firefighters to better communicate in dense or "heavy" buildings, such as the hospitals, the malls, etc.

Staff desires to apply for grant in the amount of $141,300. Seventy percent ($98,910) will be Federal dollars and 30% ($42,390) will be the City's match. The City's match will come from Fund Balance.

PROS:

- The computer equipment would allow the Asheville Fire and Rescue Department to take advantage of the information and technology that is available to us and allow us to apply it virtually every day. We have field-tested a laptop already for two months and it works great in the field.
- The portable radios would increase firefighter safety on emergency scenes.
- The portable repeaters would allow firefighters to communicate in locations where the current system is very limited such as the hospital, mall and other "heavy" buildings.
- If the grant is approved, 70% of the funds, would be supplied by the Federal Government.

CONS:

- In order to maintain the same level of service, computer equipment and radio equipment would have to be replaced by the city when it is worn out. Live expectancy would be approximately five (5) years.
- If the grant is approved, the city would have to contribute 30% of the funds for the project.

City staff recommends City Council approve the resolution authorizing staff to apply for the 2004 Assistance to Firefighters Grant from the U.S. Department of Homeland Security.

RESOLUTION BOOK NO. 28 – PAGE 164

I. MOTION SUPPORTING THE RECOMMENDATIONS OF THE DOWNTOWN SOCIAL ISSUES TASK FORCE THAT A JOINT CITY-COUNTY TASK FORCE BE APPROVED TO DEVELOP A TEN-YEAR PLAN TO END HOMELESSNESS

J. RESOLUTION NO. 04-64 – RESOLUTION APPROVING AN AMENDMENT TO THE OPTIONAL RELOCATION POLICY

Summary: The consideration of a resolution adopting a revised Optional Relocation Assistance Policy.

When federal funds, such as Community Development Block Grant (CDBG) or HOME, are used in a project in which people are involuntarily displaced from their homes, there are strict regulations for providing adequate relocation assistance to the displaced households. CDBG funds can also be used "optionally" to provide assistance in cases not covered by these regulations. The City adopted such an optional policy in December 2000 in response to the closure of the Merrimon House. It provides for CDBG-assisted relocation when tenants are displaced by City housing code enforcement action.

Staff has found that the current the policy is not very effective in emergency situations because it requires Council approval for each case. We have also started to encounter cases of need not covered by the original policy.

A recent code enforcement case made us aware of the need to provide relocation assistance quickly in emergencies. The City's Housing Code Coordinator issued an immediate Notice to Vacate to a household consisting of an owner and tenants whose health and safety were at risk because the property lacked a sanitary sewer. The residents had minimal financial resources. Due to the urgency of the situation, staff authorized CDBG Emergency Relocation funding to enable the Affordable Housing Coalition to provide advice and financial aid. Without such assistance, the residents might have become homeless.

In addition, participants in the City's homeowner rehabilitation program are sometimes required to temporarily relocate during the rehabilitation process to protect their health and safety. This has presented problems for some applicants who cannot afford to pay for rent and moving costs in addition to their regular mortgage payment.

These cases are fairly unusual, averaging one or two a year, although, as with the Merrimon House, several households may be relocated in one case.

The revised relocation policy would allow staff to approve CDBG relocation assistance up to $2,000 per household, and would extend assistance to homeowners displaced by code enforcement action and to participants in the homeowner rehabilitation program. In every case there would have to be clear evidence of financial hardship. The number of cases is expected to increase to an average of 2-4 a year.

The advantages of adopting the revised policy as drafted are:

- Allows rapid response to emergency needs, preventing possible homelessness;
- Extends benefits to homeowners displaced by code enforcement action, as well as tenants;
- Allows low-income homeowners to participate in the FAIR program without fear of hardship if they have to relocate temporarily;
- Avoids involvement of Council Members in administrative decisions involving small expenditures;
- Avoids public discussion of cases, which may be embarrassing for the individuals involved; and
- Avoids setting a precedent for administrative (as opposed to advisory) action by the HCD Committee.

Disadvantages include:

- Removes cases from direct Council oversight; and
- By extending benefits to more people, marginally increases the possibility of abuse.

Staff recommends adoption of the Revised Optional Relocation Assistance Policy in which the City's Housing Code Coordinator and Community Development Director determine the relocation assistance is necessary to mitigate hardship (not the Housing & Community Development Committee).

RESOLUTION BOOK NO. 28 – PAGE 165

K. RESOLUTION NO. 04-65 – RESOLUTION APPROVING A POLICY GOVERNING BANNERS ON LIGHT POLES IN THE CITY OF ASHEVILLE

Summary: The consideration of a resolution adopting a policy governing banners on lights poles in the City of Asheville.

Requests for placing banners on City light poles have been increasing over the past few years. City staff needs a policy to guide how this program should work.

The City of Asheville reserves the right to install its own banners for special events, holidays or other purposes. There are two categories of banners provided for in the policy for other participants:

- District Identification – Banners can be used to identify specific neighborhoods or business districts, which will also assist visitors with way finding. These banners may be displayed for up to a year, and are renewable.

- Co-Sponsored Events – Events that are co-sponsored by the City of Asheville may want to promote their event with banners for a month preceding the event date. Examples of such banners could be Bele Chere, the Greek Festival or Goombay.

Sponsorship is allowed on 20% of a banner to identify private businesses or individuals who have contributed funds towards supporting the banners. This sponsorship can appear on the banner itself or on a hang down piece that will be no greater than 20% of the banner area. The hang down option gives participants the ability to produce banners for multiple uses, while changing sponsorships.

The policy outlines standard size requirements for banners. The size of 30" x 60" is a standard size for city streets, as well as a standard manufacturing size. In the case of larger profile roads, such as Patton Avenue in West Asheville, a longer banner could be allowed.

Advantages:

- Individuals or groups will be able to put up banners recognizing business districts or neighborhoods of the city.
- Events co-sponsored by the City will be able to promote their event for a month prior to the event.
- Event Banners will reflect events that benefit the entire community.

Disadvantages:

- The policy does not allow for other types of banners to be put up, which may seem restrictive, but should prevent community division over the content of the banners.

City staff recommends the adoption of the policy governing banners on light poles in the City of Asheville.

RESOLUTION BOOK NO. 28 – PAGE 167

L. MOTION APPROVING THE FISCAL YEAR 2005 FEDERAL AGENDA

Summary: The federal budget process is underway for Fiscal Year 2005. An official city agenda is needed to ensure that important city projects are considered by legislators during the appropriations process.

Input has been solicited from members of City Council, city staff, as well as from the City of Asheville federal lobbyist, Ball-Janik, to help determine a prioritized list of projects for inclusion on the City's Fiscal Year 2005 official federal agenda.

Based on input received to date and on recommendations from Ball-Janik, the following are recommended as priorities for the Fiscal Year 2005 federal agenda:

Appropriations Requests:

Economic Development	- Renovation of Pack Square - $1.5 million
Transportation	- City Bus Fleet Replacement – 30 ft. bus - $290,000 - Asheville Riverway – PE and Design - $600,000
Homeland Security	- Digital Platform Upgrades for Police/Fire Comm. - $2.75 million
Public Health	- Water System Infrastructure Upgrades - $600,000

Non-Appropriations Requests:

Transit Issue	- Section 5307
S. 150	- Internet Tax Non-discrimination Act

Staff recommends City Council approve the above items as the priority items for the official Fiscal Year 2005 City of Asheville federal agenda.

M. RESOLUTION NO. 04-66- - RESOLUTION AMENDING THE 2004 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE APRIL 6, 2004, WORKSESSION

RESOLUTION BOOK NO. 28 – PAGE 168

N. MOTION SETTING PUBLIC HEARING ON THE CONSOLIDATED ACTION PLAN FOR 2004-05

Summary: The consideration of a motion setting a public hearing on April 13, 2004, to receive public input on the City's draft Consolidated Action Plan for 2004-05.

The Annual Consolidated Action Plan sets out the City's planned use of federal Community Development Block Grant (CDBG) and HOME funds for the next fiscal year. In compliance with HUD regulations, the following schedule is being followed for preparing the Plan:

2003	
November 10	Public Hearing (for Buncombe & Madison Counties)
November 12	Public Hearing (for Henderson & Transylvania Counties)
2004	
January 30	Deadline for applications
March 12	Consortium Board makes HOME funding recommendations
March 23	Housing & Community Development Committee makes CDBG recommendations
March 26	Draft Plan published for public comment
April 13	Asheville City Council: Public Hearing on draft plan
April 26	Deadline for citizen comments on draft plan
April 27	Asheville City Council approves Action Plan
May 12	Action Plan submitted to HUD

Approximately $3,800,000 will be available for allocation this year.

A full staff report, detailing the funding recommendations made by the City's Housing and Community Development Committee and the Asheville Regional Housing Consortium, will be submitted to Council before the hearing.

City staff recommends City Council set the public hearing for April 13, 2004.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEM PULLED OFF CONSENT AGENDA FOR DISCUSSION

APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 9, 2004, AND THE WORKSESSION HELD ON MARCH 16, 2004

Councilwoman Jones moved to amend the minutes of the March 16, 2004, worksession to show that the funding for writing the 10-year plan to end homelessness would be monies coming from the HOME funds, not Community Development Block Grant funds; and to approve the minutes of the March 9, 2004, meeting. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

III. PUBLIC HEARINGS:

REQUEST FOR CONTINUANCE OF PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley said that there has been a request for a continuance of this public hearing.

Ms. Patsy Brison Meldrum, attorney representing Britt & Tilson Glass Company, one of the neighboring property owners to the proposed project, requests a continuance for three reasons. (1) The Technical Review Committee recommended approval of the project with conditions. One of the conditions is that Britt Drive be used as an access if legally permissible. If Britt Drive is not available for access, the City's Traffic Engineer requires that a traffic impact analysis be performed. Our firm has conducted a limited title search of the property proposed for the Foxwood Apartments development limited to determining whether or not access to Britt Drive was conveyed. We have found no such conveyance. In addition, the recorded subdivision plat for property, including our clients property, shows Britt Drive as a portion of that subdivision, but the subdivision does not include the property proposed for the Foxwood Apartments project. In addition, our clients, and other adjoining property owners, have installed the paved surface for Britt Drive and our records indicate that the City has not maintained Britt Drive. Therefore, it is our opinion that Britt Drive is not a public street and access is not available via Britt Drive. As of March 15, 2004, no determination by the City of Asheville has been made about the use of Britt Drive and no traffic impact analysis has been done for the project. On that basis, we are requesting a continuance of the public hearing until a determination can be made as to whether or not Britt Drive may be used for access and, if not, until a traffic impact analysis can be performed and reported to the City and available for review by adjoining property owners. Secondly, a portion of this project is located within the River District. Because there is a substantial change to the landscape for new construction over 5,000 square feet in size, the project would be classified as a "major works" which requires a formal review by the River District Design Review committee, which has not been done. Thirdly, she feels the continuance should be granted because of pre-hearing bias. In the staff report there are included proposed findings based upon evidence not yet before Council. Council has evidence that has been given before you before this hearing and that needs to be deleted from the record before the matter is considered.

Mr. Albert Sneed, attorney representing the property owner and developer, objected to a continuance. He explained that the developer didn't want access over Britt Drive. That was a suggestion by City staff. It was his understanding that the City Attorney has just determined that there is no public access over Britt Drive and that issue is no longer in question. There has never been a requirement for a traffic study. City staff's recommendation was that if Britt Drive was not available for access then a limited traffic study was required to determine whether or not the design of the entrance on Swannanoa River Road was proper. This project is able to provide 100 units of affordable housing because of a tax credit program. Since the application must be made shortly after April 1, he felt this is a ploy by the neighborhood to kill the project by asking for a continuance. The only thing in the River District is the entrance onto Swannanoa River Road and there are no building proposed in that District. Regarding the "pre-hearing bias," Mr. Sneed felt City staff was entitled to make recommendations to Council with the ultimate decision being made by City Council.

Planning & Development Director Scott Shuford said that the requirement that City staff is proposing for a traffic impact analysis is not to determine whether there is a capacity on Swannanoa River Road to handle the volume of traffic that will come from this project. It's an operational issue to determine what the best design for that single driveway would be in the event that Britt Drive was not available. We don't need the traffic impact analysis to determine whether the seven standards for a conditional use permit approval can be met. Regarding the River District, only a small portion of the property is located in the River District. It is located at the access drive with no structure in that District and consequently there is no need for River District design review.

City Attorney Oast said that Britt Drive is not publicly maintained beyond a certain point. The staff report does not require access via Britt Drive at this time. It may be that we later determine that it is available for public access, but that information is inconclusive at this time. He didn't think Council needed to make that conclusion in order for Council to make the decision tonight. In any event, it was his understanding that staff has made the determination that the project will work with a single access. Regarding the pre-hearing bias claim, he reminded Council that they are to make your decision on the basis of the information that has been provided to you at the public hearing. He didn't think the staff report with recommended findings rises to the level of pre-hearing bias.

Councilwoman Bellamy disclosed that she is the City Council liaison to the Housing Authority Board and has heard the presentation by the developer because there are project based Section 8 vouchers being given for this project. City Attorney Oast felt it was appropriate for Councilwoman Bellamy to disclose that fact, however, he did not feel that was a disqualifying conflict.

City Engineer Cathy Ball explained that initially looking at the plan they felt like because the number of units and because of the proximity to Swannanoa River and the possible flooding, they wanted to see two access points to the site. Our recommendation from the beginning was that the developer be able to acquire and be able to make access to Britt Drive. If that was not possible, (this project does not fall under the requirements of needing to complete a traffic impact analysis) then we need to do a limited study to make sure that there won't be issues if there is only one entrance into the site provided. There may be other ways to mitigate the problem of not having the other drive. An engineer can look at that entrance and make sure it can handle the capacity of all the vehicles that come in and out of there and make sure they can maneuver in and out. This is not a full-blown traffic impact analysis because we know Swannanoa River Road can handle the traffic. The engineer will look at that entrance and determine that if in certain conditions will traffic flow safety and can emergency services be provided to that facility. If it can't then are there other alternatives that would help accomplish the same thing, like is there another place on the property where another drive could be located.

Ms. Ball explained said that the City maintenance of Britt Drive ends prior to getting to this project, however, there is a platted right-of-way, and whether that right-of-way has limitations that would not allow this property owner to access it is a question that needs to be answered.

Councilman Dunn moved to not continue the public hearing to another date. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Ms. Meldrum asked that City Council re-order the public hearings and allow this public hearing to be heard first based on the number of people in attendance (in excess of 80). Based on no motion being made by Council to re-order the public hearings, the meeting continued.

ANNEXATION PUBLIC HEARINGS

Mr. Carter Pettibone, Urban Planner, explained that purpose of these hearings is for the City to explain the plan for extending City services to the proposed annexation areas, and to give all persons resident or owning property within the areas, and all residents of the City, the opportunity to be heard.

On January 13, 2004, the City Council adopted Resolutions of Intent beginning the annexation process for the following six areas referred to as the 2004 annexations: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan was approved on January 27, 2004, and a public information meeting was held on March 4, 2004. Approximately 30 persons affected by the proposed annexations attended this meeting. On April 13, 2004, City Council will consider adoption of the ordinances extending the corporate limits, with an effective date of the annexations being June 30, 2004.

Mr. Pettibone said that annexation is defined as an extension of the City's corporate limits. Annexation areas under the statutes must be developed to urban standards. Once annexed, the property owners and residents are entitled to City services and are subject to the City's taxes and ordinances. The authority for annexation comes under the N. C. General Statutes. North Carolina state law recognizes that the cities need to expand their boundaries to include this growth so that we don't end up in a situation where an increasingly relatively smaller number of citizens are financing the urban infrastructure used by a much larger population. The fact is that people living in close proximity to cities benefit from the cities, and state annexation law is designed to include these people in the costs and benefits of governing and servicing the City.

Mr. Pettibone explained the standards necessary to qualify areas for annexation – (1) at least 1/8 of the area's boundary must be adjacent to the current corporate limits; and (2) each area must meet at least one or more of four development tests - (a) population/density test; (b) subdivision test; (c) development test; or (d) nonresidential urban use test. The state also recognizes that certain areas within these annexation areas may be classified as non-urban areas and there are two qualifications that must be met.

He explained the City's annexation strategy has been to target areas (1) that are clearly developed and meet statutes, (2) include areas where water and sewer infrastructure have been extended, (3) improve the City's boundaries by eliminating pockets and clarifying boundaries; and (4) disburse the annexation areas geographically.

Mr. Pettibone then reviewed the various services (police protection, fire protection, solid waste collection, street maintenance, water distribution, and sewer collection) that would be provided to each of the annexed areas. He then reviewed the following financial plan:

Financial Impact:

Revenue: Total ad valorem property tax revenue - $254,055; Total state utility tax revenue - $22,742; Total local option sales tax - $91,799; Total Powell Bill allocation - $21,276; and Total fees, permits, licenses and charges for services - $38,845. Total revenue - $424,717.

Annual recurring expenditures: Police (one additional officer) - $35,000; Fire (rural fire department contracts expected to be in place for at least 5 years. Additionally, there is a general annual expenditure not associated with a particular area of $17,000 to reflect a portion of the cost for the hiring of a Deputy Fire Marshal. This position will be hired effective January 1, 2005) - $62,446; Solid waste - $13,827; Recycling - $3,922; and Street lighting - $101. Total recurring expenditures - $115,296.

Annual capital expenditures: Water lines - $135,020; Sewer lines - $31,200; Solid waste (cost equals potential economic loss compensation for private solid waste haulers) - $60,839; Rollout containers - $16,760; Street signs - $2,100; Street repair - $39,500; Sidewalks - $232,000. Total annual capital expenditure - $517,419.

A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HERITAGE BUSINESS PARK AREA

Mayor Worley opened the public hearing at 5:45 p.m.

Mr. Pettibone explained the Heritage Business Park area – This area contains commercial and vacant lots. This contains 11 lots totaling 13.58 acres. There is no estimated population. If the property is annexed, it would bring in $7,591 in annual property tax revenue.

Mr. Pettibone said that there are nine businesses in this proposed annexation area: Andy Oxy Company; Go Grocery Outlet (portion of property): Heritage Limited; James C. Greene Company; Land-of-Sky Regional Council; Leicester Carpet (portion of property); Mike Creasman, Certified Financial Planner; N.C. Division of Pollution Prevention; and Wilco.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:49 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HONEY DRIVE AREA

Mayor Worley opened the public hearing at 5:49 p.m.

Mr. Pettibone explained the Honey Drive area – This area contains single-family residential. This contains nine lots totaling 4.5 acres. There is an estimated population of 13. If the property is annexed, it would bring in $6,037 in annual property tax revenue.

Mr. Pettibone noted that initially the Annexation Services Plan did not include taking over a portion of Honey Drive for maintenance. We do plan to bring a small amendment to the Services Plan to Council to show that we will be taking over the portion of Honey Drive within the proposed annexation area for maintenance.

Mr. Wayne Marshall, Honey Drive resident, said that he was not opposed to being annexed and was surprised that they had not been annexed years ago. However, he questioned if the process would be good for Asheville given the amount of revenue it would create from the few properties being annexed. He compared the $82,000 cost of upgrading the water system improvements with the revenue that the few homes on Honey Drive would bring.

Mr. Fred English, Haw Creek resident, felt that the City should not be annexing until they provide services to current residents and also felt that there would be no affordable housing when rents have to be increased.

Mr. Dick Washam, Honey Drive resident, questioned where the $82,000 for water system improvements to their area would come from and how does the City justify putting newly annexed areas ahead of other areas in the City that have been waiting for water line improvements.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 5:58 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE ENKA PARK AREA

Mayor Worley opened the public hearing at 5:59 p.m.

Mr. Pettibone explained the Enka Park area – This area contains single-family residential and industrial. This contains 89 lot totaling 30.27 acres. The estimated population is 170. If the property is annexed, it would bring in $39,257 in annual property tax revenue.

Smith Dray Line Company is the only business in this proposed annexation area.

Mr. C. V. Parker, Enka Village resident, said that this is annexation is 2/3 of Enka Village. He noted that this is the only remaining intact mill village in the State of North Carolina. They currently pay for water assessments, street lights, and sewer maintenance. But since the City is only annexing 2/3 of Enka Village, the City is taking over four streets and leaving two. He understands the other 1/3 of Enka Village does not meet the annexation standards, but the Enka Village residents will still have to be responsible for the other two streets' sewer maintenance, street lights, etc.

Upon inquiry of Councilman Davis, City Engineer Cathy Ball said that the water service in the area is maintained by the City of Asheville. The property owners are working with MSD to have their sewer lines taken into the MSD system for maintenance purposes. If the sewer lines are up to MSD standards and taken over by MSD, they will take over the entire line but the homes in the County will be considered outside the district and would be charged an additional $0.01 per CCF (100 cubic feet = 1 CCF) on their bill.

Upon inquiry of Councilman Davis, Planning and Development Director Scott Shuford responded about the other two streets. He believed that when the Biltmore Lake development went in, those properties were connected to the sewer and water system that was being installed for that project. Upon annexation into the City, we will be providing to the Enka Village residents street light service. He also said that the narrow streets are not dissimilar to other streets in the City. In addition, the City felt that the original sidewalks needed to be replaced so we have added $232,000 in our Annexation Services Plan to address that need.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:04 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

D. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE ASHWOOD AREA

Mayor Worley opened the public hearing at 6:04 p.m.

Mr. Pettibone explained the Ashwood area – This area contains single-family residential and mobile homes. This contains 58 lots totaling 14.42 acres. The estimated population is 113. If the property is annexed, it would bring in $30,881 in annual property tax revenue.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:07 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

E. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE HEATHBROOK AREA

Mayor Worley opened the public hearing at 6:08 p.m.

Mr. Pettibone explained the Heathbrook area – This area contains single-family residential. This contains 24 lots totaling 4.51 acres. The estimated population is 47. If the property is annexed, it would bring in $27,956 in annual property tax revenue.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:09 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

G. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SWEETEN CREEK ROAD AREA

Mayor Worley opened the public hearing at 6:09 p.m.

Mr. Pettibone explained the Sweeten Creek Road area – This area contains single-family residential, condominiums and multi-family residential, and commercial. This contains 190 lots totaling 74.86 acres. The estimated population is 545. If the property is annexed, it would bring in $140,303 in annual property tax revenue.

There are seven businesses in this proposed annexation area: Arden Garage and Towing; BellSouth; Crazy Dave's Fireworks World; Lane and W.M.C. Auto Group; The Oaks at Sweeten Creek; Papa's Grill and T & J Auto Service Center.

Upon inquiry of Councilman Newman, Mr. Pettibone said that this area meets the population test. It contains 7.3 persons per acre, which is well above the minimum of 2.3 persons per acre.

Ms. Janice Dotson, resident in Pensacola Heights, explained how the additional property taxes would be a hardship on the 12 units in Pensacola Heights.

Mr. Ralph Shindler, representing the Pensacola Heights Homeowners Association, said that his complex is made up of many retirees on fixed incomes and with the higher price of drugs, fuel, etc. they would not like to have increased property taxes. He felt that annexation is unfair. The City already has streets that need repair, and a Civic Center that needs renovation. It does not need any more problems associated with annexation. His area already has water, sewer and excellent police and fire protection so the City will not be offering them anything they don't already have.

Ms. Betsy Gardner felt this annexation process is moving too rapidly in that the short notice puts property owners at a disadvantage. It does not allow them proper time to research and prepare a rebuttal to the proposal. She felt it gives the impression of bulldozing annexation just to receive one more year of taxes. In addition, their area is marginally eligible for annexation due to the difference between the character of existing City land and the land proposed to be annexed. It may meet the letter but not the spirit of the annexation statutes.

Ms. Jeanette Senn, property owners, said that because Carrington Place has a Condominium Association, their roads and street lights are private and there is nowhere to house the green trash cans. They feel they are being taxes with no services being provided. Since the City does not have the proper equipment to pick up dumpsters, they would like to make sure that private carriers to have the right to contract with the City. In addition, she asked that the City look at their streets to see if they meet the criteria for maintenance and perhaps provide street lighting.

Upon inquiry of Councilman Dunn about the lack of sidewalks on Sweeten Creek Road, Mr. Pettibone said that the City requires sidewalks be constructed when developments are built within our jurisdiction.

City Attorney Oast said that N.C. Gen. Stat. sec. 160A-49 requires that the appropriate persons who handled those tasks make certain certifications regarding public notice provided for this hearing. Urban Planner Carter Pettibone and City Clerk Burleson have made the appropriate certifications. In addition, City Clerk Burleson has certified certain other ministerial facts regarding the availability of the Annexation Services Plan; the delivery of the statement of impact to Buncombe County; letters to volunteer fire departments and their responses; and letters to the solid waste providers and their responses. He asked that these certifications be entered into the record.

Mayor Worley closed the public hearing at 6:25 p.m.

Mayor Worley said that the ordinance to extend the corporate limits into this area would be considered by City Council on April 13, 2004.

H. PUBLIC HEARING TO CONSIDER THE REZONING OF 34.6 ACRES LOCATED AT SCHENCK PARKWAY FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3099 – ORDINANCE TO REZONE 34.6 ACRES LOCATED AT SCHENCK PARKWAY FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 6:29 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to rezone 34.6 acres located at Schenck Parkway from RS-2 Residential Single-Family Low Density District to Commercial Industrial District. This public hearing was advertised on March 12 and 19, 2004.

Biltmore Farms Inc., (applicant) wishes to rezone the property in order to continue the business park development of the Biltmore Park Master Plan. The properties are located just outside the City limits in the extraterritorial jurisdiction area on the extension of Schenck Parkway. There is a mix of zoning districts in the area, with RS-2 and RS-8 to the east, RS 2 to the north, and CBD to the south and unzoned interstate right-of-way to the west. Land uses include primarily single-family residential to the east, a scenic corridor (Blue Ridge Parkway) to the north, vacant property to the south and I-26 to the west. The surrounding properties to the east and south are part of the Biltmore Park development and, in addition to being regulated by zoning, are subject to the provisions of Biltmore Park's master plan. The property is separated from the Blue Ridge Parkway roadway by a knob and topography that limits the visual impact of the development from that scenic corridor except from the Parkway's I-26 bridge crossing. Staff has identified no compatibility concerns that would not be mitigated by the Unified Development Ordinance's buffer requirements.

The 2025 Plan calls for the protection of scenic views and vistas and enhancement of the Blue Ridge Parkway viewshed. The subject property is separated from the Blue Ridge Parkway roadway by a knob that limits the visual impact of the development from that scenic corridor except from the Parkway's I-26 bridge crossing. The Plan also calls for the City to identify and zone areas appropriate for large-scale commercial uses where transportation and other infrastructure is available for such uses. This area has been planned and developed for uses permitted in the CI zoning district.

Pros

- Rezoning the property CI would allow the applicant the opportunity to continue the development plan for the Biltmore Park project.
- The rezoning is consistent with the intent and purpose of the Unified Development Ordinance (UDO) and goals of the City's smart growth policy and 2025 City Development Plan.
- Staff has identified no compatibility concerns that would not be mitigated by the buffering requirements of the UDO.

Cons

- Perception of commercial intrusion.
- Potential of development to affect Blue Ridge Parkway viewshed.

On March 18, 2004, the Planning and Zoning Commission voted unanimously (4-0) to recommend approval of this rezoning request. The only public comment received was from the applicant's representative, Greg Hildebrand, who was in support. We have received no informal objection to the request.

City staff recommends approval as well

The following residents were opposed to the rezoning for various reasons, some being but are not limited to: traffic study and noise abatement study should be performed before any decisions are made to rezone; desire to see the view preserved; 6-story corporate headquarters will not be compatible with the neighborhood; all uses in Commercial Industrial District are not compatible with the RS-2 adjoining neighborhood; noise already a concern in the area; safety for children from traffic near park and in the residential development is a concern; not enough buffering from site to residential property; view will be destroyed because of the significant grading and loss of trees; removal of trees will create a wetland for stormwater runoff from the development; request for mandatory 100' buffer (not 30'); residential properties will have to look at a parking lot; and air pollution:

Ms. Kay Whittington, resident on Dianthus Drive
Ms. Jackie Steward, resident on Dianthus Drive
Mr. Wyatt Stevens, resident on White Ash Drive
Mr. William McCann, resident of Red Cedar Lane

Mr. Rick Lutovsk, representing the Chamber of Commerce and Economic Development Commission, spoke in support of the rezoning in that it has the potential for job creation.

Mr. Yates Pharr, employee with Biltmore Park representing the property owner, explained that this land was unzoned until approximately two years ago when the City zoned it residential because it was in the extraterritorial jurisdiction area. They have always intended to use this land to be commercial and to continue their Master Plan in Biltmore Park. They intend to carry out the same type of Class A improvements that they have so far.

Councilwoman Bellamy asked if the developer would be willing to place a 100-foot buffer on the residential side. Mr. Pharr explained that when anyone is interested in looking at Biltmore Park there is an illustrative plan that is given that shows where the property was intended to be developed as commercial (he showed a similar plan). There is almost no difference in the development or the houses from the illustrative plan originally shown. The distance between the residential and where the planned usable area is at this time is anywhere from 200-300 feet as it is now. With the 30-foot buffer (Type-D buffer required), that would be added to the existing 200-300 feet boundary.

City Attorney Oast cautioned Council that they cannot consider specific development plans for any rezoning, in that any use permitted in the Commercial Industrial District is allowed. He said that Council can rezone some, all or none of the property, but Council cannot put conditions on it. The only buffering we can require is what is provided by the Unified Development Ordinance.

After a brief discussion about additional buffering, City Attorney Oast said the developer can work with the neighbors as to any additional buffering, but again, the only buffering Council can require is the Type D buffer that the UDO provides.

Mr. Shuford advised Council that any large scale project is subject to all City requirements and if the project is large enough it would be considered a Level III project. A Level III project will have to be approved by City Council which will give Council an opportunity to cover some concerns expressed tonight.

Councilwoman Bellamy urged the developers to meet with the neighbors regarding the buffering. Mr. Pharr said that he will be happy to listen and work with the neighborhood where they can.

Mayor Worley closed the public hearing at 7:08 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3099. This motion was seconded by Councilman Dunn and carried unanimously.

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At 7:25 p.m., Mayor Worley announced a short break.

H. PUBLIC HEARING RELATIVE TO A CONDITIONAL USE PERMIT REQUEST FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3100 - ORDINANCE DENYING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:45 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located off Britt Drive for the construction of a 100 unit apartment complex in an RM-16 Multi-Family High Density District.

Ms. Hamel said the project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City Limits. The site is also within .5 mile to 2-mile proximity of transit service, parks, potential employment centers, restaurants and shopping centers.

This project will make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005. The plan projected a need for 370 new affordable rental units each year within the City of Asheville. All units within this development will be affordable for households with less than 60% area median income and some will be affordable to households with as little as 30% area median income. Affordability will be assured for 30 years under the terms of the federal and state Low Income Housing Tax Credit programs.

In 2000 - Conditional use rezoning request from RM-16 to CB-II requested. The application never proceeded past the TRC level because the applicant could not provide the necessary site plan requirements.

On January 4, 2004, Tommy Ward with Gateway Companies submitted a conceptual master plan for the construction of a 100-unit multifamily development on approximately 9.59 acres with access proposed on Swannanoa River Road and Britt Drive (Attachment to City Exhibit 3 – Location Map). The property is zoned RM-16 and River District, which allows for a density of 16- units per acre. Based on the acreage, up to 153 units could be constructed. The developer is proposing 100 units, a density of approximately 11 units per acre.

Using a schematic grading plan (Attachment to City Exhibit 3), she said there are steep areas and changes in elevations when compared to the surrounding existing single-family residential dwellings. There are some significant changes in elevation where it's closest to Swannanoa River Road. There is an average of a 35-50' change in elevation and the development will sit below the residential properties. Another significant feature on the site is the location of Ross Creek (City Exhibit 4). A portion of the property is located in the floodway. Kenilworth Dam is located approximately 250 feet north of the site.

The project will consist of five buildings, housing 20 units each to include 30 – one bedroom units, 50 – two bedroom units and 20 – three bedroom units. (Attachment to City Exhibit 3 – Schematic Site Plan) They will be constructed in a 2-3 story split design (3 stories in the front, 2 stories in the back) with a maximum height of 40-feet. Amenities to the complex include: a 3,000 square foot community building, swimming pool and several play areas within the site. Open space, in excess of the standard City requirement, is shown in multiple locations throughout the development. A bus stop with shelter is also being proposed at the entrance of the development on Swannanoa River Road. Although transit service is currently unavailable to areas along Swannanoa River Road, the developer will work with the transit director in order to determine an appropriate level of service. Currently, a transit stop is available near the entrance to River Hills Shopping Center, approximately .5 miles from the site. Two other transit stops, located near the Asheville Mall on Tunnel Road, are within a mile of the site.

Due to the challenging topography and proposed location of the buildings, a large retaining wall will be constructed along portions of the eastern property boundary. The plan also shows several other retaining walls proposed around the northern edge of the parking lot and around portions of the building located on the west side of the property.

A 25-foot, type "C" vegetative buffer is required along the north, east and northwestern sides of the property where adjacent to Low-density residential uses (Attachment to City Exhibit 3 – Schematic Landscape Plan). A 15-foot, Type "A" vegetative buffer is required along the western side of the property (Britt Drive) where mainly low impact commercial uses exist. In addition to the required landscaping and in an effort to further mitigate the impact of the development to abutting residential uses, the developer has offered to install a privacy fence around the perimeter of the property where permitted.

On Thursday, December 11, 2003, and Wednesday, January 21, 2004, the developer, Tommy Ward, and the owner of the property, Thomas Wolfe, met with the Kenilworth residents to discuss the details of the project and to receive input on site design and landscaping from the neighborhood. At both meetings a number of concerns from the neighborhood were voiced including: traffic on Swannanoa River Road, flooding and liability concerns for Kenilworth Dam, site design, noise, access through Kenilworth Forest, emergency access to Foxwood apartments during times of congestion and flooding, stormwater and erosion control and the environmental impact to Ross Creek, sewer service issues, and construction concerns.

Some of the comments and concerns from the neighborhood could not be addressed due to the limited information required for a conceptual plan. However, following the Council approval process, detailed plans will be submitted to the Technical Review Committee (TRC) for review. This review will provide a level of detailed information that will enable staff to address many of the concerns by the neighborhood.

On Monday, February 16, 2004, the TRC reviewed the conceptual plans and voted to continue the project to the March 1, 2004, meeting to allow the developer time to address concerns from the neighborhood and comments outlined in the staff report including building location, schematic grading plans and potential locations of retaining walls. On Monday, March 1, 2004, the TRC reviewed the revised conceptual plans and made comments primarily identifying items that must be addressed in the submission of detailed plans following the Council approval process. The TRC members voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report and the following additional conditions:

1. The site plan must identify walkways between buildings and parking areas.
2. Any retaining wall over 30" in height must have pedestrian guardrails installed.
3. The developer will work with affected property owners and MSD to reach a reasonable agreement on the relocation of sewer lines on the subject property.
4. If it is determined that Britt Drive cannot be used as a secondary access point, then a traffic impact study needs to be completed for the main entrance drive.
5. If it is determined that Britt Drive cannot be used as a secondary access point, then all of the buildings, including the clubhouse, must contain sprinkler systems.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

The proposed use of the property is a multi-family residential project. The property is appropriately zoned for the proposed use. Prior to the issuance of permits, the Technical Review Committee will review the final plans to insure technical standards set forth in the Unified Development Ordinance (UDO), the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety, are met. Kenilworth Dam is classified as a high-hazard dam, which reflects its potential for property damage in the event of failure, not its current condition. The dam is inspected yearly by the Department of Environmental and Natural Resources and examination of these inspection reports indicate the dam is in sound condition.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

Any development on the site must comply with all City standards in regards to clearing and grading, erosion control, and maximum slope. Grading of the site will be necessary to develop the property as proposed. The buildings will be located on the eastern side of the property in order to reduce construction within the floodplain, minimize land disturbance near Ross Creek and to provide a greater area for preservation of existing vegetation. A condition has been added to the project for the developer to work with staff and other local agencies to address water quality issues by means of appropriate wetland species, riparian buffers and use of other Best Management Practice tools.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The applicant plans to present evidence that the proposed development will have minimal, if any, negative impact on values of abutting or adjoining properties.

In addition to the significant elevation differences between the project site and abutting residential properties, existing landscaping is expected to be preserved around the perimeter of the property; a privacy fence and a 25-foot landscape buffer will also be installed. The buildings will also be constructed with long lasting materials and designed in manner that will enhance the surrounding community.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The existing zoning on the property is River District and RM-16. The applicant is proposing a density well below what is permitted on the lot. In addition to the landscape buffers that will be installed, the buildings are designed with features that will increase their compatibility with the character of the abutting neighborhood. Although larger than the buildings in the immediate neighborhood, the buildings are compatible with the development along Swannanoa River Road. The development should positively contribute to the character of this area.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth policies and affordable housing. The project utilizes the existing zoning on the lot to create a sustainable high-density residential development within the City Limits, and where infrastructure capable of handling this type of development exists. The site is also within .5 mile to 2-mile proximity of transit service, parks, potential employment centers, restaurants and shopping centers.

This project will also make a significant contribution to meeting the needs for affordable rental housing outlined in the Consolidated Strategic Housing and Community Development Plan 2000-2005. The plan projected a need for 370 new affordable rental units each year within the City of Asheville.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

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Any development of the site would require technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development. The site is also within .5 mile to 2-mile proximity of transit service, parks, potential employment centers, restaurants and shopping centers. In addition, the developer is providing a bus stop with a shelter at the entrance of the project on Swannanoa River Road and has agreed to work with the Transit Director on determining an appropriate level of transit service to the site.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Two access points are currently proposed for the project, one on Swannanoa River Road and one off of Britt Drive. The City's Traffic Engineer has determined that a Traffic Impact Analysis will only be required if it is found that access cannot be legally provided on Britt Drive.

Pros:

- The site is appropriately zoned for this type of development.
- The project makes a significant contribution to meeting the need for affordable rental housing in the City of Asheville.
- The project supports numerous goals and strategies outlined in the City's 2025 plan as it relates to smart growth, infill and sustainable development.
- The site is within close proximity to potential employment centers, shopping venues, and parks and recreational activities (Rec. Park, Azalea Park, future Riverside Parkway).
- Development of the site will necessitate an environmental clean up, eliminating any on-site hazardous materials.
- The conditional use permit will require the developer to work with staff on addressing water quality issues in order to protect the sensitive wetland environment surrounding Ross Creek.
- The buildings are located opposite Ross Creek and outside of the flood hazard area. This will assist in minimizing land disturbance near Ross Creek and potentially allow a greater area for the preservation of existing vegetation.

Cons

- Due to the existing topography on the site, extensive grading will be necessary to develop the property as proposed. This will require the construction of several large retaining walls on the site.
- The property is located approximately 250 feet downstream from Kenilworth Dam, which is classified as a high-hazard dam.
- Although a Traffic Impact Analysis is not required for this project, ingress and egress to the site may be difficult at times due to traffic on Swannanoa River Road.
- City transit does not currently provide service to Swannanoa River Road.

The TRC voted unanimously to recommend approval of the project subject to the conditions outlined in the staff report and the following additional conditions:

1. The site plan must identify walkways between buildings and parking areas.
2. Any retaining wall over 30" in height must have pedestrian guardrails installed.
3. The developer will work with affected property owners and MSD to reach a reasonable agreement on the relocation of sewer lines on the subject property.
4. If it is determined that Britt Drive cannot be used as a secondary access point, then a traffic impact study needs to be completed for the main entrance drive.

5. If it is determined that Britt Drive cannot be used as a secondary access point, then all of the buildings, including the clubhouse, must contain sprinkler systems.

Staff recommends approval of the conditional use permit with the conditions outlined by the TRC and the following added conditions:

- All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property.
- The portions of the retaining wall visible from Swannanoa River Road shall be designed to accommodate vegetation to visually screen the effects of its height.
- Privacy fencing shall be installed by the developer to screen and prevent access to and from the adjoining residential development to the extent possible.
- The developer shall work with city staff and other independent groups to address water quality issues in the design and monitoring of stormwater run-off infrastructure.

At Council's discretion, the Kenilworth Neighborhood has requested consideration of the following conditions:

- Light shields that block out 100% of potential light pollution.
- Full barrier protection from trespassing into the neighborhood and protection from our yards being used as cut through to the mall. This will also protect the Developer from cross trespassing from the neighborhood. A metal fence such as the one used by the Asheville Mall, if this does not work it could be topped with barbed wire.
- Landscaping that would provide maximum noise pollution and act also as a sight barrier while maintaining its natural context.
- A written plan of how to maintain all barriers, assurance that upkeep will be a priority, and updated contact information to report breaches in the barrier.
- Annual monitoring of Ross Creek by a qualified independent group or engineer much like was demanded by City Council for the Overlook Village project on Tunnel Road.
- Deeding to Kenilworth Forest Community Club, Inc. the strip of land between lot 109 and lot 1, as verbally promised by Mr. Ward at the first public neighborhood/developer meeting.
- Written assurance from Mr. Ward that he will not use blasting in construction of the project, as verbally stated as the first TRC meeting. Blasting could jeopardize the integrity of the dam.
- For the developer to meet all conditions to date and any others provided in the future by City Council and the neighborhood.

City Attorney Oast entered the City Exhibit 3 into the record. Ms. Patsy Brison Meldrum, attorney representing Britt & Tilson Glass Company, one of the neighboring property owners to the proposed project, objected to offering the staff report (City Exhibit 3) into the record because Council has evidence that has been given before this hearing and that needs to be deleted from the record. Therefore, she objected based on pre-hearing bias. Mayor Worley noted the objection and overruled it.

Mr. Albert Sneed, attorney for the developer and property owner, questioned Mr. Tom Ward, developer. Mr. Ward gave testimony about his company – Gateway Companies out of Florence, Alabama. They specialize in affordable housing. This project cost will be almost $90,000 per unit. He explained how they are in competition with other 152 other applications for tax credits, which would enable the project to the constructed. He explained that his company will own the property for 30 days, which is mandated by the State of North Carolina. Mr. Ward said they are willing to deed the right-of-way that leads up into the existing neighborhood to their homeowners association. They will not use that for foot traffic. The City has asked them to grant an easement for a water-loop, which they will do. He said the Asheville area has a medium income of $49.700. Twenty-five percent of the units would be leased to persons making 40% of that amount. The other remaining 75 units would be leased to persons making 60% of the area medium. There are no market rate units. They are building 10 handicapped units, which is 5 more than required, and also two additional hearing-impaired units. Using City Exhibit 3 (Schematic Grading Plan) Mr. Ward explained the elevation differences from White Pine Drive to the existing property. Mr. Ward said that there has been debris dumped on this site which will have to be removed and tested, at their cost. Based on his experience, this project is appropriate for this location because it's close proximity to jobs, e.g. the Asheville Mall, retail outlets and hospitals. Mr. Ward explained that there are 200 parking spaces (two spaces for each unit), however, the majority of the houses would only require one parking space due to the income levels. It was his opinion that this project would not endanger the public's health or safety.

Mr. Albert Sneed questioned Mr. Thomas Wolfe, officer of the company that owns this property. He said that they have a contract to sell the property to the Gateway Companies which contract was in place before the application was filed. He said that The Gateway Companies had the authority to file the application on this company's behalf Using photos (Applicant Exhibit 1), Mr. Wolfe showed the existing property which consists of left-over sewer pipe, construction debris, old tires, grown up weeds, bulldozer, warehouse, etc.

Mr. Albert Sneed questioned Mr. Elbert Taylor, Realtor and Appraiser. Mr. Taylor said he has been appraising property in Asheville since 1981 and has appraised approximately 5-6,000 residential properties in Asheville. He has been qualified as an expert witness in courts on various types of cases. He said that he was familiar with this property and the property on White Pine Drive and had in fact inspected them earlier in the day.

When Mr. Sneed asked Mr. Taylor if he had an opinion of whether or not this project will not have any impact on the property values adjacent to this project, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

When Mr. Taylor said that he did have an opinion, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

Mr. Taylor said that this project will have a neutral effect, no effect or will increase the value of the property on White Pine Drive. He bases that opinion on the studies he has seen on affordable housing as well as from his experience in this market. He said the elevation runs from 35-60 feet to the backyard of the properties on White Pine Drive and once they have no access from White Pine Drive, and the residents from this property cannot get to White Pine Drive this will actually be a benefit to the residents. Any affect to the property to the south and east of the property will be a benefit to all properties as well. It will clean up the area and it will also buffer on each side of the project.

Mr. Albert Sneed questioned Mr. Anthony Butzek, the City's Traffic Engineer. Mr. Butzek said he was a registered professional engineer, with a Batchelor degree and Masters degree in traffic engineering. He has studied traffic engineering for approximately 9 years and the City regularly relies on his expert opinions about traffic engineering matters. Mr. Butzek said that he has reviewed this project. The traffic count on Swannanoa River Road is approximately 12,000 per day. He said the estimate for development of a 100-unit complex would be 734 trips generated per day or 73 trips during the p.m. peak hour.

When Mr. Sneed asked Mr. Butzek if he had an opinion as to whether or not this project would have any serious impact or undue influence on traffic congestion, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

Mr. Butzek said that he did not expect this project to have a significant impact on traffic congestion along Swannanoa River Road.

When Mr. Sneed asked Mr. Butzek if he had formed an opinion as to whether or not this proposed use will cause undue traffic congestion, Ms. Meldrum objected. Mayor Worley noted the objection and overruled it.

Mr. Butzek said that he has formed the opinion that he does not believe that this project will contribute to undue traffic congestion.

Upon inquiry of Mr. Sneed, Mr. Butzek said that it was his opinion that the project will not create a traffic hazard.

Mr. Butzek said that he requested the study for entrance on Swannanoa River Road. He explained that it is preferred that multiple access points be provided to better distribute traffic. Since this is a unique case and it appears that it may or may not be feasible to make that connection, if a single connection were to be made, given the size of the development and the concentration of the traffic all in one driveway on a fairly busy street, they wanted to be sure that that driveway was designed appropriately, including proper lanes and that if there were any potential problems that we could mitigate those in the design process. He explained this is a traffic impact study inasmuch as it is considering the operation of the driveway, but the development would not be expected to adversely impact on Swannanoa River Road. This is to simply to ensure that proper access is provided. For a two-lane road like Swannanoa River Road, assuming there needs to be turn-lanes where appropriate, 16,000 would be the maximum capacity. The current traffic count on Swannanoa River Road is 12,000 and with the additional 734 trips from this development the traffic count would be well below the maximum of 16,000.

Mr. Albert Sneed questioned Ms. Cathy Ball, the City's Engineer. Ms. Ball said that she has reviewed the reports provided from the State on the Kenilworth Dam. Her comments are based upon the State's reports. The report from the State inspection consisted of two pieces for 4 different years. Letters sent back to owners of the Dam stated that there was no immediate danger. Each letter had a report attached of the conditions of the Dam at the time the inspection was done. The letters indicated that there was no immediate threat but if the Dam did fail there would be danger to the public. In looking at a report that was completed, there was an indication of places where there was seepage in the Dam that tended to be normal wear on a dam of this age. She did not know if the Dam has been worked on or upfitted recently. Ms. Natalie Berry of her staff reported that she did look at the Dam and simply commented on seeing it. If the Dam is unsafe, the State of North Carolina requires the property owner to immediately repair it.

The following residents spoke against the issuance of the conditional use permit for various reasons, some being, but are not limited to: Flood Insurance Rate Map inaccurately portrays floodplain lines; in times of heavy rain and flood, emergency vehicles will not be able to reach residents at the entrance because the Swannanoa River Road is in the floodway; a no-rise engineering study needs to be performed since the floodway encroaches on a good portion of the property where the parking lot is to be located; City Engineer stated that a development on the property would increase the exposure of the Kenilworth Lake Commission and that the Dam failure could result in significant damage and possible loss of life; granting a conditional use permit may very well increase the City's liability for personal injury and property damage; without adequate safeguards to insure the integrity of the Dam the process should be stopped; it is highly likely that blasting will be required for grading and construction and it is a concern because the Dam was built in 1925; request for bond to be provided by the developer which would remain in place during construction and for one year after all construction is completed which would be sufficient to cover any damages to Kenilworth Lake Dam and surrounding properties and any personal injuries; request for bond that would not be released until the Kenilworth Lake Dam has been inspected by an independent engineer selected by the Kenilworth Forest Community Club and paid for by the developer; V-shaped retaining wall near the entrance to Foxwood is deceptive in plan view; in places, the 40 foot setback does not allow sufficient buffering and emergency access; there are massive retaining walls; steeply graded land, tall fencing, the UDO will be violated because in the River District grading is prohibited on a degree of 45 degrees or more and prohibits the removal of existing vegetation; there is a perimeter fence along areas that would not be under water in times of flood which will be a death trap to the residents, residents won't want to walk on Swannanoa River Road at night to go to and from their jobs, there were only 9 minimum wage jobs available on one day at the Asheville Mall; there are no parks within walking distance of this development; why are 200 parking spaces being built if they will not be needed; there is no grocery store in the area; there is no place for children to ride their bikes, who will be watching the developer's company during the 30 years they must retain ownership of the property; the property is better suited for a bird sanctuary; illegal dumping on site must be removed in presence of County officials and site must be tested; soil contaminants can result in serious health effects; an environmental impact study should be performed before disturbing the site; there are no sidewalks on Swannanoa River Road; development is bordered by massive retaining walls, the Dam and the Swannanoa River; foot traffic cannot be prevented through the Kenilworth neighborhood; failure of the Dam would be catastrophic; an earthquake is not impossible and that would damage the Dam; light from development will be bothersome, there will be additional noise from the development; the parking lot turning radius will not be wide enough; there needs to be a study to ensure that adjoining property owners values are not negatively impacted; the City has not factored in all the Super Wal-Mart or Target traffic on Swannanoa River Road; a lot of inconsistencies and carelessness from developer; disabled people should not live below the Dam in case of flooding; undue traffic congestion and traffic hazards because many tractor-trailer trucks load and unload materials along Britt Drive for business located there; Britt Drive is a private road; Britt and Tilson floods during rains; if Britt Drive is widened, Britt & Tilson Company will have to be reduced by 1/3 and that would force him to close down; and many tress will have to be cut down if there is going to be an entrance on Swannanoa River Road:

Mr. Mike Weizman, President of Kenilworth Forest Neighborhood (Neighborhood Exhibit 1 - Letter dated February 5, 2004 to Mr. Tom Ward; Neighborhood Exhibit 2 – Flood Insurance Rate Map; Neighborhood Exhibit 3 – Photo of Lake Kenilworth Dam Spillway During Flood; and Neighborhood Exhibit 4 – Map showing 500 Year and 100 Year flood lines)
Mr. Jimmy Boyd, resident on East Shore Drive (Neighborhood Exhibit 5 – "Foxwood Development Opposition Sign In" containing 62 signatures; Neighborhood Exhibit 6 – Photo of Dam in 1925; Neighborhood Exhibit 7 – Photo of Dam repair in 1992; Neighborhood Exhibit 8 – Photo of Possible Blasting Damage to Lake Kenilworth Dam; and Neighborhood Exhibit 9 – Comments by Jimmy Boyd)
Mr. Phillip Hawkins, resident on White Pine Drive (Neighborhood Exhibit 10 – Topography Concerns with the Proposed Foxwood Project; Neighborhood Exhibit 11 – Schematic Grading Plan, Sheet S-2, 3-10-04; and Neighborhood Exhibit 12 – Building 2 Elevation, Sheet 7, 3-10-04)
Ms. Leigh Heminger, resident on White Pine Drive and Vice-President of Kenilworth Forest
Mr. Peter Loewer
Ms. Kathy Toler, resident of Kenilworth Forest Community (Neighborhood Exhibit 13 – Photo of Illegal Dumping in Ross Creek Watershed; and Neighborhood Exhibit 14 – Photo of Lower Ross Creek Watershed Illegal Dump Site)
Ms. Claire Payne, resident on White Pine Drive
Mr. Eric Finstick, resident on White Pine Drive
Mr. William Mansfield, resident on White Pine Drive
Ms. Addison Martin, resident on East Shore Drive

Mr. Les Whittington, resident on East Shore Drive
Ms. Karen Flynn, resident on White Pine Drive
Mr. Frank Adams, resident on Forest Hill Drive
Ms. Kathy Sheldon; resident on White Pine Drive
Mr. Bill Britt Jr.; co-owner of Britt & Tilson Glass Company (Neighborhood Exhibit 15)
Mr. David Tilson, co-owner of Britt & Tilson Glass Company (Neighborhood Exhibit 15)

Ms. Meldrum cross-examined Mr. Butzek about traffic on Swannanoa River Road. Mr. Butzek said that he has not taken traffic counts on Swannanoa River Road because the N.C. Dept. of Transportation (NC DOT) takes those counts. He has reviewed the NC DOT published traffic counts for this meeting. He did not take into consideration any additional traffic impact from the Super Wal-Mart or the Target store because neither one of those would push it over the capacity limit that he estimated for the roadway. He did not examine any traffic accident reports for Swannanoa River Road. The road profiles for Swannanoa River Road are submitted in the final TRC plans. If a traffic study is required, then there would be a study of if a traffic light should be installed at the proposed entrance on Swannanoa River Road He said that in his opinion the site distance he from the new proposed entrance to the curb going towards Lowe's is adequate.

Ms. Meldrum cross-examined Ms. Ball regarding the Kenilworth Lake Dam (Attachment to City Exhibit 3 – E-Mail to Kim Hamel regarding Kenilworth Lake Dam). Ms Ball read the following portion of the e-mail: "A new development would increase their exposure." She explained that it is the Kenilworth Lake Commission's exposure that would increase. She said that the 500-year floodplain is not shown on the map provided by the developer, but the 500-year floodplain is close to the 100-year floodplain. Using Neighborhood Exhibit 2, she said that the proposed entrance on Swannanoa River Road is located within the 100- and 500-year floodplain line.

Ms. Meldrum cross-examined Mr. Taylor. Using the schematic grading plan (Attachment to City Exhibit 3), Mr. Taylor said that had not performed any appraisal reports on the single-family residents adjacent to the proposed property. He said that he has been appraising in Buncombe County since 1981 and it was his opinion that property values in Buncombe County have continued to increase no matter where the property is located. He has not done an appraisal on the impact of a 100-unit development on single-family homes.

Ms. Meldrum cross-examined Mr. Ward. He responded to questions regarding the elevations. He said that there is a sewer line that runs across the developer's property down to Swannanoa River Road and they are willing to work with the residents to provide them with an easement. They will relocate any utility lines necessary to construct the buildings. Using the schematic grading plan (Attachment to City Exhibit 3), Mr. Ward explained where the retaining walls will be located. Soil borings have not been performed yet nor do they know if any blasting will be required at this point. If blasting is required, their engineers will obtain the necessary permits. He did not have any power of attorney or other authority from the owner of the property to make this application; however, the owner of the property delivered the application to the City.

Upon inquiry of Councilwoman Bellamy, Mr. Ward explained the process for tax credits and why the conditional use permit is required before the application is submitted. He said that the State of North Carolina reviews their plans and because they are using tax credits. Each year they must re-verify everyone's income and they must also monitor and inspect the units. He explained some of the guidelines they must follow for tax credits.

Ms. Meldrum entered into evidence a letter dated March 23, 2004, on behalf of Kenilworth Forest Community Club Inc., requesting denial of the conditional use permit (Neighborhood Exhibit 16).

Mr. Sneed cross-examined Ms. Ball. She said that the entrance of the project is within the 100 and 500-year floodplain, but there are no buildings in the floodplain (Attachment to City Exhibit 3 – Schematic Grading Plan). She said that sections Swannanoa River Road go in and out of the 100-year floodplain areas (Neighborhood Exhibit 2). She said that she was asked to evaluate the reports provided by the N.C. Dept. of Environment & Natural Resources (Attachment to City Exhibit 3). In Ms. Ball's testimony that the Kenilworth Lake Commission's exposure would increase if there was a new development, Ms. Ball agreed that of Britt & Tilson Glass Company hired an additional employee, or if there were any more cars on Swannanoa River Road, the Kenilworth Lake Commission's exposure would also be increased.

Ms. Meldrum outlined to City Council why the application should be denied due to its failure to comply with condition use standards 1, 2, 3, 6 and 7. (Neighborhood Exhibits 15 and 16). If, however, City Council approves the conditional use permit, she requested (1) there be no access to the development via Britt Drive; (2) that the permit include all of the conditions set forth in the staff report (City Exhibit 3) from the Planning & Development Department as well as the conditional from the Kenilworth Forest neighborhoods; and (3) that a bond be provided by the developer which would remain in place during construction and for one year after all construction is completed. The bond should be sufficient to cover any damages to Britt & Tilson Glass Company's property, which may occur during construction for the project, including, but not limited, flooding and erosion damage and interruption of business. She felt that the application was void from the beginning because at the time of the application, it was not filed by the owner or agent specifically authorized by the owner to file such application.

Mr. Sneed explained that during every meeting with the City and the neighborhood Mr. Wolfe (owner) and Mr. Ward (developer) have attended, showing that they are both in agreement with the plans. He felt Council has a wonderful opportunity to have 100 units of low-moderate income housing. The neighborhood doesn't have evidence that the Dam is unsafe because it's their responsibility to fix it. The Dam is safe and the buildings are outside of the 500-year floodplain. They gave no evidence that property values would be substantially injured. Our appraiser said these units do not injure the value of adjacent property. The City's Engineer said that the standards regarding traffic have been met. A Traffic Impact Analysis is not required for this project and that only a traffic study of the entrance is required to make sure that the entrance is properly designed for curb, turning radius, fire trucks, entry into the traffic, etc. They have no problems with the traffic study of the entrance or with the staff conditions for the permit, but he did not agree with the posting of the bonds. He urged Council to approve the conditional use permit.

Mr. Wilton Davis said that part of his property runs from Swannanoa River Road up Ross Creek. He explained that they haven't tried to develop their property because of the topography and floodplain. His main concern is liability.

Upon inquiry of Vice-Mayor Mumpower, Ms. Hamel said that the project will have to come back through TRC and meet all regulations and City standards prior to the issuance of any permits.

In response to Councilwoman Bellamy, Ms. Hamel said that there is a condition that the lighting needed to minimize any lighting pollution to the above residential neighborhood. Mr. Shuford explained that the lights will have to conform with the City's lighting standards and that the lights will be shorter than the buildings. He said that there may be security lighting in the back, but it will be at a low level.

When Vice-Mayor Mumpower asked about the neighborhood/developer process, Ms. Hamel said that it was her opinion that the process worked well. She felt the developer was very open with the neighborhood and in fact, flip-flopped the buildings per the neighborhood request.

Upon inquiry of Vice-Mayor Mumpower, Ms. Ball said that prior to doing any blasting, the developer will need a permit from the Fire Department and the Fire Department has to be at the site when the blasting occurs. They will also need to do an inspection report of the Dam. That is not something the City regulates, but it would be in their best interest to do that to make sure they can prove whether or not any blasting they have done has caused damage to that structure. She said there are safe ways to blast close to a dam and provide for the safety of the dam. With appropriate measures and safeguards in place, she felt the blasting can be done safely.

Vice-Mayor Mumpower asked about Britt Drive being a City maintained road. Ms. Ball said the City of Asheville City Maintained Street Inventory (City Exhibit 5) shows 0.08 miles (422.4 feet) of Britt Drive as a City maintained street.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said there is no City standard to require second entrance. It was a suggestion by City staff to improve the traffic flow as well as emergency access. The Fire Marshal has a threshold when second entrances are required, but this project does not meet that threshold.

Upon inquiry of Councilman Newman, Mr. Butzek said that what is before Council is only a conceptual plan. Details such as the turning radius for fire trucks would be addressed in the final TRC review of the plans. He did say though that nothing he has seen in their plans would prohibit emergency access in any form.

Upon inquiry of Councilman Newman, Mr. Butzek said that he felt the project would be viable with only one access onto Swannanoa River Road, assuming that after the traffic study is complete, the developer is willing to implement any of the recommendations.

When Councilwoman Jones asked about the increased traffic from the Super Wal-Mart, Mr. Butzek said that you probably won't see a lot of increased traffic on this section of Swannanoa River Road.

Councilman Dunn asked if the Dam broke would it take the development with it. Ms. Ball replied that she felt it would.

Councilman Dunn said the Dam inspection reports (City Exhibit 3) indicate that the inspections are superficial. He felt that with the potential for loss of life and property, there should be an inspection on the internal part of the Dam. Ms. Ball explained that the inspections are limited to what they can physically see and based upon that they see no need for immediate attention. She said that the City has regulations

When Councilman Dunn asked if the City can be liable if the City issues the conditional use permit and the Dam fails, City Attorney Oast said that if a problem is detected with the Dam, the responsibility falls on the owners of the Dam to either fix it or dismantle the Dam and drain the lake.

Councilman Dunn asked if Council can require the Dam to be inspected. City Attorney Oast said that the Dam is not on the property that is under consideration here and the information in the record indicates the Dam is inspected regularly by the State officials who are in charge of that process. If Council wanted to have more engineering studies done, Council could require that, but he assumed the inspectors would look for the same things that the State inspectors look for.

Councilman Dunn asked if the conditional use permit was approved and after all site preparation was done, could an internal and external inspection be performed on the Dam before any more construction. City Attorney Oast said that Council can require inspections.

Upon inquiry of Councilman Davis, Ms. Ball explained that the City regulates the 100-year flood elevation, so the buildings could not be constructed within the 100-year elevation, unless they are one foot higher than that elevation. The City does not have regulations over the 500-year flood elevation. There may be some stipulations on the 500-year flood through the federal government and through the tax credits the developer is seeking.

Councilman Davis asked if consideration was given to the significant changes made in Chunns Cove and the downstream flow of that water, which eventually goes into Kenilworth Lake. Ms. Ball said that typically with the size of that lake, the type of impervious area above stream, and the water surface elevation, she felt the Lake could handle that amount of water, however, that has not been studied specifically.

Councilman Davis was concerned that if there was a flood on Swannanoa River Road, there would be no access for emergency vehicles. Mr. Britt said that he has not been able to get to his business about one time in the past nine years and had to wait about 1-1-1/2 days until the flooding subsided on Swannanoa River Road.

Upon inquiry of Councilman Davis about how much grading will be required to have the primary entrance on Swannanoa River Road, Ms. Ball said we don't have detailed plans, but they will be required to adhere to the regulations in our Standard Specifications and Details Manual.

Councilman Davis was concerned about the children using the Dam and creek as a playground. Mr. Ward said they proposed to build a fence along the creek area but they now have to take that out because they are not allowed to build a fence in a flood zone area. At this point they are talking about a heavily dense landscape buffer.

Upon inquiry of Councilwoman Jones, Ms. Ball said that the City would not build a new road in a 100-year floodplain.

When Councilwoman Jones asked if there are any environmental concerns, Ms. Ball said she doesn't know enough about that to have a professional opinion either way. What she has seen on the property appears to be construction debris, but she did not look at the soil.

Mayor Worley noted that any the soil borings would have to be tested and if there are any environmental hazards they would have to be cleaned up.

Upon inquiry of Councilman Newman, Ms. Hamel said that internal sidewalks will be located throughout the site and there will be required on Swannanoa River Road for the length of their property. Ms. Ball said that sidewalks on Swannanoa River Road are a high priority on the Pedestrian Thoroughfare Plan but there is no funding allocated for it. She said that a half-mile of sidewalks is approximately $100,000.

Councilman Newman was concerned that the developer testified that most people wouldn't have two cars, so why are 200 parking spaces being proposed. He wondered if that is a potential way to reduce the footprint of the project on the site. Ms. Hamel said that parking spaces are based on the number of bedrooms per unit. They are allowed a minimum of 120 parking spaces up to a maximum of 200 parking spaces. Mr. Ward said they would be willing to construct 1.5 parking spaces per unit.

Upon inquiry of Councilman Newman, Mr. Ward said that since he can only apply for the tax credits annually. If the project were not approved, he would not be able to make an application for at least one year.

Councilman Newman recognized the challenging site and wondered if there was discussion about building a road that had more contour of the property. Mr. Ward said until they get a fully engineered topography map, they don't know exactly what the grades are, but chances are they will probably have to angle the road at some point.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that the Urban Riverfront Master Plan, that City Council will be reviewing shortly, provides residential along the river as a high priority.

Upon inquiry of Councilwoman Bellamy, Ms. Ball explained the no-rise engineering study, which is required anytime work is done in a floodway.

When Councilwoman Bellamy asked about the retaining walls, Ms. Ball said that we do require slope stabilization. There has to be an engineer's report showing that the design for the retaining wall is safe and then after it is designed, there must be an engineer's report saying that it was built according to the plans.

Upon inquiry of Councilwoman Bellamy, Fire Chief Greg Grayson said that for residential properties the N.C. State Code allows up to 100 units without having a mandatory secondary access road. It is his understanding from his staff that this project will be fully protected with automatic fire sprinklers.

Upon inquiry of Councilwoman Bellamy, Ms. Ball said that City regulations require the project to have some type of facility on site to hold back a 10-year storm event.

Mayor Worley closed the public hearing at 10:51 p.m.

Vice-Mayor Mumpower moved to approve the conditional use permit for property located off Britt Drive for the construction of a 100 unit apartment complex in an RM-16 Multi-Family High Density District, subject to the following conditions: (1) The site plan must identify walkways between buildings and parking areas; (2) Any retaining wall over 30" in height must have pedestrian guardrails installed; (3) The developer will work with affected property owners and MSD to reach a reasonable agreement on the relocation of sewer lines on the subject property; (4) If it is determined that Britt Drive cannot be used as a secondary access point, then a traffic impact study needs to be completed for the main entrance drive; (5) If it is determined that Britt Drive cannot be used as a secondary access point, then all of the buildings, including the clubhouse, must contain sprinkler systems; (6) All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from the surrounding residential property; (7) The portions of the retaining wall visible from Swannanoa River Road shall be designed to accommodate vegetation to visually screen the effects of its height; (8) Privacy fencing shall be installed by the developer to screen and prevent access to and from the adjoining residential development to the extent possible; and (9) The developer shall work with city staff and other independent groups to address water quality issues in the design and monitoring of stormwater run-off infrastructure. This motion died for lack of a second.

Councilman Dunn said that water is an unknown factor and it cannot be contained. He felt affordable housing is very important but the safety of the future residents of the development is more important.

Councilman Newman felt the intensity of the footprint of the project and the intensity of the development is not reasonable compatible with significant natural and topographic features on the site. In addition, he felt the scale of the cuts into the site are genuinely out of scale.

Councilwoman Bellamy felt that the proposed use or development was not reasonably compatible with significant natural and topographic features on the site. She felt that with Kenilworth Dam so close, this was not the right location for this particular development.

Vice-Mayor Mumpower felt this was one of the worst displays of "Not In My Backyard" than he has seen on City Council. He felt City Council had an opportunity to step forward with affordable housing and feels the developer has met the requirements.

Councilman Davis felt it was not appropriate to build houses below a dam.

Councilman Dunn moved to deny the conditional use permit for property located off Britt Drive for the construction of a 100 unit apartment complex in an RM-16 Multi-Family High Density District. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Mayor Worley and Vice-Mayor Mumpower voting "no."

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City Attorney Oast said that he would bring back the draft order for City Council wording approval at their next formal meeting on April 13, 2004.

At 11:06 p.m. and after a brief discussion on whether to continue with the rest of the agenda items or postpone them to another date due to the lateness of the hour, Councilwoman Jones moved to proceed with the remainder of the agenda tonight. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Mayor Worley, Councilwoman Jones, Councilman Dunn and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Davis.

At 11:10 p.m., Mayor Worley announced a short recess.

IV. UNFINISHED BUSINESS:

A. MOTION TO APPROVE THE PACK SQUARE CONSERVANCY PLAN AND ALLOW THE CONSERVANCY TO MANAGE NAMING RIGHTS FOR PARK FEATURES AS A FUND-RAISING/MARKETING TOOL

Ms. Carol King, Chair of the Pack Square Conservancy, said the Pack Square Conservancy is requesting consideration of plan revisions to Pack Square Conservancy Plan and approval of allowing the Conservancy to manage naming rights for the park features.

Ms. King briefly reviewed with Council the history of the project. The Pack Square Conservancy (PSC) recently held a design charette to receive and respond to public input concerning redesign of the middle section of the Pack Square Renaissance project. This was necessitated by the withdrawal of the Grove Park Inn's proposed building at this site. City Council has previously received a copy of the recommended plan by the PSC. This plan substitutes a smaller building for the large mixed-use structure proposed by Grove Park Inn (GPI).

As our experience with GPI indicates, there are currently existing development constraints at this site that complicate certain types of large-scale development. These constraints include the expense of underground parking and the need for expensive relocation of existing utilities (estimated by professional contractors at approximately $450,000).

Additionally, please note that Engineering staff will present a redesign for College Street for your consideration in April. This redesign will complement the PSC project but was identified as a public safety and capital project need (and was under design & development) prior to the PSC plan.

Plan Approval:
Pros:

- Public acceptance of the new design
- Allows fundraising for the park to continue without public controversy and for park development to continue on schedule
- Maintains a building at the park edge as an urban design component and revenue source

Cons:

- Potential loss of a larger scale infill redevelopment opportunity and resultant public revenue

Naming Rights:
Pros:

- Allows opportunity for greater private fundraising for the park

Cons:

- None noted.

City staff recommends City Council consider plan revisions to PSC Plan and consider approval of allowing the Conservancy to manage naming rights for the park features.

Ms. King requested approval of allowing the PSC Conservancy the ability to manage naming rights for park features as a fund-raising/marketing tool. She then reviewed with Council the PSC Donor Recognition Policy.

Mr. Fred Bonci, designer, briefly reviewed with City Council the PSC Plan and how the consensus items are woven into the Plan, e.g., of calming traffic, re-establishing a more regimented street grid within the area, a place for leisurely daily activities, a green space, a place for residents to enjoy themselves, a place to build civic provide, space that was flexible to accommodate not only everyday use but the tradition of festivals; a place for families; and a place of destination.

The following individuals spoke in support of the PSC Plan:

Mr. Joe Bly
Ms. Kim MacQueen, member of the Downtown Commission and Chair of the Asheville Downtown Association
Ms. Bill Byrne, member of the Downtown Commission
Mr. Herman Turk, General Manager of the Renaissance Hotel, Vice-Chair of the Buncombe County Tourism Development Authority and member of the Pack Square Conservancy Board
Ms. Becky Anderson, member of the Pack Square Conservancy Board and Director of Hand-Made in America
Mr. Glenn Bannerman
Mr. Craig Madison, President and CEO of the Grove Park Inn and Spa
Mr. James Geter, member of the Pack Square Conservancy Board and representative of the Eagle-Market Streets Development
Ms. Pam Myers, Director of the Asheville Art Museum

Mr. Brad Burns, Asheville resident, asked City Council to stipulate that the primary function of any group formed as an extension of City Council is to provide a public forum to be incorporated by Council. He asked Council to stipulate a minimal number of forums with plenty of public notification for public access before the process is concluded. He felt the Plan was pleasant but had no confidence that the PSC can navigate a community aesthetic. He asked a sub-committee be composed of local designers, visual & performing artists, sociologists, social workers and civil engineers to accommodate our community. He also spoke against the donor naming policy. He felt that at the southwest corner of Pack Place, near the Jackson Building, a feature conjoining the two areas of Pack Square and The Block so they will be considered equal.

Mr. Roger Smith, downtown property owner, said that he supported most of the Plan, however, did not support reducing College Street from 4 lanes to 2 lanes and diverting the free flow of traffic. He also felt we should not change the name of City/County Plaza.

Upon inquiry of Vice-Mayor Mumpower, Planning & Development Director Scott Shuford explained why College Street was made 4-lanes. He said that the City's Traffic Engineer has studied the reduction to 2-lanes and will be bring a presentation to Council in April.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford explained what design features the City would participate in and said the City has asked in their federal legislative request for $1.1 Million to be earmarked for this project.

Vice-Mayor Mumpower voiced concern that we had a dedicated revenue stream and the City taxpayers were not going to have carry the infrastructure costs of creating this nice park. Mr. Shuford explained the alternatives available to the City that would address costs concerns.

Vice-Mayor Mumpower said that this Council supported the goals of the Conservancy by taking that piece of property off the table, which property represented the dedicated revenue stream. When Vice-Mayor Mumpower asked if there has been any discussion with the Conservancy asking them to compensate the City for the loss of revenue, Mr. Shuford replied there has not been any discussion.

Councilman Dunn also expressed concern of infrastructure costs on City taxpayers.

Councilwoman Bellamy moved to approve the Pack Square Conservancy Plan and to allow the Conservancy to manage naming rights for park features as a fund-raising/marketing tool. This motion was seconded by Councilwoman Jones and carried unanimously.

V. NEW BUSINESS:

Due to the lateness of the hour, Vice-Mayor Mumpower moved to continue the remaining items on the agenda until another date. This motion was seconded by Councilwoman Bellamy. After a brief discussion, Councilwoman Bellamy withdrew her second. Said motion then died for lack of a second.

Councilwoman Bellamy then moved to consolidate New Business Items A-D and approve them with one motion. This motion was seconded by Councilwoman Jones.

Councilman Newman stated that these items were discussed in the March 16, 2004, worksession.

Vice-Mayor Mumpower felt that there too many issues and too much money being lumped together.

The motion made by Councilwoman Bellamy and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Davis voting "no."

Mayor Worley said that members of Council have been previously furnished with copies of the resolutions and budget adjustment they would not be read.

A. RESOLUTION NO. 04-67 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE HEALTH ADVENTURE TO TRANSFER 1.14 ACRES OF CITY-OWNED PROPERTY LOCATED AT THE CORNER OF CATAWBA AND BROADWAY IN EXCHANGE FOR AN .89 ACRE GREENWAY EASEMENT AND CONSTRUCTION OF A GREENWAY ACROSS THEIR PROPERTY

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with The Health Adventure to transfer 1.14 acres of City-owned property located at the corner of Catawba and Broadway in exchange for a .89 acre greenway easement and construction of a greenway across their property.

For the past several months, City staff has met with representatives from The Health Adventure to discuss the transfer of 1.14 acres of property located at the corner of Catawba and Broadway known as the "Leaf Pile." This property was formerly part of the Penick Property, which was donated to the City several years ago. During these discussions, staff expressed the need for the continuation of the Reed Creek Greenway to occur through this property and across The Health Adventure property to connect to the Glenn Creek Greenway on Weaver Boulevard. The final determination in regard to this transfer includes The Health Adventure granting an easement representing .89 acres adjacent to Broadway Avenue. In addition, the Health Adventure has agreed to pay for and construct the greenway across this property from the corner of Catawba to the intersection of Broadway and Weaver Boulevard. The greenway will be constructed to the standards established by the Greenway Master Plan with final approval of the design by the Greenway Commission and City staff. In addition, The Health Adventure will work with the Public Works Department to continue the use of the "Leaf Pile" until actual construction occurs for the proposed Health Adventure facility. City staff wishes to ensure that the property remain for public use as much as possible, and the City will work with The Health Adventure to ensure that the property is open to the general public as feasible. In addition, if for some reason The Health Adventure fails to build their facility on this site and they wish to resell the property, the 1.14 acres should revert back to the City of Asheville to remain as public space. City staff will be working with representatives of The Health Adventure to develop and agreement that will incorporate all of the above issues.

Upside:

- The City of Asheville will be able to continue development of the greenway from Catawba to the entrance at Weaver Boulevard at no cost to tax payers.
- Greenway design and construction will be approved by the Greenway Commission and City staff.
- The City retains property in the future if The Health Adventure wishes to resell the property.
- The City and The Health Adventure will work together on design elements on and around the Greenway.

Downside:

- The City will lose the use of the "Leaf Pile" for public use.
- Some restrictions may occur with the use of the former property by the public due to accessibility issues with The Health Adventure operations.

The Parks and Recreation Department recommends that the Mayor enter into an agreement with The Health Adventure for the transfer of 1.14 acres of City property in exchange for a greenway easement of .89 acres and the construction of a greenway on Reed Creek.

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B. RESOLUTION NO. 04-68 – RESOLUTION AUTHORIZING ADOPTION OF THE AIR QUALITY IMPROVEMENT INITIATIVE 2004 TO IMPROVE AIR QUALITY IN THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing adoption of the Air Quality Improvement Initiative 2004 as a tool to improve air quality in the City of Asheville

In December 2002, City Council adopted a resolution to enter into an Early Action Compact (EAC) along with Buncombe County and other local governments. The first step in the process was to develop a list of measures that can be taken by each of the local governments to reduce air pollution. In an effort to develop this list, EPA recommended that a group of stakeholders be created to make recommendations to local governments. City Council reviewed and approved the stakeholders in March 2003.

Due to the differences in size and economic base, it was agreed that each county would identify local control measures individually. This process allows greater stakeholder participation and allows each jurisdiction to evaluate local resources and determine if county-specific control measures can reasonably be implemented.

This group of stakeholders representing the City of Asheville and Buncombe County developed a list to City Council in June 2003. Since that time, no major changes in the measures has been made by the stakeholders.

Since the June 2003 update to City Council, the City has received information that indicates that our area will not be considered for non-attainment status in the next review largely due to the wet summer and fall we experienced in 2003 as well as some major changes that Progress Energy is making in their process at the Lake Julian site.

The stakeholders met to discuss this issue and recommend that the City approve this plan as an effort to improve air quality regardless of the threat of becoming non-attainment. The stakeholders indicated that they would like to see a more aggressive approach to improving air quality particularly in the area of educating the public of measures they can take to reduce pollutants.

Buncombe County along with the City of Asheville held a public meeting on January 8, 2004, to solicit input on the plan. The comments were good but many participants requested that the measures in the plan be mandatory as opposed to optional.

The Southern Environmental Law Center has indicated they will file suit against EPA if they allow communities to use the Early Action Compact as a method of avoiding non-attainment status. EPA has indicated they will not challenge this suit. This means that adopting an Early Action Compact may not allow communities to avoid the non-attainment designation. This area is not affected by this challenge because we would not be considered for non-attainment status for the reasons described above. For that reason many of the counties in the surrounding area have chosen not to adopt an air quality improvement plan.

Rather than passing this plan as an "Early Action Compact" Plan, staff recommends that we refer to it as an "Air Quality Improvement Initiative 2004" to avoid any possibility of being involved in the possible lawsuit mentioned above.

Most of the measures in the imitative do not cost money, they simply state that we will try to take measures that have been proven to reduce pollutants. The only initiative that cost money is developing and implementing an educational/public relations plan. The Engineering Department has requested $15,000 in the Fiscal Year 2004-05 budget to cover these expenses.

Staff recommends that City Council adopt the Plan under the title of Air Quality Improvement Initiative 2004 to improve air quality in the City.

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C. RESOLUTION NO. 04-69 – RESOLUTION SUPPORTING THE RECOMMENDATIONS OF THE HAYWOOD ROAD TRAFFIC STUDY (MARCH 2004)

Summary: The consideration of a resolution supporting the recommendations of the Haywood Road Traffic Study dated March 2004.

Improvements to Haywood Road, the "Main Street" of West Asheville, have long been identified as a critical desire of the residents of Asheville. This traffic study proposes modifications developed based upon public input and technical analysis, with the intent of improving the corridor's role as an urban commercial district while enhancing traffic flow. The modifications can be implemented almost entirely by restriping the pavement, at a very low cost.

Based upon years of input from citizens, businesses, and political leaders, and significant investment in community planning, the report requests the proposed modifications to Haywood Road be implemented by N.C. Dept. of Transportation (NC DOT) as part of the proposed resurfacing (currently scheduled for 2004). The proposed modifications would address a number of goals intended to support the viability of West Asheville's community business district, including improving facilities for pedestrians, bicyclists, transit users, and vehicles, and better providing and clearly marking on-street parking spaces. The modifications should clean up what can be a very confusing street on which to drive.

The corridor study proposes one through lane in each direction with turn lanes where appropriate and marked on-street parking. The proposal would eliminate the confusing pattern of lane-adds and lane-drops, as well as the existing condition of cars parking in a travel lane. The proposal would also relieve the bottleneck at the intersection of Haywood Road with Dorchester, State, and Majestic by removing Majestic from the traffic signal (this will also reduce Majestic's use as a cut-through). In summary, the proposal maintains current level of service for traffic while improving the corridor for businesses, pedestrians, bicyclists, and transit users.

Pros:

- Support of revitalization through improved environment for pedestrians, bicyclists, and transit users.
- Elimination of traffic bottleneck at Dorchester/State/Majestic.
- Expected reduction in crashes due to elimination of confusing lane adds and drops and elimination of parking in travel lanes.
- Implementation of a plan developed with significant community input.
- Minimal cost of implementation by coordinating with scheduled resurfacing.

Cons:

- NC DOT may not approve proposal due to reduction in number of lanes in certain areas and addition of some on-street parking.
- Minimal cost of installation includes minor traffic signal modifications at Dorchester/State/Majestic and installation of several concrete islands.

- City may need to accept maintenance responsibility in order to implement if NC DOT rejects proposal.

City staff requests City Council adopt a resolution supporting the recommendations of the Haywood Road Traffic Study (dated March 2004) and the forwarding of said resolution to the NC DOT.

RESOLUTION BOOK NO. 28 – PAGE 171

D. MOTION TO APPROVE BUDGET ADJUSTMENT ALLOCATING $80,000 FOR HALL FLETCHER PLAYGROUND, $50,000 FOR TWO QUICK RESPONSE VEHICLES FOR THE FIRE DEPARTMENT, AND $25,000 TO THE WNC VETERANS MEMORIAL ASSOCIATION TO SUPPORT THEIR MEMORIAL EFFORT ON PACK SQUARE

Summary: The consideration of a motion to approve a budget adjustment for expenditures previously not included in the adopted budget.

The Fiscal Year 2003-2004 Adopted Budget included funds to provide social security benefits to firefighters. The Fire Department, however, elected not to participate in social security, which freed up $563,146 in budgeted funds. City Council has recommended reusing a portion of these funds for the following expenditures:

1) $25,000 grant to the WNC Veterans Memorial Association
2) $50,000 for two new Quick Response Vehicles for the Fire Department
3) $80,000 to renovate the Hall Fletcher Playground

Pros: City Council is able to fund needs that could not initially be accommodated in the Adopted Budget.

Cons: The appropriation to the WNC Veterans Memorial Association is being made outside of the normal outside agency review process. Appropriations made outside of the normal budget process (fire vehicles, playground renovation) may not reflect overall citywide priorities.

City staff recommends City Council approve the budget adjustment for expenditures previously not included in the adopted budget.

E. RESOLUTION NO. 04-70 – RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COUNTY HISTORIC RESOURCES COMMISSION

Vice-Mayor Mumpower said that Angela Heitter has resigned as a member of the Asheville-Buncombe County Historic Resources Commission, thus leaving a vacancy until July 1, 2005. In addition, the term of Allen Roderick expires on July 1, 2004.

City Council's worksession on March 16, 2004, City Council instructed the City Clerk to arrange interviews for Marsha Shortell and Diane Duermit.

On March 23, 2004, City Council interviewed Marsha Shortell and Diane Duermit.

It was the unanimous decision of Council to appoint Diane Duermit as a member of the Asheville-Buncombe County Historic Resources Commission, to serve the unexpired term of Ms. Heitter, term to expire July 1, 2005, or until her successor has been appointed.

In addition, Mayor Worley moved to appoint Marsha Shortell to serve a three year term, term to begin July 1, 2004, and expire on July 1, 2007. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 172

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of March 5-18, 2004: Faith Chapel (Police), Jose A. Lopez (Water), Bayshore Co. (Water) and Bob Arthur (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 12:27 a.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 13, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn (arrived in meeting at 6:07); Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr. (arrived in meeting at 6:21 p.m.); Assistant City Attorney Martha McGlohon (left meeting at 6:21 p.m.); and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Retired Air Force Veteran Ray Green led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

ADDITIONS TO AGENDA

At the City Manager's request, a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Earth Day 2004 festival to be held on Saturday, April 17, 2004, will be added under "Other Business".

I. PROCLAMATIONS:

II. CONSENT:

Mayor Worley said that Consent Agenda Item E will be removed from the Consent Agenda.

Councilwoman Bellamy asked that Consent Agenda Item C be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 23, 2004

B. RESOLUTION NO. 04- 71 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION AND CONSTRUCTION OF FIRE STATION NO. 6 FROM PROCEEDS OF A FINANCING

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of Fire Station Number 6 from proceeds of a financing.

City Council has previously directed staff to initiate action to acquire land and contract for the design and construction of a fire station in the vicinity of I-40 Exit 44. City Council has also previously adopted a budget authorizing expenditures for the project, with the supporting revenues to be provided from the proceeds of a Certificates of Participation (COPs) issue. The financing of the fire station will be combined with the financing of the Haywood Street Parking Deck and result in substantial savings in the cost of issuance for the two projects. The current project schedule calls for the COPs to be issued early in Calendar Year 2005. However, project expenses are presently being incurred. U.S. Treasury regulations require that, if the City intends to reimburse itself from the proceeds of a tax exempt financing for certain project expenses, which were paid prior to the closing date of the financing, it must adopt a resolution evidencing that intent. The resolution of intent may cover expenses paid by the City during the period beginning sixty days prior to adoption of the resolution of intent and ending on the day of issue of the financing. This resolution indicates the City's intent to reimburse itself accordingly.

PROS:
- Savings in cost of issuance for financing of the fire station and the parking deck;
- More efficient use of staff time in doing a single financing rather than two separate COPs (several hundred hours); and
- Potential lower interest rate for fire station by combining it with larger parking deck financing.

CONS:
- Potential for interest rates to increase during the approximately 90-day period between when a
  financing for the fire station would be ready to issue versus when the parking deck financing will be ready; and
- Slight reduction in liquidity of the City due to payment of project expenses prior to receiving the proceeds of the financing.

City staff recommends Council adopt the resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition and construction of Fire Station Number 6 from proceeds of a financing.

RESOLUTION BOOK NO. 28 – PAGE 173

C. BUDGET AMENDMENT TO ACCEPT GRANT AND LOCAL MATCH FOR PREPARATION OF THE CLINGMAN/RIVERSIDE INDUSTRIAL NATIONAL REGISTER NOMINATION REPORT

This item was removed from the Consent Agenda due to a conflict of interest with Councilwoman Bellamy.

D. RESOLUTION NO. 04-72 - RESOLUTION SETTING A PUBLIC HEARING ON MAY 11, 2004, TO CONSIDER THE CLOSURE OF AN UNNAMED ALLEY OFF COMMERCE STREET, BEHIND ASHEVILLE SAVINGS

Summary: The consideration of a resolution of intent to close an unnamed alley off Commerce Street and setting a public hearing on May 11, 2004.

N. C. Gen. Stat. sec. 160A -299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Commerce Street, the entry of which is located approximately 135 southwest of the intersection of Commerce and Church Streets. From Commerce Street, the alley proceeds southeasterly approximately 100 feet, then southwesterly approximately 150 feet to its intersection with Buncombe Street.

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not the sole means of ingress and egress for any of the abutting properties. There are six lots that abut this unnamed alley. They are identified by PIN Nos. 9649.18-30-7001; 9648.06-39-6929; 9648.06-39-5988; 9648.06-39-5927; 9648.06-39-5867; and 9648.06-39-7227.

City staff recommends that City Council adopt the resolution setting a public hearing for May 11, 2004, to close an unopened unnamed alley off Commerce Street.

RESOLUTION BOOK NO. 28 – PAGE 175

E. RESOLUTION SETTING A PUBLIC HEARING ON MAY 11, 2004, TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 451 KENILWORTH ROAD BE VACATED AND CLOSED

This item was removed from the Consent Agenda.

F. RESOLUTION NO. 04-73 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR A CONCEALED WIRELESS COMMUNICATION FACILITY AT 50 OREGON AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise for upset bids regarding an offer to license space for a concealed wireless communication facility at 50 Oregon Avenue.

City of Asheville has received a bid from Triton PCS Property Company, LLC (Triton) for the license of space at 50 Oregon Avenue, the site of Fire Station #3, for a concealed wireless communication facility at a beginning annual fee of $18,000.

50 Oregon Avenue is located at the Northeast corner of Oregon Avenue and Louisiana Avenue. It is zoned Institutional and has a total area of 0.86 acre. The lot is rectangular in shape and Fire Station #3 is located approximately in the center of the lot. The proposed license area is at the northwest (rear) corner of the building and comprises about 810± square feet.

Triton proposes to construct a cell phone tower designed as a flagpole, which will be lighted and the United States Flag will fly 24 hours per day. Antennas will be concealed within the flagpole. Ground equipment will be housed in a small building of a design and materials to match the fire station building. Triton will own, maintain and insure the tower. The tower will have space for two additional antennas and Triton will sublicense the tower spaces to other carriers. An additional building for each carrier of the same character as the first will be added within the license area at such time as the spaces are sublicensed. The proposal from Triton includes the following fee schedule:

Year	**Amount**
1	**$18,000**
2	**$22,500**
3	**$25,960**
4	**$27,000**
5	**$28,000**

The license fee during each renewal term will be increased by four percent (4%) per year compounded annually. Triton will post a cash security deposit in the amount of $5,000 to be held by the City for the duration of the License Agreement.

In addition to the above, Triton will construct a storage room addition for the exclusive use of the City (Asheville Fire Department) on the east side of the Fire Station; replace the City's existing 20 KW generator with a 40KW generator; and construct 3 additional parking spaces for the City's use.

Triton must obtain a Conditional Use Permit in accordance with the Unified Development Ordinance (UDO). Approval of this resolution will not affect consideration of the Conditional Use Permit.

The positive aspects of the proposed license agreement include:

1. Generates revenue for the City that is long term and increases annually.
2. Provides public benefit through better cell phone coverage for the Patton Avenue area.
3. Tower will be located on City owned property as encouraged by the UDO.
4. Promotes co-location of carriers as encouraged by the UDO.
5. Utilizes stealth technology and integrated design; antennas will be concealed within a flagpole tower to present a more esthetic appearance and the ground buildings will appear to be part of the fire station.
6. Licensee (Triton) will own the tower and be responsible for maintaining and insuring it.
7. Puts unused space to productive use.
8. Fire Department will get desired improvements at Fire Station #3.

The negative aspects of the proposed license agreement are:

1. Encumbers the property for up to 25 years, which could impact the disposition of the property should the City no longer need it for a fire station.
2. Would prevent expansion of the station into the licensed area should the need arise to expand.
3. Flagpole tower will be 100' tall and will extend above tree line.

Approval of the resolution will initiate the process for execution of the license agreement as prescribed in N.C.G.S. sec.160A-272 through the upset bid process provided in N.C.G.S. sec. 160A-269.

Planning & Development staff, Fire Department staff and Information Services staff recommend adoption of the resolution authorizing the City Clerk to advertise for upset bids regarding an offer to license space for a concealed wireless communication facility at 50 Oregon Avenue.

RESOLUTION BOOK NO. 28 – PAGE 176

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR DISCUSSION

ORDINANCE NO. 3101 - BUDGET AMENDMENT TO ACCEPT GRANT AND LOCAL MATCH FOR PREPARATION OF THE CLINGMAN/RIVERSIDE INDUSTRIAL NATIONAL REGISTER NOMINATION REPORT

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Summary: The consideration of a budget amendment, in the amount of $3,380, to receive $2,000 in grant money from the North Carolina State Historic Preservation Office (NCSHPO) and $1,380, from a local match from outside source, for preparation of the Clingman/ Riverside Industrial National Register Nomination Report.

The Historic Resources Commission of Asheville & Buncombe County requested $2,000 from NCSHPO to prepare a national register nomination. Staff was successful in obtaining these funds. We received the grant funds for the preparation of a National Register Nomination Report for the Clingman/Riverside Industrial Historic District, which is on the North Carolina Study List. The District encompasses between 20-25 properties on approximately 2.5 acres. It will include only the historic industrial and commercial areas within the larger West End/Clingman Avenue Neighborhood (WECAN) and roughly follow the areas on a Study Area map. The local match of $1,380 was provided by property owners from the WECAN Community.

Pros:

- The local required match of $1,380 has been provided by the WECAN community.
- If the nomination is approved for listing on the National Register, no obligations or restrictions will be placed on the property.
- If listed on the National Register privately owned buildings in the district may be eligible for a 20% federal income investment tax credit, which is an incentive for the preservation of the structure.

Cons:

- National Register listing does not provide absolute protection from state or federal actions that may affect the property.

City staff recommends City Council approve the budget amendment to receive grant money from the NCSHPO and the local match from the WECAN sponsors.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3101. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 106

PUBLIC HEARING CONTINUANCE REQUEST

Mayor Worley said that on Monday, April 12, 2004, a letter was received from Mr. Craig Justus, requesting the public hearing to consider adoption of an ordinance ordering demolition of 86 Crayton Road be continued until the next City Council formal meeting. The letter stated that Mr. Justus would be in Raleigh on the public hearing date and his partner has a scheduling conflict. They have been recently asked to look into the merits of the City staff's claims concerning this property.

Vice-Mayor Mumpower moved to continue the public hearing to consider an ordinance ordering demolition of 86 Crayton Road until April 27, 2004. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING ON THE CITY'S CONSOLIDATED ACTION PLAN FOR 2004-05 ALLOCATING FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS

RESOLUTION NO. 04-74 – RESOLUTION ADOPTING THE CITY'S CONSOLIDATED ACTION PLAN FOR 2004-05 ALLOCATING FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME FUNDS

Mayor Worley opened the public hearing at 5:13 p.m.

Councilwoman Jones moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of the City's Consolidated Action Plan for 2004/05, allocating federal Community Development Block Grant (CDBG) and HOME funds. This public hearing was advertised on April 2 and 9, 2004.

The City expects to have available $1,981,372 in CDBG funds and $2,038,859 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2004. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 35 projects. She reviewed a summary of the applications received and the funding section of the draft action plan.

If approved, the HOME and CDBG funding will assist 288 affordable housing units Consortium-wide. CDBG funds will also help replace nearly 2/3 mile of undersized water pipes in west Asheville, and provide 250 Asheville residents with employment or business training and over 3,000 residents with other needed services.

Notice of the public hearing and a summary of the draft plan were published on March 28, 2004. A 30-day public comment period is required by federal regulations. The final plan must be submitted to U.S. Dept. of Housing and Urban Development by May 15, 2004.

Advantages:

- Allocates $4,020,231 in compliance with federal rules and the City's Consolidated Strategic Housing & Community Development Plan
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee

Disadvantages

- Funding insufficient to meet all requests – some applicants are disappointed.

City staff, the Housing and Community Development Committee and the Asheville Regional Housing Consortium recommend approval of the draft Action Plan.

Mayor Worley closed the public hearing at 5:21 p.m.

Councilman Newman moved to adopt the Consolidated Action Plan. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 177

B. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 86 CRAYTON ROAD BE DEMOLISHED

This public hearing was continued to April 27, 2004.

C. **PUBLIC HEARING TO CONSIDER REZONING A PORTION OF 812 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT**

ORDINANCE NO. 3102 - ORDINANCE TO REZONE A PORTION OF 812 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 5:21 p.m.

Urban Planner Carter Pettibone said that this is the consideration of an ordinance to rezone a portion of 812 Merrimon Avenue from RS-8 Residential Single-Family High Density District to Community Business II District. This public hearing was advertised on April 2 and 9, 2004.

This portion of property is located in the City limits west of Merrimon Avenue and East of Mt. Vernon Circle. Surrounding land uses and zoning include commercial uses to the north, east, and south zoned Community Business II (CB II) and a residence zoned RS-8 to the west.

The applicant (Gary Houser of Houser Investments) wishes to rezone this portion of the property, which is currently vacant, in order to add it to his already commercially-zoned property to the east, which contains a retail sales business. The purpose of the CB II District is to provide areas for medium to high-density business and service uses serving several residential neighborhoods.

The applicant is swapping a narrow, RS 8-zoned portion of his own property that connects with Mount Vernon Circle for the portion in question with the subject property owner.

Currently, a retail shoe sales business is located on the applicant's property. He would like to add this portion of his neighbor's property and rezone it in order to better access the rear of the property and building. If this portion of property were rezoned, the applicant would be required to use part of this portion to screen his commercial use and vehicular use area from the neighboring residential property.

Advantages (Pros):

- Better vehicular access to the rear of the site and building.
- No additional commercial access onto Mt. Vernon Circle.
- Once properties are swapped, the Houser CB II parcel will no longer have direct access onto a residential street (Mt. Vernon Circle).
- If rezoned and the applicant were to expand the vehicular use area, additional screening or buffering would be required against the neighboring residential property.

Disadvantages (Cons):

- Delivery and support vehicles accessing the rear of the site near residentially zoned property.

In consideration of the above, the adjoining zoning and land uses in the area surrounding the property, and its proximity to Merrimon Avenue, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval of the rezoning request. The Planning and Zoning Commission, at its March 3, 2004, meeting, voted unanimously to recommend approval of the rezoning request.

Mayor Worley closed the public hearing at 5:28 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No 3102. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE [illegible]

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF A .77 ACRE PARCEL ADJOINING PROPERTY AT 31 COLLEGE PLACE TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 3103 - ORDINANCE TO ZONE A .77 ACRE PARCEL ADJOINING PROPERTY AT 31 COLLEGE PLACE TO CENTRAL BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:29 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone a .77 acre parcel adjoining property at 31 College Place to Central Business District. This public hearing was advertised on April 2 and 9, 2004.

The property is located within the City limits in the downtown area. The property was recently acquired from the State of North Carolina by 31 College Place LLC Surrounding land uses and zoning include highway and right-of-way areas to the north and east which are not zoned. To the west, the property is zoned Central Business District (CBD). To the south, the parcel is at the edge of the CBD area with residential uses, (RS-8) nearby too.

The applicant, Martin Lewis, wishes to zone the property to CBD and to develop uses permitted in this district. The Central business District zoning supports and reinforces the downtown as the urban center of Asheville and western North Carolina and encourages private investment to support this role it the community

Currently the property is vacant and has been used as NC Department of Transportation right-of-way for I-240. This property totaling .77 acre was recently combined with property already owned by 31 College Place LLC. The combined parcel totals 4.3 acres. The property and any future development will use existing driveways on College Place and College Street for access.

It is an unusual situation to have right-of-way property made available for private development. The Central Business District zoning application is appropriate for this parcel due to its relationship to other CBD zoned property and close proximity to the downtown area. CBD zoning allows for mixed use commercial and residential projects in support of the downtown area as the community center of Asheville and western North Carolina.

PROS: Property that was unavailable is now available for development. The property is well situated with access and infrastructure already in place.

CONS: The hillside residential area nearby may be impacted from I-240 and possible CBD uses.

The Planning and Zoning Commission, at its March 3, 2004, meeting, voted unanimously to recommend approval. City staff recommends approval of the rezoning request as well.

Mayor Worley closed the public hearing at 5:32 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3103. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 110

E. PUBLIC HEARING TO CONSIDER CONDITIONAL USE ZONING FOR PROPERTY LOCATED AT 15 LYNNDALE AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE, AND ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONVERSION OF TEMPORARY USE BUILDINGS FOR PERMANENT USE

ORDINANCE NO. 3104 - ORDINANCE REZONING PROPERTY LOCATED AT 15 LYNNDALE AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3105 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 15 LYNNDALE AVENUE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:25 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

Mayor Worley said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Shuford said that this is the consideration of a request to rezone property located at 15 Lynndale Avenue from RM-8 Residential Multi-Family Medium Density District to Institutional District/Conditional Use and a request to issue a conditional use permit for the conversion of temporary use buildings for permanent use.

The applicant (West Asheville Baptist Church) has requested a rezoning of a total of .52 acres (two lots) of RM-8 property to Institutional (INST-CUZ) to allow for the extended maintenance of three separate temporary use structures as accessory uses to the main church facility. A temporary use permit was issued to the West Asheville Baptist Church in April 2002 to allow the temporary placement of three modular buildings to be used as classrooms while the expansion at the main facility was under construction. The church issued a letter to the City stating the buildings would be removed no later than July 2003. Since the buildings were to remain in place longer than 180 days, the applicant agreed to install landscape buffer as required by the ordinance. Due to the assurance of the temporary nature of the buildings, the Planning Department applied flexible development standards to allow for the reduction of a side setback and waiver of a rear setback that would normally be required for an accessory use to a place of worship in an RM-8 district. Under the current zoning, the use is a 'Use by Right, Subject to Special Requirements' which is not eligible for variance requests. As such, the structures would be non-conforming and could not be approved. Due to the institution's desire to keep the structures unchanged, the only course of action was to pursue a rezoning to an Institutional designation that would reduce the side setback requirement to a conforming level in addition to completing a recombination of the two lots in order to provide for an appropriate rear setback. The Church administration recognizes the temporary nature of the modular structures and wishes to extend the temporary use to a maximum of five years to accommodate the growing needs of their congregation.

The project site is located within the City Limits and is surrounded on two sides by Institutional zoning and uses. Due to the unusual configuration of the two lots combined, the other three sides of the lot are surrounded by residential zoning with single family uses and a non-conforming church parking lot. The two lots were, historically, single family uses with one of the existing homes being reused as an accessory use to the church facility. The other single family home was removed to allow for the placement of the three temporary structures to accommodate the West Asheville Baptist Church during their recent expansion.

The purpose of the RM-8 zoning district is to establish a diverse medium density multifamily and single family district in areas where public infrastructure is sufficient to support such densities. The Institutional zoning district is to reserve land for the development of major educational facilities, medical facilities, and other complementary and supporting uses such as health related developments, office developments and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses and as such allows for the development of high density multi-family, to serve as a potential buffer between other institutional uses and single family areas.

Pros:

1) Accommodates the growing needs of a local Place of Worship until a time when a more suitable alternative can be explored.
2) Allows for the continued use of community based functions.
3) Limited disturbance to the site is required.
4) Some site improvements will be installed.

Cons:

1) Loss of residential potential.
2) Project can be perceived as an encroachment into the neighborhood and could open the door for future encroachments.

3) Impact of temporary structures on adjacent property values is uncertain.
4) Project will require the recombination of two lots resulting in an undesirable configuration.

At their January 21, 2003, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating that the conditions outlined in the report be addressed prior to final review by the TRC.

The Planning and Zoning Commission reviewed the proposed plan on March 3, 2004, and after some discussion, tabled the hearing until the mid-month meeting. On March 18, 2004, a quorum of Planning and Zoning Commission members (4-0) voted to approve the Conditional Use Rezoning request to extend the maintenance of the temporary use structures for a maximum of five years.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The project area is relatively flat and the proposed project will not require any additional grading or other ground disturbing activity other than minor site improvements.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
It is fairly well established that mobile/modular structures do not appreciate over time and can have a negative impact on adjacent property values. However, the existing structures are intended to be temporary in nature and it is difficult to determine whether these temporary structures would have the same impact to property values as permanent structures. Despite the temporary nature of the proposed use, concern over a potential negative impact to adjacent property values initiated the landscape buffer requirement in the original application. These buffers will be expanded and further enhanced to meet minimum buffer requirements per the UDO and staff feels that any concern over the impact on adjacent properties can be mitigated through the landscape and potential improvements to the appearance of the buildings.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The existing modular structures are well in scale with the library and larger church use. Similarly, the temporary structures are fairly compatible with the existing parking lot to the south of the site. In respect to the adjacent single family uses, height, bulk, or density do not appear to be exceeded but issues with harmony, character, and coverage could be considered. As mentioned earlier in the report, the appearance/character of the structures is to be mitigated through landscaping and other site improvements along with potential improvements to the buildings. Staff feels that these improvements along with the temporary nature of the structures addresses any concern over those issues.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The Asheville City Development Plan 2025 does not appear to specifically address Places of Worship or other non-profit uses. However, there is one minor reference under the Land Use and Transportation section regarding W. Asheville and Haywood Rd. that reads, "Schools, Churches, and parks complement the retail and service uses located in close proximity to the residential uses. . ." This site is located on Lynndale Avenue. less than one block south of Haywood Rd, in proximity to the local library, church, and residential areas.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed project will share the existing parking area with the larger Church facility located across the Lynndale Avenue, resulting in no real change to off-street parking or traffic flow. In addition, pedestrian connections will have to be improved and will tie into existing, clearly delineated crosswalks.

City staff, along with the Planning and Zoning Commission, recommends approval of the Conditional Use Rezoning request subject to the conditions of TRC being met and also with the condition that the temporary structures and use cease after a maximum of five years.

Mr. Marshall Roberts, member of the Property and Grounds Committee of West Asheville Baptist Church, spoke in support of the project and felt that through this project they can add community equity because not only does the Church use the modulars, but community organizations and clubs use them as well.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 5:40 p.m.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3104 to conditionally rezone property Located at 15 Lynndale Avenue from RM-8 Residential Multi-Family Medium Density District to Institutional District/Conditional Use. This motion was seconded by Councilman Newman and carried unanimously.

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After an inquiry from Councilwoman Bellamy regarding landscaping, there was a brief discussion about landscaping around the modulars that face the street side. Mr. Shuford suggested that if the conditional use permit is approved, that a condition be attached directing City staff to work with the West Asheville Baptist Church using the alternative compliance procedures to move some landscaping around to the street side.

Councilman Davis was concerned with the issuance of the conditional use permit as the modulars are a real intrusion into the residential neighborhood. He was pleased to see the Church growing, but felt that five years is too long for a temporary use and for something that is out of context with the neighborhood, even with the additional landscaping. Mr. Shuford responded that the Church is planning to build a permanent building as soon as they can raise funds.

Upon inquiry of Councilman Davis, Mr. Roberts said that the modulars will all be for adult education space.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3105 to issue a conditional use permit for property located at 15 Lynndale Avenue, subject to (1) the conditions of TRC being met; (2) that the temporary structures and use cease after a maximum of five years; and (3) City staff be directed to work with the West Asheville Baptist Church using the alternative compliance procedures to move some landscaping around to the street side. This motion was seconded by Councilwoman Bellamy.

Councilman Newman moved to amend the original motion to reflect that the temporary structures and use cease after a maximum of three years (not five years). This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Vice-Mayor Mumpower voting "no."

Vice-Mayor Mumpower voted against the amended motion because the Planning & Zoning Commission, City staff and the neighborhood didn't seem to think five years was a significant concern.

The original amended motion, to issue a conditional use permit for property located at 15 Lynndale Avenue, subject to (1) the conditions of TRC being met; (2) that the temporary structures and use cease after a maximum of three years; and (3) City staff be directed to work with the West Asheville Baptist Church using the alternative compliance procedures to move some landscaping around to the street side, carried unanimously.

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IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 04-75 -RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN

Urban Planner Carter Pettibone said that this is the consideration of a resolution amending the Annexation Services Plan for the 2004 Round Two Annexation Areas to reflect the City's intention of taking over a portion of another private street for public maintenance and correct a typographical error.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan, as long as the requirements for providing service to the annexation areas continue to be met.

At the public hearing on March 23, 2004, City staff recommended that the City take over for maintenance the portion of Honey Drive that is within the Honey Drive Annexation Area. The Services Plan, as it is currently written, does not propose any street within the Honey Drive Annexation area to be taken over for public maintenance. The effects of this change are that it raises slightly the amount of projected annual Powell Bill revenue for the Honey Drive Area, total Powell Bill Revenue, and total revenues from the annexation areas. Additional costs are not expected since no street paving is required for the 0.24-mile segment and new street signs were already figured into the capital costs for the area. An amendment is also required for a typographical error on page 20 of the Services Plan.

These technical amendments allow the City to provide better municipal service for the annexation area and incorporate improved information for projected revenues into the Services Plan. The change does not increase the size of area under consideration nor add any additional property to the annexation area.

As long as the Annexation Services Plan does not show the annexation areas as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to include taking over the portion of Honey Drive within the Honey Drive Annexation Area for public maintenance and to correct the minor typographical error.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-75. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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B. ORDINANCE NO. 3106- ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HERITAGE BUSINESS PARK AREA

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Heritage Business Park area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Heritage Business Park area, with an effective date of June 30, 2004.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilman Newman moved for the adoption of Ordinance No. 3106. This motion was seconded by Councilwoman Bellamy and carried on a 5-1 vote with Vice-Mayor Mumpower voting "no."

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C. ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HONEY DRIVE AREA

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Honey Drive area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

At the public hearing on March 23, 2004, City staff recommended that the City take over for maintenance the portion of Honey Drive that is within the Honey Drive Annexation Area. The Services Plan has been amended to reflect that change.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Honey Drive area, with an effective date of June 30, 2004.

Upon inquiry of Councilwoman Jones, Mr. Pettibone said that there are three vacant parcels in this development, however, it appears that only one parcel is developable.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Mayor Worley moved for the adoption of an ordinance to extend the corporate limits of the City of Asheville to the Honey Drive area. This motion was seconded by Councilman Davis and failed on a 3-3 vote, with Mayor Worley, Councilwoman Bellamy and Councilman Davis voting "yes" and Vice-Mayor Mumpower, Councilwoman Jones and Councilman Newman voting "no."

City Attorney Oast said that the Annexation Services Plan will need to be amended to reflect the deletion of the Honey Drive area.

D. ORDINANCE NO. 3107 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ENKA PARK AREA

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Enka Park area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Enka Park area, with an effective date of June 30, 2004.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3107. This motion was seconded by Councilman Newman and carried on a 5-1 vote with Vice-Mayor Mumpower voting "no."

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E. ORDINANCE NO. 3108 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE ASHWOOD AREA

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Ashwood area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Ashwood area, with an effective date of June 30, 2004.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

At 6:07 p.m., Councilman Dunn arrived at the meeting.

Councilwoman Jones moved for the adoption of Ordinance No. 3108. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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F. ORDINANCE NO. 3109 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE HEATHBROOK AREA

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Heathbrook area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Heathbrook area, with an effective date of June 30, 2004.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Vice-Mayor Mumpower said there are good arguments in support of annexation and he recognizes the dilemma that we face on Council in that respect. The largest argument being the issue of fairness in that people who live near the City should help pay for the City. However, he will vote against the annexations largely on the basis of divisiveness. Forced annexation runs against the founding principles of the country and it creates a lot of ill will and a lot of repercussions that he was not sure serves the City well.

Councilman Newman moved for the adoption of Ordinance No. 3109. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote with Vice-Mayor Mumpower and Councilman Dunn voting "no."

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G. ORDINANCE NO. 3110 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SWEETEN CREEK ROAD AREA

Mayor Worley said that the public hearing on this matter was held on March 23, 2004.

Urban Planner II Carter Pettibone said that this is the consideration of adopting an ordinance to extend the corporate limits of the City of Asheville to the Sweeten Creek Road area.

On January 13, 2004, City Council adopted Resolutions of Intent beginning the annexation process for the following six areas: the Heritage Business Park area, the Honey Drive area, the Enka Park area, the Ashwood area, the Heathbrook area, and the Sweeten Creek Road area. The Annexation Services Plan for all of these areas was approved on January 27, 2004, and the Plan was amended on April 13, 2004. A public information meeting was held on March 4, 2004. Public hearings on each of annexations were held by City Council on March 23, 2004. Adoption of the annexation ordinances is the final step in the annexation process.

Mr. Pettibone said that a metes and bounds description is attached to the ordinance. The annexation area does meet the requirements of General Statutes. It is the intent of the City to extend City services outlined in the Annexation Services Plan. On the effective date of the annexation, the City will have funds in sufficient amount to finance all capital expenditures. The effective date of this annexation is June 30, 2004.

Mr. Pettibone explained Council what is located on this site and what is located in the surrounding area.

Staff recommends adoption of annexation ordinance for the Sweeten Creek Road area, with an effective date of June 30, 2004.

Councilman Dunn was concerned that the Sweeten Creek Road area only meets 1 out of 4 development tests. Planning & Development Director Scott Shuford explained that it's possible for an annexation to meet 3 out of the 4 development tests and another annexation have a strong qualification under one single test. It is a strong possibility that the single test annexation would be more likely to withstand a challenge. He explained the annexation laws were set up to provide for 4 different ways (population density, subdivision, development and non-residential urban use) to qualify for annexation and if the area meets one test, that is sufficient.

Mayor Worley said that members of Council have previously been furnished with a copy of the ordinance and it will not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3110. This motion was seconded by Councilman Davis.

Councilman Newman said felt that annexation is an issue of fairness in how we pay for the infrastructure in our community and the issue of community planning in areas that are urbanizing. State law says that areas that become urban should belong to the cities that they are associated with and that makes good sense from a planning standpoint. The families and businesses that are inside the City limits now pay almost twice what people who live outside the City limits pay in taxes for our infrastructure, even though Asheville is the economic, cultural and commercial center of western North Carolina. The infrastructure that Asheville provides is critical to the economy of the larger area. The economic opportunities that we have in our area would not be possible without the infrastructure that we create in the City. The need to invest more in infrastructure in Asheville is beyond debate. We have huge infrastructure needs in Asheville and it would be irresponsible for us to not invest more in that infrastructure. It's not fair for us to have to further raise taxes on the families and businesses who are already in the City of Asheville. Our only other strategy is to pursue annexation policies so that some of the areas that have become truly urban can help pay for that infrastructure that we need to invest in in Asheville. We also need to create new revenue sources that take advantage of the fact that Asheville is the economic center of western North Carolina and a major tourist destination. Unfortunately for this Council, the state legislature has to approve giving this body the authority to use some of those other revenue options that would allow tourists and visitors and people who live outside the City to help pay for our infrastructure. We are trying to make a case for those other revenue options which will help us pay for infrastructure, without necessarily having to pursue annexation as our only tool that is available for us. Until we get that tool, annexation is the only strategy that we have to invest in our infrastructure, other than raising taxes further on the citizens and businesses in Asheville, which is unacceptable. It is my hope that we can work with the County Commissioners and our state legislators to develop some other options that will give us more funding to invest in infrastructure and perhaps allow us to not have to pursue such an aggressive annexation policy in the future.

Councilman Dunn agrees that we must work with our state legislators to get some other revenue options. He doesn't think the City has enough police officers and the street maintenance schedule is not adequate. Until the citizens of Asheville have the basic City services he will not support annexation.

The motion made by Councilwoman Jones and seconded by Councilman Davis carried on a 4-3 vote, with Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

Councilwoman Bellamy did not support this annexation because she felt the City could not accommodate some of the needs of the residents in this area, e.g. trash pick-up.

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H. ORDINANCE NO. 3100 – ORDINANCE DENYING THE CONDITIONAL USE PERMIT FOR PROPERTY LOCATED OFF BRITT DRIVE FOR THE CONSTRUCTION OF A 100 UNIT APARTMENT COMPLEX IN AN RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley said that the public hearing and adoption of this ordinance denying the conditional use permit (CUP) was held on March 23, 2004. At the City Attorney's request, this ordinance is being brought back for approval of the wording of the order only.

City Attorney Oast said that this is the consideration of the form of the ordinance denying the CUP for Foxwood Apartments on Swannanoa River Road.

At Council's March 23, 2004, meeting, a public hearing was held to consider whether to issue a conditional use permit for a 100 unit apartment complex on Swannanoa River Road. Council voted to deny the permit.

A conditional use proposal must satisfy all 7 standards listed in Sec. 7-16-2(d), together with any standards specific to the use, in order for a CUP to issue. Failure to meet any one of the criteria requires that the CUP be denied. The order denies the CUP on the grounds that the project will materially endanger the public safety (standard #1), and that it will be incompatible with natural topographic features on the site (standard #2). These were the standards that Council based its decision on.

If Council is satisfied with the order denying the CUP, then adoption of the ordinance is recommended.

Councilman Davis moved for the adoption of Ordinance No. 3100. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Mayor Worley voting "no."

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V. NEW BUSINESS:

A. ORDINANCE NO. 3111 - BUDGET AMENDMENT TO RECOGNIZE RECEIPT OF A SECTION 108 GUARANTEED LOAN AND AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FROM THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT AND EXPENDITURE OF THE PROCEEDS ON THE REDEVELOPMENT OF SOUTH PACK SQUARE

Planning & Development Director Scott Shuford said that this is the consideration of a budget amendment, in the amount of $1,140,000, to recognize receipt of a Section 108 Guaranteed Loan and an Economic Development Incentive Grant from the U.S. Dept. of Housing and Urban Development and expenditure of the proceeds on the redevelopment of South Pack Square.

The developer for the Eagle-Market Streets Development Corporation (EMSDC) project has submitted a letter that provides responses to a number of the concerns raised by City Council in its prior consideration and denial of the budget amendment. The budget amendment would accept and allocate $800,000 of U.S. Dept. of Housing & Urban Development (HUD) Section 108 loan funds and $340,000 of Economic Development Incentive (EDI) grant monies to an EMSDC project that would create over 8,000 square feet of additional retail and office space and 14 residential units.

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Since Council's denial of the budget amendment that would have allocated federal monies to the previous project, four important things have happened. First, there has been a visioning session held involving a large number of people interested in the redevelopment of South Pack Square. This session resulted in the identification of a number of common issues and concerns, including:

- Greater affordability of residential, retail and office rents
- Preservation of the architectural character of The Block
- The need to keep the federal dollars invested in South Pack Square
- A desire for and commitment to greater inclusion of the various interests of the community in the decision-making process
- The need for timely redevelopment of The Block

Second, to address issues concerning proper oversight of public funds invested in the project, EMSDC has consented to its removal from direct participation in the project. EMSDC will still own the property, receive appropriate lease payments from the developer, and have an option to purchase the improvements to the property at a price that cash-flows any time between five and seven years after completion of the project. The developer will make a special effort to install restaurant equipment to help accommodate the relocation of the Ebony Grill to the site; this expense, along with the rent reductions described below, will increase the buy-back requirements for EMSDC but there will still be a positive cash flow, making buy-back feasible.

Third, the developer has committed to working with the City to remove the fence; the City will temporarily sublease the parking lot that will contain the new infill building and open it to public parking. This will allow the City to assume liability for the property while it is used for public parking. If the project moves forward, the developer will need to do some final environmental testing and does not want to have the property tied up with parking which would be difficult to work around. It is anticipated that within ten days the fence will be removed until actual construction activities start on the site, which is anticipated to be approximately 60 days.

Fourth, the developer has obtained additional financing through the federal New Markets Tax Credit program and has been able to make the following significant reductions in rents under its pro-forma.

- **Residential** – 20% of the residential units will be rented at 75% ($0.727 per square foot per month) of market rates. The remainder will be rented at market rates ($0.975 per square foot per month); this market rate will still be affordable to service workers, City employees, and other people that make up our local workforce. This is a greatly underserved group in our downtown housing market.
- **Retail/Office** – Market rates for retail and office space in this area of downtown are $12.50 per square foot per year. The developer will rent 80% of his retail space and 67% of his office space at 88% of market rates ($11.00 per square foot per year) and, additionally, he will rent the remaining 20% of retail space and 33% of office space at 64% of market rates ($8.00 per square foot per year).

Staff finds that the proposed revised project will be fully consistent with the South Pack Square Redevelopment Plan. In addition, the project appears to be consistent with all applicable financial review criteria necessary for the City to carry out its responsibility in monitoring the allocation of federal funds and in securing the consequent City financial interest in the project.

Pros:

- This project provides significantly greater rent affordability compared with the prior project that Council failed to fund; in particular, the $8 psf commercial/retail rent will be accessible for the type of neighborhood businesses that formerly flourished on The Block and the $0.727 psf residential rents are very affordable to singles or couples below 80% of AMI.

- Concerns about EMSDC oversight have been addressed.
- It appears that this project is more consistent with the community vision for South Pack Square redevelopment.
- A major redevelopment project for South Pack Square will be funded.

Con:

- The effort to accommodate the return of the Ebony Grill and the lower rents will result in a higher buy-back cost for EMSDC.

Staff recommends that the City Council approve the budget amendment resolution that allocates $800,000 of HUD Section 108 loan funds and $340,000 of EDI grant monies to the revised EMSDC project.

The following individuals spoke against City Council taking action at this meeting for several reasons, some being, but are not limited to: following Council's decision on February 24, 2004, public notice was given that Council would next take up this issue at the April 20 worksession; the April 20, 2004, worksession date was repeated by City representatives at subsequent community meetings and broadly distributed by local media; no public notice has been given of the tonight's hearing, only a press release that was printed in the paper on Good Friday; the South Pack Square Association, as directed, has met and formed a resolution on this project and they request the opportunity to present their work to Council at the April 20 worksession; and hearing this matter tonight will compromise the process which Council initiated: the South Pack Square Association has only been given a few days to look over the new proposal and they have several questions; what happened to the inclusive process City Council wanted to achieve; and who will be the owner of the improvements in 2009:

Mr. Gene Ellison
Mr. Jesse Plaster
Mr. Fred English
Ms. Amy Plaster
Mr. Jesse Ray
Mr. Walter Plaue

Mayor Worley responded to Mr. Ellison's comment about the February 24, 2004, meeting. He explained that is was Council's intent to put a general discussion of where do we go from here having turned that project down. This is not the same thing. This is a revamping of the proposal which has some critical time elements to it, and which necessitates it being on the agenda tonight. That is the reason why it is different from what we talked about and intended to have on the worksession agenda for April 20, 2004.

Upon inquiry of Mayor Worley regarding ownership of the improvements in 2009, Mr. David Rogers, developer, explained that they do not want to be the long-term owners of the property. In our 7-year lease, the tax credit investor has to own the property for at least five years to give the best change for EMSDC to be able to buy the improvements back. During that time period, EMSDC will have a capital campaign to enable them to buy the improvements back within 5-7 years. If EMSDC does not buy the property back, there is a provision in the lease that extends it to 99 years so we can find another buyer for the property.

Community Development Director Charlotte Caplan said that EMSDC will continue to own the freehold and have the option to buy back the improvements after 5-7 years. However, during the development phase, that will be handled by the highly-capable developer in the form of

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historic acquisitions and by the Enterprise Real Estate Services. EMSDC realized they needed that additional expertise and City staff supports them in that decision.

Mr. Rogers explained the New Market Tax Credits Program, which was started by the federal government in 2002. He explained that the reason why they did not discuss the New Market tax credits for the first proposal is because the EMSDC project (with the Mt. Zion Church project) did not qualify for those tax credits. Two weeks ago he was asked by Mt. Zion Church to talk about moving ahead with just their project without the EMSDC project. In that meeting they explained to him what they wanted to do differently on their site. Once they told him that, their project immediately qualified for the New Market tax credits. With the Mt. Zion project qualifying for the tax credits, the EMSDC project would qualify as well. He then contacted the City and said there has been a change in what financing is available due to the Church's change in their project. They have been able to reduce a 7.5% loan down to a 4.25% loan, fixed rate for 7 years. He said that they are proceeding with the project on the Mt. Zion Church site regardless of what happens with the EMSDC project.

Mr. Rogers then responded to various questions/comments from Council regarding the role of the EMSDC in this project and how they anticipate the buy-back in 5-7 years.

Mr. Rogers explained how the community can participate in the jobs, training and minority contracting. He said they have already been taking applications from general contractors. In the advertisement they require the contractor to hold job fairs and take pricing from minority sub-contractors. They will abide by all U.S. Housing & Urban Development requirements.

Upon inquiry of Councilwoman Bellamy, Mr. James Geter, President of the EMSDC Board, said that the Board has agreed there needs to be additional representation on the Board. Their Vice-Chair is leading that effort in putting together an advisory council. The Board has also determined that there needs to be additional community seats available. They have passed out applications throughout the community at least three times searching for new Board members, but have received none back to date. The YMI Cultural Center will have a seat on the Board.

When Councilwoman Bellamy asked about the EMSDC's plan to buy back the improvements, Mr. Jeter said that they want to make sure that these properties stay in the community and they don't lose control of the properties. He said that the Board will begin capital campaigns soon after the development starts and develop a plan to raise a certain amount of money each year so that when the 5-7 year period comes they will be ready to buy the improvements back. They hope they don't have to borrow any money to buy the improvements back, but if they do, they will be in a better position.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that the City has a contract with the EMSDC, as they are the redevelopment agent for the South Pack Square area. The contract puts certain responsibilities on them to facilitate the development of the area in accordance with the South Pack Square Plan. He felt there are some provisions in the contract that are required by federal law that the City can't amend, but with respect to the things we can change, certainly we can do that.

Councilwoman Bellamy asked how the EMSDC is different from the City's relationship with the Housing Authority, Metropolitan Sewerage District Board, Alcoholic Beverage Control Board, Regional Water Authority, etc. City Attorney Oast said that the EMSDC is not a governmental entity but a corporation formed under the N. C. Corporation Laws. There is some misconception that they are an arm of the City, but they are not. They are only the City's redevelopment agent, not a redevelopment commission.

Mayor Worley said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3111. This motion was seconded by Councilwoman Jones.

Vice-Mayor Mumpower agreed with people who feel the Council has made an unfortunate step away from normal procedures to be making such a major step forward. He also agrees that Council is side-stepping portions of the South Pack Square Redevelopment Plan in that we are marginalizing EMSDC without any clear reform plan and he doesn't understand the logic in that. With that said, the African American community's historical connection to The Block is a key component of the development plan and that is going to be much more clearly preserved by this effort than if we let traditional piecemeal development occur there. EMSDC, as representatives of the African American community, will be in a position to guide things in that area and make use of the revenues that will have a much greater impact than if we let it just occur traditionally. There are cons to this process but the pros seem to clearly outweigh the cons.

Councilman Dunn was concerned about the process. The uncertainty of the availability of tax credits is unknown by the developer and the City. He doesn't like to feel pressured into voting because we are spending taxpayers' money. However, The Block will be developed anyway and voting in favor will help create that re-birth. In addition, he feels that every board Council works with should be reviewed in depth.

Councilwoman Jones studied very hard the issues which concerned Council on the earlier proposal and feels they have been addressed - there are commercial rents that are affordable, Ebony Grill is included in the plans, affordable housing, separate the Church project from EMSDC, and flush out the discussions with the EMSDC. The timing is not great, but it is not unfair. Councilwoman Bellamy worked very hard to hear a lot of different voices and made sure that their words have been heard. She asked the developer take initiative to have regular contact with the property owners and apprise them of anything that will disrupt their business and work in concert with that. She also asked City staff to look at the Urban Trail's role in that area. Also, she pointed out that this Council is committed to finding other dollars through a lobbyist to bring other amenities to South Pack Square.

Councilman Davis said that he supported the earlier project and feels that it is now in a better form. However, he felt Council should give all groups concerned the opportunity to report back to Council and didn't feel one more week to the April 20 worksession was asking too much.

Councilwoman Bellamy would like for Council to evaluate our relationship and partnership with the EMSDC. There may be a possibility that the City can make appointments to that Board. She wants the City to pursue what we can do to ensure that the level of participation that we really want, we can achieve. We need to make sure we have input into seeing the changes in the Board organization going forward.

Councilman Newman said that the Housing & Community Development Committee allocated $50,000 in Community Development Block Grant (CDBG) funds for overall redevelopment for South Pack Square without indicating exactly how that would be utilized or exactly what agency would receive those funds. Even though the project was not approved in February, the Council maintained its commitment to the revitalization of this area. That does provide us with an opportunity to remain in dialogue with all of the different people who are interested in South Pack Square and how best to use those funds to move the overall redevelopment effort forward and to remain in dialogue with EMSDC about what form of partnership the City would like to have with that organization. He also thanked Councilwoman Bellamy and Councilwoman Jones on their hard efforts to help move this forward.

Councilwoman Bellamy suggested a portion of the $50,000 of CDBG funds be allocated to the YMI Cultural Center for some incubator-type small businesses and/or a marketing plan being created to get more African-American businesses on The Block. She commended Mt. Zion Church for stepping up in their willingness to move ahead because they saw a need in our community and made holistic changes to their plan. She appreciated the developer working with the Ebony Bar and Grill, constructing affordable apartments, lowering office and commercial spaces, working with Mt. Zion Church to create a new Master Plan, and finding financing for the project. She also thanked the local bank for investing in this project. She hoped other issues identified will be addressed as well, e.g., parking, ventilation and electrical system of surrounding property owners, etc. She hoped that more people would be included in the process and asked the developer to openly communicate with the property owners. She also felt that the 1996 South Pack Square Redevelopment Plan needed to be revised.

Mayor Worley felt that City Council has followed their processes in that the item was placed on the agenda in the normal way with the normal notice. The City even went to the unusual step to issue a press release to try to be sure that the publicity got out there. Since February, there have been many public meetings in which Councilwoman Bellamy and Councilwoman Jones worked hard to make this a better project and he thanked them for their efforts. He said this issue has been before Council for over six months and since there have been changes in the companion project, which allowed for the change in some of the financing options, we have an opportunity to make a decision at this point.

The motion made by Vice-Mayor Mumpower and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Davis voting "no."

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At 8:05 p.m., Mayor Worley announced a short break.

ADDITION TO THE NEW BUSINESS AGENDA

B. RESOLUTION NO. 04-76 – RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR 2004 ROUND TWO ANNEXATIONS

City Attorney Oast said the amended annexation services plan adopted earlier in the meeting will require another amendment to reflect the Honey Drive area was not annexed. The Annexation Services Plan, as amended, will continue to meet the requirements of N.C.G.S. 160A-47 with respect to all of the other 2004 annexation areas.

City Attorney Oast then read the following resolution: WHEREAS, pursuant to N.C.G.S. 160A-49(e), the City has the authority to amend the report required by N.C.G.S. 160A-47; and WHEREAS, the Asheville City Council has, pursuant to N.C.G.S. 160A-47, approved the Annexation Services Plan for the annexation in 2004 of the areas known as Heritage Business Park Area, Honey Drive Area, Enka Park Area, Ashwood Area, Heathbrook Area, and Sweeten Creek Road Area (Resolution Numbers 04-28, 04-29, 04-30, 04-31, 04-32, and 04-33; adopted January 13, 2004); and amended the Plan by resolution adopted April 13, 2004; and WHEREAS, City Council decided not to annex the Honey Drive Area and the Annexation Services Plan as adopted and amended, is in further need of revisions to reflect the fact that the Honey Drive Area was not annexed; and WHEREAS, the revision of the Annexation Services Plan to reflect that Honey Drive was not annexed will not negatively affect the City's ability to provide required services to the other areas as called for in the Annexation Services Plan and that the Annexation

Services Plan will continue to meet the requirements of N.C.G.S. 160A-47 as to those remaining area; and WHEREAS, amending the Plan to reflect the fact that the Honey Drive Area has not been annexed will not cause any of the remaining areas to qualify for annexation under any of the additional subsections of N.C.G.S. 160A-48 (c) and (d). NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: (1) The Annexation Services Plan approved by the Asheville City Council on January 27, 2004, and amended on April 13, 2004, be further amended by revising said Plan to reflect the fact that the Honey Drive Area was not annexed; and (2) The Planning and Development Director is hereby directed to cause the amendments described herein to the Annexation Services Plan to be made to all official copies of the Annexation Services Plan, including the Plan on file in the Office of the City Clerk.

Councilwoman Jones moved to adopt Resolution No. 04-76. This motion was seconded by Councilwoman Bellamy and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no." Resolution Book 28-page 184

C. RESOLUTION NO. 04-77 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN MEMORANDUM OF UNDERSTANDING WITH THE CITY OF HENDERSONVILLE AND THE REGIONAL WATER AUTHORITY CONCERNING FUTURE WATER PLANT CONSTRUCTION AND EMERGENCY, TEMPORARY OR WHOLESALE BASIS CONTRACT WATER TREATMENT

Mayor Worley said that this is the consideration of a resolution approving a Memorandum of Understanding between the City of Asheville, the City of Hendersonville and the Regional Water Authority concerning future water plant construction and emergency, temporary or wholesale contract water treatment.

As you know, for an extended period of time the City Manager and the Mayor have been working with the City Manager and Mayor of Hendersonville on a joint draft Memorandum of Understanding to provide for regional cooperation and emergency, temporary or wholesale contract water to the City of Hendersonville. The Memorandum of Understanding is divided into two parts. Part One addresses regional cooperation at the point in time when the City of Hendersonville has to expand or build additional capacity at its water treatment plant. Simply stated, the agreement will call for a study to determine whether it is best for Hendersonville to expand their current plant, or to expand the Mills River Water Treatment Plant, which is newer and has access to the French Broad River. The second part of the agreement sets out that each party will supply the other with emergency, temporary and wholesale water, should the need occur. It sets the rate per 100 cf in advance, with provisions for adjustments based on documentation and increased costs.

Mayor Worley thinks this is a firm step toward further regional cooperation and provides for future areas of cooperation between the two largest water producers in the region.

Mayor Worley recommended that Council approve the Memorandum of Understanding and forward it to the Regional Water Authority for their approval on April 20, 2004.

Councilman Dunn, member of the Regional Water Authority, doesn't think it was a good precedent for a unilateral decision to be made with the City of Asheville and the City of Hendersonville. The Henderson County Commissioners, the Regional Water Authority members and City Council were not included in this process. Mayor Worley did a good job in addressing this important issue and he would support it, however, he was concerned about the lack of inclusiveness.

Mayor Worley explained that was basically done at the staff level. It was done in the same manner as the agreements with the Town of Black Mountain, Woodfin Water & Sewer District and Town of Weaverville. Nothing was different in this process.

Interim Water Resources Director David Hanks said that this was done as a result of a vulnerability assessment performed last year and brought before Council. It brought up the fact that we only had handshake agreements and nothing in writing if an emergency arose. He explained that Henderson County has expressed some concern and felt they should have been more of an active partner. However, they are not a supplier of water and that was what we were basically looking at – having agreements with people who produce water, just as our system does.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-77. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 185

D. RESOLUTION NO. 04-78 - RESOLUTION AMENDING CITY COUNCIL RULES REGARDING THE CONDUCT OF MEETINGS

City Attorney Oast said that this is the consideration of a resolution amending City Council Rules regarding the conduct of meetings.

One of Council's continuing concerns has been the length of council meetings and the conduct of public comment sessions, including public hearings. The public shares and frequently has expressed this concern. The law is clear that Council may establish rules for the conduct of its meetings and public hearings. In the conduct of some required public hearings and quasi-judicial hearings, due process is also a concern.

Most public hearings or public comment periods are concluded quickly, but there are some matters that require special attention, and the ability to establish special procedures. Accordingly, some revisions to Rule 7 are proposed to deal with general public address to the Council, and a new Rule 7.5 is proposed to deal with special matters with respect to which, due to their nature or anticipated length, it may not be possible or desirable to conduct them within the framework of the normal rules.

The proposed revisions to Rule 7 establish general rules of decorum, applicable to all public comment, and recognize the Mayor's power, as the presiding officer, to control proceedings.

The proposed new Rule 7.5 establishes some procedures, such as the maximum time allotted and the manner of submitting documents, that will apply to all public hearing/comment items. The proposed new rule also provides for the establishment of rules and procedures applicable to particular matters. These include: recognition of spokespersons, order of presentation, and rulings on relevance and repetition of information. Due process will be taken into consideration in establishing any special rules.

Considerations:

- There may be other proposed amendments that come out of Council's recently completed goal-setting process.

- There will need to be some break-in period for these rules, while the public and Council become accustomed to them.
- Staff will attempt to recognize those matters where special procedures may be appropriate, and will work with the affected citizens to establish appropriate special procedures in advance of hearings.
- Respect for any rules and procedures is essential to their effectiveness.

In response to comments made at the March 15, 2004, work session, the following revisions have been made to the proposed amendments to Council's rules:

1. Rule 7(c) – clarification of time limits applicable to groups and to individual members of that group.
2. Rule 7(e) – addition of a prohibition against discussion of City personnel matters.
3. Rule 7(g) – substitution of "rude, inappropriate" for "vexatious"; also added "any person or group of people."
4. Rule 7.5 B. – addition of subsection 7, allowing mayor to require use of speaker sign up sheets.
5. Rule 7.5 F. – addition of rule clarifying that vice-mayor or temporary chair has power to administer rules regarding public hearings and public comment in the absence of the mayor.

Considerations: The staff will endeavor to identify in advance those agenda items where "special orders" might be needed, and submit the special order for consideration at the work session prior to the meeting where the item is to be considered.

He reviewed with Council the following changes:

7. PUBLIC ADDRESS TO THE COUNCIL

Citizens desiring to address the council shall be given the opportunity to do so as follows:

(a) Any individual or group who wishes to address the council may make a request to be on the agenda to the city clerk. The mayor and city manager shall determine when preparing the agenda for the meeting whether the matter will be placed on the agenda.

(b) Subject to the time limitations set forth in paragraph (c), below, the public shall be allowed to comment on matters under consideration by the council prior to a final vote on the matter by the council. Public comment shall generally be taken regarding such matters under consideration by the council during the formal~~"regular" 5:00 p.m.~~ meetings of the council as referenced in Rule 1. Public comment will not be taken during the "worksession" discussions of the council except in those instances where a final vote of the council is being taken during a worksession. In such instances, public comment shall be allowed in accordance with the time limits set forth hereinafter.

(c) Any person addressing the council shall be limited to a three minute presentation except that any group making a presentation to the council may have a single spokesperson who will be allowed ten minutes to address the council, formal organizations such as neighborhood associations and public interest groups are encouraged to designate a single spokesperson to present that organization's position. No person who identifies himself or herself as a member of a group will be permitted to address the Council as an individual on the same agenda item. The council will receive written information from any individuals or groups that cannot conclude their presentations within these time limitations.

(d) At each "regular" meeting ~~and each "worksession"~~ of the Council, under the "Informal discussion and public comment" section of the agenda, any group or person wishing to address the Council on any matter not previously considered during the meeting may do so. For matters coming before Council pursuant to this paragraph, and with respect to which the Council may not act, the following limitations apply:

(i) No more than three persons (one at a time) may address the Council, and no person may take longer than three minutes to complete a presentation.

(ii) In lieu of the limitation set forth in (i) above, a group may elect to designate a spokesperson who may take no longer than ten minutes to complete a presentation.

As used herein, "presentation" means all forms of address, including speaking, use of audio or video materials, and distribution of literature. For presentations that cannot be completed within the limitations of this paragraph, written comments or other information may be delivered to the Council through the City Clerk.

(e) Persons addressing the Council are expected to observe the decorum of the Chamber, to be respectful of the Council and the public, to refrain from the use of profanity or foul language, to refrain from personal attacks and commentary on candidates for political office, and to refrain from making disclosures prohibited by the Personnel Privacy Act with respect to any City employee.

(f)~~(e)~~ The mayor ~~(or the vice mayor, in the absence of the mayor)~~ shall be authorized to allow additional comments and time for comments as he or she may deem appropriate for the orderly conduct of business.

(g) Pursuant to Rule 9(b), the mayor may rule out of order any comments made under this part of the agenda if such comments are unruly or repetitive of information previously received by council on the same subject at the meeting then in session or at previous meetings. The mayor may also rule out of order any comments made during this part of the agenda that are rude, inappropriate, or intended to harass any person or group of people, and is authorized to take reasonable and appropriate measures to ensure compliance with these rules.

7.5 SUPPLEMENTAL RULES AND PROCEDURES FOR PUBLIC HEARINGS AND PUBLIC COMMENT.

A. The time limit applicable to public hearings or public comment periods on any agenda item shall be one hour. This time limit shall be exclusive of staff presentations and any structured Council debate. This time limit may be shortened or extended by the ~~Mayor~~mayor, with the concurrence of Council.

B. In addition to the rules set forth in Rule 7 and herein, the ~~Mayor~~mayor may, in consultation with the City Attorney and with the concurrence of Council, establish supplemental rules and procedures applicable to particular public hearings or public comment periods in order to facilitate the receipt of relevant information by Council, while affording appropriate due process. Without limitation, such rules and procedures may include:

1. The order of presentation;
2. The length of individual or group presentations;
3. Recognition of a primary spokesperson or representative to provide information or respond to a particular question.
4. The maximum time allotted for the public hearing.
5. Relevance of information and repetition of information previously received; and

6. Determining when new information has been presented.

7. Requiring speakers to sign up in advance.

C. The ~~Mayor~~mayor may, with the concurrence of Council, determine when sufficient information has been presented at any public hearing or public comment period, and is ready for action by Council.

D. Any documentary information that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in electronic format or 15 copies thereof. This rule may be waived for good cause.

E. In order to facilitate the efficient use of time, citizens are encouraged to coordinate their presentations with others who have similar positions, and to designate a spokesperson, where practicable, to speak for the group.

F. In the absence of the mayor, and subject to compliance with N.C G.S 160A-70, the vice-mayor temporary chairman shall be authorized to administer the provisions of this rule and Rule 7.

If Council approves of the amendments as revised, adoption of the resolution is recommended.

Discussion occurred regarding whether Council needed a definition of group, what constitutes a group, how groups are recognized, and how it is determined who gets to speak if they are associated with a group.

Councilwoman Jones also noted that City Council will need to do their part to expedite the meetings as well. She felt that Council is as much of the time problem as the public.

Upon inquiry of Mr. Fred English, Mayor Worley said a sign-up sheet would be instituted if there were a particularly contentious issue.

When Councilwoman Jones suggested the rules be placed at the Council Chamber door, City Attorney Oast said that he will also put the rules in bullet-point format and suggest the

Planning & Development Department send them out with their public hearing notices, in addition to posting it on the website in the general area of the electronic agenda.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-78. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 186

VI. OTHER BUSINESS:

RESOLUTION NO. 04-79 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE EARTH DAY FESTIVAL

Mr. Paul Clarke, Festival Coordinator, said that this is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Earth Day 2004 festival to be held on Saturday, April 17, 2004.

Earth Day 2004, scheduled for April 17, is a celebration committed to raising awareness of the environment and what every person can do to help maintain and improve our world. They have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at the event.

The Asheville Parks and Recreation Department recommends approval of the resolution authorizing the possession of malt beverages and/or unfortified wine at the Earth Day 2004 event at the specific location and time noted in the resolution.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilman Newman moved for the adoption of Resolution No.04-79. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no".

RESOLUTION BOOK NO. 28 – PAGE 190

COMMENTS BY VICE-MAYOR MUMPOWER

On behalf of the Memorial Stadium Task Force, Vice-Mayor Mumpower thanked Buncombe County and the City of Hendersonville for approving resolutions that support our effort to restore our regional memorial to our war dead at Memorial Stadium.

Vice-Mayor Mumpower also thanked people who participated in the first and very successful For Our Kids Day at Lee Walker Heights.

CLAIMS

The following claims were received by the City of Asheville during the period of March 19-Apri 1, 2004: Roxanne Williams (Streets), Robert West (Streets), Helen C. Whitten (Water), Virginia Avenue (Inspections) and Pershing Road (Inspections).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English felt the City of Asheville did not need the public access television station.

Mr. Mike Fryar spoke against annexation and how he felt people don't receive any services after being brought into the City.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:18 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Provisions for Possession and Consumption of Malt Beverages and/or Unfortified Wine at Various Events

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Sunset Stampede, Mountain Sports Festival, The Asheville Independent Restaurants' Taste of Asheville, Asheville's 4th of July Celebration, Bele Chere 2004, Asheville Goombay Festival, Sisters on Stage, Annual Brewgrass Festival, Asheville Greek Festival, World of Ice Festival, October Harvest Festival, Hardlox Café Jewish Food Festival, Asheville Downtown Association events, The Asheville Assault Home Games, Asheville Splash Home Games, and Asheville Grizzlies Home Games.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- The Sunset Stampede, scheduled for May 1, is a run and event that will raise funds for Big Brothers/Big Sisters.

- The Mountain Sports Festival, scheduled for May 7-9, is an event to draw attention to the vast opportunity for Asheville as a destination for adventure sports.

- The Asheville Independent Restaurants' Taste of Asheville, scheduled May 22, is an event to promote the many independently owned restaurants in the Asheville area.

- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.

- For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the downtown area. This year the request is being made for July 23-24, 2004. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 27-29. The 2004 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

- Sisters on Stage is an event to raise funds for Helpmate, an organization committed to assisting battered women. This year's event is scheduled on September 4.

- For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. This year's event is scheduled for September 18.

- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 24-26. The 2004 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

- The World of Ice, scheduled for October 10, is an event showcasing the regions best Ice Carvers and restaurants in downtown Asheville.

- The Grove Arcade's Harvest Festival, scheduled for October 16, is an event to promote downtown as a shopping destination.

- The Hardlox Café Jewish Food Festival, scheduled for October 17, is a celebration of Jewish cuisine and heritage.

- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown and four Downtown After Five activities.* The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

- The Asheville Assault, Splash, and Grizzlies are all semi-professional sports teams that seek to serve alcohol at their home games throughout the summer.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Financing the Purchase of One Fire Pumper, One Side-Loader Garbage Truck and 5,330 Roll Carts

Summary: The consideration of a resolution authorizing the installment financing of the purchase of one fire pumper, one side-loader garbage truck and 5,330 associated roll carts.

The City of Asheville Capital Improvement Plan 2003/04 to 2008/09 includes authorization in Fiscal Year 2003/04 for the installment purchase of a fire pumper, one side-loader garbage truck and associated roll carts.

The Finance Department sought proposals from fourteen firms to finance the purchase of the above listed equipment. Proposals were received from ten firms, the best of which was submitted by RBC Centura Bank, - - 2.35% for four years eleven months.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and RBC Centura Bank for the purchase of the fire pumper, side-loader garbage truck and 5,330 roll carts and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Pros: Provides funding of capital expenditures at very favorable interest rates.
RFP solicitations for financing proposals fosters competition which results in lower rates for this and future financings by the City.
Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.
Paying for capital purchases with the proceeds of a financing, as opposed to paying for the purchase by using the City's currently-available cash balances, slightly increases the currently available funds that could be used for other purposes.

Cons: Financing the purchase slightly increases the lifetime cost of the acquisition due to the payment of interest on the amount financed.

City staff recommends City Council adopt the resolution authorizing the installment financing of the purchase of one fire pumper, one side-loader garbage truck and 5,330 associated roll carts.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

UPDATE ON COLLEGE STREET PLAN BETWEEN SPRUCE STREET AND CHARLOTTE STREET

Traffic Engineer Anthony Butzek said that this is the description of conceptual plans prepared for implementing a boulevard treatment on College Street between Spruce and Charlotte Streets.

College Street, which once served as US 70, is a wide four-lane undivided street with on-street parallel parking. The proposed design consists of one through lane in each direction, a median with left-turn bays, bicycle lanes, added parking through use of angle parking, and a roundabout at the intersection with Valley and Oak Streets. Changes would be implemented with planned resurfacing to minimize costs.

The proposed plan was analyzed with existing peak-hour traffic counts plus 10% growth, and operates well within capacity with this traffic projection. The capacity of the corridor as a whole remains constant, because the same number of lanes is provided at Charlotte Street, which is the corridor's capacity constraint. Potential future traffic volumes for the underutilized group of parcels north of College Street were analyzed as well, and the corridor would continue to operate within capacity.

By virtue of the proposed roundabout, the proposed plan cuts the travel time between Spruce and Charlotte Streets by about 10 seconds in each direction from existing conditions. Compared to a two-lane cross-section with a traffic signal, the roundabout saves about 20 seconds travel time in each direction. The roundabout improves future level of service (LOS) from LOS E (peak) to LOS D, and LOS D (off-peak) to LOS C.

The two-lane divided cross-section will correct the unsafe crosswalks that currently exist by 1) providing a safe refuge island; and 2) eliminating the multiple jeopardy situation that occurs today. Multiple jeopardy is when a car in one lane stops for a pedestrian, blocking the view of the car in the other lane. This is the reason for most of the pedestrians being struck. This design will eliminate the need for Sheriffs to continue to serve as crossing guards. This design is much less costly than other safety-improvement techniques, such as signals or actuated crossings, which would cost $50-100,000 per crosswalk.

The two-lane divided cross-section will increase speed limit compliance, which is currently problematic in this corridor, while reducing enforcement needs.

The provision of bicycle lanes is consistent with the Asheville Greenways Master Plan, which recommends an on-street greenway in this corridor.

The parking count is increased by 14 spaces on the south side of College Street, which will offset the potential loss of 6 on-street spaces to Pack Square, 16 on-street spaces to the two-way conversion of College Street and Patton Avenue, and 3 on-street spaces on the north side of College Street due to safety considerations.

This plan is consistent with the Pack Square Plan and the City Plan, providing a gateway boulevard with extensive aesthetic opportunities for the primary eastern access to downtown.

The materials cost of this project is estimated at $75,000 - $80,000. City crews could perform the construction. Consultant fees of $15,000 would produce construction drawings for the roundabout. Estimated $5,000 to remove traffic signal at Oak/Valley Street (compared to $10,000 to install needed upgrades) will save $4,000-5,000 annually in signal operation and maintenance costs. Aesthetic enhancements would be additional.

He explained there are costs of doing nothing: (1) continued use of Buncombe County Sheriff's Department as crossing guards; (2) $10,000 traffic signal upgrades; (3) $4-5,000 annual signal maintenance; and (4) the opportunity cost is tremendous.

The next steps will be a public meeting and final design.

Pros:
- Improved traffic flow and reduced travel time
- Reduction in most traffic crashes
- Improved pedestrian safety
- Provision of bicycle lanes
- Increase in on-street parking spaces
- Improved speed limit compliance through design; reduced enforcement
- Consistent with approved plans (Pack Square, Greenways, City Plan 2025)
- Creation of attractive downtown gateway corridor
- Cost is less than alternative measures to improve safety
- Minimize cost by scheduling with resurfacing

Cons:
- Negative perception by some of reduced number of lanes
- It is possible that the angle parking might generate some low-severity crashes
- Cost is moderate

He reviewed with Council the history of the area and showed Council a proposed design outlining the specifics, which included: design speed is 20 miles per hour; two-lane median-divided; parallel parking on north, angle parking on south; striped bicycle lanes; safe pedestrian crossings; roundabout at Valley/Oak Streets; and all lanes maintained at College and Charlotte.

Mr. Butzek then explained a traffic comparison, which analyzed traffic, travel times and speed for the existing conditions in 2004, a 2-lane road with a roundabout in 2014 and a 2-lane road with no roundabout in 2014.

He explained the design allows for future expansion as follows: extends eastbound left-turn lane at Charlotte Street from 160 feet to 210 feet; allows future addition of 2nd eastbound left-turn lane at Charlotte Street; and effectively increases capacity of the corridor by 25% by easing constraint (College Street and Charlotte Street).

Some project amenities include: better traffic flow; increase street network capacity; speed limit compliance through design; improved pedestrian safety; and relief for Buncombe County Sheriff's Department acting as crossing guards. He then showed Council a traffic simulation of the area.

The design is consistent with the Pack Square Renaissance Plan, the Greenway Master Plan and the Asheville City 2025 Plan.

Project drawbacks include: a hazard associated with backing out of angle parking spaces; and the negative perception by some of reduced number of lanes.

Mr. Butzek responded to various questions/comments from Council, some being, but are not limited to: is Asheville read for a roundabout; what is the experience of the roundabout on Weaver Boulevard; where will the bike lanes be located; are the lanes wide enough for emergency vehicles; what are the different Level of Services; would a traffic light be safer in lieu of a roundabout; have there been any plans for the inside of the roundabout since it will be a gateway into the core of Asheville; are there any plans for the intersection of College and Charlotte Streets; and are there any plans for that portion of US 70 coming out of the Tunnel towards downtown leading into Asheville.

Councilman Dunn expressed concern about cutting the 4-lanes down to 2-lanes. He felt the area will continue to be congested and there will be more opportunity for accidents with people trying to back out of the angled parking spaces.

Upon inquiry of Councilman Dunn, City Engineer Cathy Ball said that Buncombe County government is aware of the problems on College Street. At one time they had even suggested traffic signals placed by the Courthouse. She said that a charette was held at which time Buncombe County was very involved in the process for the conceptual plan. Since that original charette, the plan has been revised and it will be sent to Buncombe County for comment. City Manager Westbrook also pointed out that this design was a direct result of the problems Buncombe County was experiencing on College Street with pedestrians and at that time they were very much in favor of it.

Vice-Mayor Mumpower felt it was very important to educate the community about roundabouts. Mr. Butzek said that he will be taking this concept to a public meeting and asked Council for other suggestions about community input.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that there are advantages and disadvantages for pedestrians with roundabouts. Vision-impaired pedestrians may have a problem crossing, but others may be able to cross easier because of the slow speed.

Councilman Davis asked if staff was aware of problems associated with roundabouts and if any cities reverted back to the 2-lane streets. Mr. Butzek replied that he was aware that several roundabouts reverted back to 2-lane streets, however, it wasn't because people didn't want them, it was because they were small and there wasn't enough right-of-way for larger vehicles.

It was the consensus of Council to direct staff to proceed with the project.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Clarification of Intent of Hillside Regulations Concerning Non-Residential Uses

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for clarification of intent of hillside regulations concerning non-residential uses.

This code amendment is a general "housekeeping" type amendment intended to clarify the intent of the hillside regulations concerning nonresidential uses. Hillside regulations address density and grading requirements for steep slope areas above a certain elevation. The current wording of the hillside regulations implies that these requirements only apply to residential uses. Since other uses, including commercial, institutional, and office uses, can occur in hillside situations, this change allows the grading requirements to apply to those types of uses.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners for review and comment.

Pro – Hillside regulations will be able to be applied to nonresidential situations in a manner consistent with how they are applied to residential situations, allowing the ordinance purposes to be met in a more effective fashion. This appears to be consistent with Council's direction at the recent goal-setting meeting.

Con – Applying hillside regulations to nonresidential situations may make it more difficult for nonresidential uses to be established in hillside situations.

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Revision of Dimensional Requirements in Urban Village District

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for certain revisions of the dimensional requirements in the Urban Village District.

This code amendment is a general "housekeeping" type amendment intended to revise certain dimensional requirements for the urban village zoning district. With the adoption of the 2025 Plan, it became apparent that several areas identified for urban village locations did not meet the 10-acre minimum acreage requirement. This amendment would reduce the minimum acreage requirement to five acres. Additionally, there are several areas of site design inconsistency between the Neighborhood Corridor District and the Urban Village District; this amendment would resolve those inconsistencies.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and Council of Independent Business Owners for review and comment.

Pros –

- The 2025 Plan and the UDO will be in greater compliance.
- The Urban Village District would be able to be applied to a larger number of properties (a potential con), allowing it to be used in a greater variety of circumstances.
- There would be greater design consistency between the Neighborhood Corridor District and the Urban Village District.

Con –
- The Urban Village district would be able to be applied to a larger number of properties (a potential pro).

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford responded to Councilman Davis' comments regarding Planned Unit Developments. He said he would provide Council with a report Council on the Planned Unit Developments and the Urban Village areas in the near future.

Revisions to the Flexible Development Standards

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for revisions to the flexible development standards.

This code amendment is a general "housekeeping" type amendment intended to clarify the requirements for flexible development standards. This code section has been very useful in streamlining the development review process and we are interested in making sure the requirements are as clear as possible, including the addition of corner side setbacks to the standards.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners for review and comment.

Pros – The amendment will be easier to use and the staff interpretation allowing corner side setbacks will be added.
Con – None noted.

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

A brief discussion was held regarding an appeal to the Board of Adjustment.

After discussion by Council, it was the consensus to place these public hearings on the appropriate formal City Council agenda.

Upon inquiry of Councilwoman Jones about the attendance of Planning & Zoning Commission members, Planning & Zoning Commission liaison Councilman Davis said that mid-month meetings are not commonly attended. He did state that most meetings are well attended, however, he would discuss attendance with Chair Fisher. Mr. Shuford also stated that there has been good attendance at the Joint Planning Area, meetings which have been outside of the Planning & Zoning regular and mid-month meetings. He said that with the new members recently appointed, they have needed to rescheduled their work load to accommodate the Planning & Zoning meetings.

PETITION FOR ZONING STUDY FOR ST. DUNSTAN'S AREA

Planning & Development Director Scott Shuford said that this is the consideration of a request from property owners for a zoning study for a portion of the St. Dunstan's neighborhood located off Biltmore Avenue south of the hospital.

Section 7-7-2 of the Unified Development Ordinance (UDO) provides property owners with a method to petition Council to authorize a zoning study for property not entirely owned by them. The code requires that a certain percentage (51%) of property owners join the request and, in this case, the percentage has been reached. The petition process does not require Council to ask staff to undertake the zoning study; it only requires that Council consider the request.

The area is described on a map labeled Map #1. In the staff's opinion, the request area does not contain all relevant property that should be examined in a zoning study, so if Council directs that we analyze the zoning of this neighborhood, we recommend that the area be expanded to that illustrated on a map labeled Map #2 for a more consistent pattern of study.

The request is prompted by the underlying zoning of the neighborhood, RS-8, that corresponds well with the existing setbacks for most lots and with the lot sizes of the smaller properties in the neighborhood. However, there is concern that existing larger lots could be further subdivided to create additional smaller lots under the existing zoning; this has in fact happened on a couple of occasions. The petitioners would prefer a zoning designation of RS-4, even though that zoning district would create some nonconformities with setbacks and lot sizes. Not all property owners in the study area are in support of the zoning change.

Pro – The zoning study would enable the issue about the appropriate zoning of this neighborhood to be decided by City Council.
Con – The study will consume limited staff resources that could be devoted to other projects.

City staff recommends that if City Council determines that a zoning study of the St. Dunstan's area is to be conducted, that the area be expanded to that illustrated on Map #2.

Upon inquiry of Mayor Worley about Planning staff's workload, Mr. Shuford said that they are getting closer to finishing the Brevard Road zoning study and they will shuffle their workload if Council chooses. He did not think it would be a monumental undertaking.

Discussion surrounded the reason for the request for a zoning study by the neighborhood.

Councilman Davis said that this neighborhood has been trying for a long time to get this type of study done.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the May 11, 2004, formal City Council agenda.

AMENDMENT TO PACK PLACE EDUCATION, ARTS & SCIENCE CENTER LEASE

City Attorney Bob Oast said that this is the consideration of a resolution renewing the lease of Pack Place Education, Arts & Science Center.

In the early 1980's, the City acquired property on Pack Square formerly occupied by the Pack Memorial Library and the Plaza Theaters. In addition to the land, there are several easements and party wall agreements that are part of the package of real estate interests that comprise this property. In 1988, the City leased the property to the Pack Place Education, Arts & Science Center, Inc., a non-profit corporation (herein "Pack Place Inc."). Pursuant to that lease, and through a combination of public and private financing, Pack Place Inc. renovated the old library and constructed new facilities on the old theater property and adjacent land. The City and

Pack Place Inc. are co-owners of the improvements made pursuant to the lease. The Pack Place Education, Arts & Science Center opened in late 1991, and has been in operation ever since.

The initial term of the lease was for 9 years, 364 days (one day less than the 10 year threshold that requires that the lease be treated as a sale). The City began negotiations with Pack Place Inc. for renewal of the lease in 1998, but these were not concluded, and personnel changes in the City and Pack Place Inc. organizations further delayed completion of them. Pack Place Inc. has continued to occupy and operate Pack Place Center, and we have negotiated a new/renewal lease that is presented for Council's consideration.

The essential terms and conditions of the renewal lease are summarized below.

Term. Recommended for 9 years 364 days so that it may be handled as a lease rather than a sale of the property. The law regarding disposition of City-owned property has changed such that it may be possible to lease for a longer term to a qualified organization, subject to certain conditions. Council and Pack Place Inc. may wish to consider this for the future.

Rental. Lease payments are $10.00 per year. However, Pack Place Inc. is responsible for all costs of operation and maintenance of the facility, and for paying the debt on its share of the cost of improvements. Pack Place Inc. is responsible for making and insuring any improvements, and for making any repairs.

Insurance. As noted, Pack Place Inc. is responsible for insuring Pack Place Center against property damage. Pack Place, Inc. also provides general liability insurance for the premises, and indemnifies the City.

Subletting. Pack Place Inc. sublets the Pack Place Center premises to several major tenants, including the Art Museum, Health Adventure, Pack Place Performing Arts, and the Colburn Mineral Museum. The lease permits subletting to major tenants (defined as one occupying 2000 or more square feet for 6 months or longer), subject to the City's written consent. However, no written consent is required for subleases to major tenants that already occupy a portion of the premises. This permits Pack Place Inc. to organize its internal space among existing tenants according to their needs without seeking the City's consent.

Historical interpretive display. Because the property is located in the City's National Register Historic district and federal funds were used in this development / rehabilitation, there is a requirement that a display describing the history of Pack Square be maintained in a prominent location on the premises. Issues regarding the size, location and form of this display were the main reasons that negotiations were not concluded in 1998. We have now, however, decided upon language that will permit reconfiguration and relocation of the display, in a way that takes advantage of advance in technology, while still adding to the requirement to maintain the display. This has been discussed with and approved by the State Historic Preservation Office.

Considerations: The Pack Place Center has been and continues to be one of the centerpieces of Asheville's revitalizing downtown. The existence of Pack Place Center has been a catalyst for much of what has happened in this area, bringing people to downtown, and which supports the local businesses such as coffee shops or restaurants.

If The City decides not to enter into this new lease, it must pay for its share of the jointly-owned improvements, which could be a substantial cost, computed pursuant to a provision in the old lease. Additionally, alternate arrangements for the operation of the facility would have to be made.

If Council desires to continue the current arrangement for operation of Pack Place Center, adoption of the resolution is recommended.

Mr. Edward Hay, President of Pack Place Education, Arts & Science Center Board responded to various questions/comments from Council, some being, but are not limited to: is there a role of the YMI Cultural Center in this lease; will the parties still work together in subletting the mutual space; and what is the current debt service.

Mr. Hay responded to Councilman Dunn on the cash flow of Pack Place.

Upon inquiry of Vice-Mayor Mumpower, City Manager Westbrook said that he would provide Council with a report regarding the financing of Pack Place.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

LEGISLATIVE AGENDA FOR THE 2004 SESSION OF THE N.C. GENERAL ASSEMBLY

City Attorney Bob Oast said this is the consideration of a resolution endorsing legislative requests for the 2004 session of N. C. General Assembly.

Following discussion on March 16, 2004, Council directed the preparation of two items of legislation affecting the City

1. Increase in ABC board membership from 3 to 5. The City of Asheville, pursuant to special legislation adopted in 1947, administers alcoholic beverage control through a local board of three persons, appointed by the Mayor and Council. Council desires to increase the board membership to 5. This legislation provides for the appointment of 2 additional members. These appointments are to be made by the Mayor and Council, as the current 3 appointments are. Initial terms will be 1 year for one appointment, and 2 years for the other, with subsequent terms to be three years. The current board members will continue to serve their appointed terms, and are not affected by this change. The requested legislation also makes a clarifying change regarding the filling of vacancies on the board, to conform to Council's practice.

2. Establishing two year terms for Civil Service Board members. The terms of the Civil Service Board members has always been two years. However, during the course of extensive amendments to the law in 1999, the provision for two year terms was inadvertently deleted. This proposed amendment puts it back in.

3. Statement of Support for Film Industry Incentives. The resolution contains a general statement of support for legislative action to create or expand financial and other incentives for the film industry. As we become aware of specific legislation on this subject, we will bring it to Council's attention.

Considerations: Because this is a short session for the legislature, bills introduced must be certified as "non-controversial."

The Civil Service Board term limit has been discussed with representatives of affected employees, and should not be a problem. The City Attorney has made no such inquiry with respect to the ABC board membership. There are other issues currently affecting the ABC board and its operations, and those issues may affect whether this bill can be certified non-controversial.

If Council approves of submitted these requests to our local legislative delegation, adoption of the resolution is recommended.

Upon inquiry of Councilwoman Jones, City Attorney Oast explained what the legislature concerns controversial and why.

When Councilman Newman suggested other ideas be submitted to our legislature in the form of an addendum to our legislative agenda, City Attorney Oast explained that we are already accumulating items for the next Session, including some requests that were not submitted last year because they were not voted on unanimously by City Council.

Upon inquiry of Councilman Newman, Mayor Worley explained how the policy goals for the N.C. League of Municipalities are accumulated and get circulated prior to adoption.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CLOSED SESSION

At 4:38 p.m. Councilman Dunn moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Frances C. Briggs; Myrna R. Hendrix; Rose Investments; Travis M. Bach; Haywood Plott and wife Ruth Plott; Howard W. Meece and wife Doris B Meece; Mary Ann Hicklin Quarngesser; Allyn Family Real Estate Limited Partnership; Thantex Specialties, Inc.; Hubbell Realty Development Corp.; Alliance-Carolina Tool & Mold Corporation; Medical Action Industries, Inc.; Cutler-Hammer, Inc.; Eaton Corporation; Carolina Power & Light Company; and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Jones and carried unanimously.

At 5:40 p.m., Councilman Dunn moved to go out of closed session. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 5:40 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – April 27, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Worley led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

A. PROCLAMATION PROCLAIMING MAY, 2004, AS "MOTORCYCLE AWARENESS MONTH"

Vice-Mayor Mumpower read the proclamation proclaiming May, 2004, as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Eldon Moore, who briefed City Council on some activities taking place during the month.

B. RECOGNITION OF THE ASHEVILLE ALTITUDE

Mayor Worley read a Certificate of Recognition to the Asheville Altitude in winning the National Basketball Development League Delta Airlines Post-Season Classic Championship Game on Saturday, April 24, 2004. He presented the Certificate to Altitude Team President Alfred White and Asheville Altitude Coach Joey Meyer who thanked City Council for their support.

Councilwoman Bellamy thanked Mayor Worley and former Councilman Edward Hay for their work in bringing the Asheville Altitude to the Asheville Civic Center.

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda Item H be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 13, 2004, AND THE WORKSESSION HELD ON APRIL 20, 2004

B. RESOLUTION NO. 04-80 - RESOLUTION AUTHORIZING THE INSTALLMENT FINANCING OF THE PURCHASE OF ONE FIRE PUMPER, ONE SIDE-LOADER GARBAGE TRUCK AND 5,330 ASSOCIATED ROLL CARTS

Summary: The consideration of a resolution authorizing the installment financing of the purchase of one fire pumper, one side-loader garbage truck and 5,330 associated roll carts.

The City of Asheville Capital Improvement Plan 2003/04 to 2008/09 includes authorization in Fiscal Year 2003/04 for the installment purchase of a fire pumper, one side-loader garbage truck and associated roll carts.

The Finance Department sought proposals from fourteen firms to finance the purchase of the above listed equipment. Proposals were received from ten firms, the best of which was submitted by RBC Centura Bank, - - 2.35% for four years eleven months.

The proposed resolution authorizes an installment purchase contract between the City of Asheville and RBC Centura Bank for the purchase of the fire pumper, side-loader garbage truck and 5,330 roll carts and authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents.

Pros: Provides funding of capital expenditures at very favorable interest rates.
RFP solicitations for financing proposals fosters competition which results in lower rates for this and future financings by the City.
Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.
Paying for capital purchases with the proceeds of a financing, as opposed to paying for the purchase by using the City's currently-available cash balances, slightly increases the currently available funds that could be used for other purposes.

Cons: Financing the purchase slightly increases the lifetime cost of the acquisition due to the payment of interest on the amount financed.

City staff recommends City Council adopt the resolution authorizing the installment financing of the purchase of one fire pumper, one side-loader garbage truck and 5,330 associated roll carts.

RESOLUTION BOOK NO. 28 – PAGE 192

C. RESOLUTION NO. 04-81 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT FOR THE PACK PLACE EDUCATION, ARTS & SCIENCE CENTER

Summary: The consideration of a resolution renewing the lease of Pack Place Education, Arts & Science Center.

In the early 1980's, the City acquired property on Pack Square formerly occupied by the Pack Memorial Library and the Plaza Theaters. In addition to the land, there are several easements and party wall agreements that are part of the package of real estate interests that comprise this property. In 1988, the City leased the property to the Pack Place Education, Arts & Science Center, Inc., a non-profit corporation (herein "Pack Place Inc."). Pursuant to that lease, and through a combination of public and private financing, Pack Place Inc. renovated the old library and constructed new facilities on the old theater property and adjacent land. The City and Pack Place Inc. are co-owners of the improvements made pursuant to the lease. The Pack Place Education, Arts & Science Center opened in late 1991, and has been in operation ever since.

The initial term of the lease was for 9 years, 364 days (one day less than the 10 year threshold that requires that the lease be treated as a sale). The City began negotiations with Pack Place Inc. for renewal of the lease in 1998, but these were not concluded, and personnel changes in the City and Pack Place Inc. organizations further delayed completion of them. Pack Place Inc. has continued to occupy and operate Pack Place Center, and we have negotiated a new/renewal lease that is presented for Council's consideration.

The essential terms and conditions of the renewal lease are summarized below.

Term. Recommended for 9 years 364 days so that it may be handled as a lease rather than a sale of the property. The law regarding disposition of City-owned property has changed such that it may be possible to lease for a longer term to a qualified organization, subject to certain conditions. Council and Pack Place Inc. may wish to consider this for the future.

Rental. Lease payments are $10.00 per year. However, Pack Place Inc. is responsible for all costs of operation and maintenance of the facility, and for paying the debt on its share of the cost of improvements. Pack Place Inc. is responsible for making and insuring any improvements, and for making any repairs.

Insurance. As noted, Pack Place Inc. is responsible for insuring Pack Place Center against property damage. Pack Place, Inc. also provides general liability insurance for the premises, and indemnifies the City.

Subletting. Pack Place Inc. sublets the Pack Place Center premises to several major tenants, including the Art Museum, Health Adventure, Pack Place Performing Arts, and the Colburn Mineral Museum. The lease permits subletting to major tenants (defined as one occupying 2000 or more square feet for 6 months or longer), subject to the City's written consent. However, no written consent is required for subleases to major tenants that already occupy a portion of the premises. This permits Pack Place Inc. to organize its internal space among existing tenants according to their needs without seeking the City's consent.

Historical interpretive display. Because the property is located in the City's National Register Historic district and federal funds were used in this development / rehabilitation, there is a requirement that a display describing the history of Pack Square be maintained in a prominent location on the premises. Issues regarding the size, location and form of this display were the main reasons that negotiations were not concluded in 1998. We have now, however, decided upon language that will permit reconfiguration and relocation of the display, in a way that takes advantage of advance in technology, while still adding to the requirement to maintain the display. This has been discussed with and approved by the State Historic Preservation Office.

Considerations: The Pack Place Center has been and continues to be one of the centerpieces of Asheville's revitalizing downtown. The existence of Pack Place Center has been a catalyst for much of what has happened in this area, bringing people to downtown, and which supports the local businesses such as coffee shops or restaurants.

If The City decides not to enter into this new lease, it must pay for its share of the jointly-owned improvements, which could be a substantial cost, computed pursuant to a provision in the old lease. Additionally, alternate arrangements for the operation of the facility would have to be made.

If Council desires to continue the current arrangement for operation of Pack Place Center, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 28 – PAGE 194

D. RESOLUTION NO. 04-82 - RESOLUTION ENDORSING LEGISLATIVE REQUESTS FOR THE 2004 SESSION OF THE N.C. GENERAL ASSEMBLY

Summary: The consideration of a resolution endorsing legislative requests for the 2004 session of N. C. General Assembly.

Following discussion on March 16, 2004, Council directed the preparation of two items of legislation affecting the City

1. Increase in ABC board membership from 3 to 5. The City of Asheville, pursuant to special legislation adopted in 1947, administers alcoholic beverage control through a local board of three persons, appointed by the Mayor and Council. Council desires to increase the board membership to 5. The proposed legislation provides for the appointment of 2 additional members. These appointments are to be made by the Mayor and Council, as the current 3 appointments are. Initial terms will be 1 year for one appointment, and 2 years for the other, with subsequent terms to be three years. The current board members will continue to serve their appointed terms, and are not affected by this change. The requested legislation also makes a clarifying change regarding the filling of vacancies on the board, to conform to Council's practice.

2. Establishing two year terms for Civil Service Board members. The terms of the Civil Service Board members has always been two years. However, during the course of extensive amendments to the law in 1999, the provision for two year terms was inadvertently deleted. This proposed amendment puts it back in.

3. Statement of Support for Film Industry Incentives. The resolution contains a general statement of support for legislative action to create or expand financial and other incentives for the film industry. As we become aware of specific legislation on this subject, we will bring it to Council's attention.

Considerations: Because this is a short session for the legislature, bills introduced must be certified as "non-controversial."

The Civil Service Board term limit has been discussed with representatives of affected employees, and should not be a problem. The City Attorney has made no such inquiry with respect to the ABC board membership. There are other issues currently affecting the ABC board and its operations, and those issues may affect whether this bill can be certified non-controversial.

If Council approves of submitted these requests to our local legislative delegation, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 28 – PAGE 196

E. RESOLUTION NO. 04-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH TRITON PCS PROPERTY COMPANY, LLC, FOR A CONCEALED WIRELESS COMMUNICATION FACILITY LOCATED AT 50 OREGON AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 50 Oregon Avenue.

On April 13, 2004, the City Council directed the City Clerk to advertise for upset bids regarding a proposal from Triton for a concealed wireless communication facility at 50 Oregon Avenue. The advertisement ran in the Asheville Citizen-Times on April 16, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the proposal from Triton was not upset.

Triton proposes to construct a cell phone tower designed as a flagpole which will be lighted and the United States Flag will fly 24 hours per day. Antennas will be concealed within the flagpole. Ground equipment will be housed in a small building of a design and materials to match the fire station building. Triton will own, maintain and insure the tower. The tower will have space for two additional antennas and Triton will sublicense the tower spaces to other carriers. An additional building for each carrier of the same character as the first will be added within the license area at such time as the spaces are sublicensed. The proposal from Triton includes the following fee schedule:

Year	**Amount**
1	**$18,000**
2	**$22,500**
3	**$25,960**
4	**$27,000**
5	**$28,000**

The license fee during each renewal term will be increased by four percent (4%) per year compounded annually. Triton will post a cash security deposit in the amount of $5,000 to be held by the City for the duration of the License Agreement.

In addition to the above, Triton will construct a storage room addition for the exclusive use of the City (Asheville Fire Department) on the East side of the Fire Station; replace the City's existing 20 KW generator with a 40KW generator; and construct 3 additional parking spaces for the City's use.

Triton must obtain a Conditional Use Permit in accordance with the Unified Development Ordinance (UDO). Approval of this resolution will not affect consideration of the Conditional Use Permit.

The positive aspects of the proposed license agreement include:

1. Generates revenue for the City that is long term and increases annually.
2. Provides public benefit through better cell phone coverage for the Patton Avenue area.
3. Tower will be located on City owned property as encouraged by the UDO.
4. Promotes co-location of carriers as encouraged by the UDO.
5. Utilizes stealth technology and integrated design; antennas will be concealed within a flagpole tower to present a more esthetic appearance and the ground buildings will appear to be part of the fire station.
6. Licensee (Triton) will own the tower and be responsible for maintaining and insuring it.
7. Puts unused space to productive use.
8. Fire Department will get desired improvements at Fire Station #3.

The negative aspects of the proposed license agreement are:

1. Encumbers the property for up to 25 years, which could impact the disposition of the property should the City no longer need it for a fire station.
2. Would prevent expansion of the station into the licensed area should the need arise to expand.
3. Flagpole tower will be 100' tall and will extend above tree line.

Approval of the resolution will authorize the City Manager to execute the License Agreement.

Planning & Development staff, Fire Department staff and Information Services staff recommend adoption of the resolution authorizing the City Manager to execute a License Agreement with Triton PCS Property Company, LLC (Triton) for a concealed wireless communication facility at 50 Oregon Avenue.

RESOLUTION BOOK NO. 28 – PAGE 201

F. **RESOLUTION NO. 04-84 - RESOLUTION SETTING A PUBLIC HEARING ON MAY 25, 2004, TO CONSIDER THE CLOSING OF A PORTION OF UNOPENED SECTION OF APPALACHIAN WAY**

RESOLUTION BOOK NO. 28 – PAGE 202

G. **RESOLUTION NO. 04-85 - RESOLUTION CANCELING THE MAY 4, 2004, WORKSESSION**

RESOLUTION BOOK NO. 28 – PAGE 203

H. **RESOLUTIONS ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE**

This item was removed from the Consent Agenda to be voted on separately.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

RESOLUTION NO. 04-86 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE SUNSET STAMPEDE

RESOLUTION NO. 04-87 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL

RESOLUTION NO. 04-88 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE INDEPENDENT RESTAURANTS' TASTE OF ASHEVILLE

RESOLUTION NO. 04-89 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 4TH OF JULY CELEBRATION AND FIREWORKS

RESOLUTION NO. 04-90 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL

RESOLUTION NO. 04-91 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GOOMBAY FESTIVAL

RESOLUTION NO. 04-92 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE SISTERS ON STAGE EVENT

RESOLUTION NO. 04-93 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BREWGRASS FESTIVAL

RESOLUTION NO. 04-94 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GREEK FESTIVAL

RESOLUTION NO. 04-95 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE WORLD OF ICE EVENT

RESOLUTION NO. 04-96 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE GROVE ARCADE'S HARVEST FESTIVAL

RESOLUTION NO. 04-97 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE HARDLOX CAFÉ JEWISH FOOD FESTIVAL

RESOLUTION NO. 04-98 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE DOWNTOWN ASSOCIATION EVENTS

RESOLUTION NO. 04-99 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE ASSAULT HOME GAMES

RESOLUTION NO. 04-100 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE SPLASH HOME GAMES

RESOLUTION NO. 04-101 - RESOLUTION ALLOWING FOR THE PROVISIONS FOR POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME GAMES

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Sunset Stampede, Mountain Sports Festival, The Asheville Independent Restaurants' Taste of Asheville, Asheville's 4th of July Celebration, Bele Chere 2004, Asheville Goombay Festival, Sisters on Stage, Annual Brewgrass Festival, Asheville Greek Festival, World of Ice Festival, October Harvest Festival, Hardlox Café Jewish Food Festival, Asheville Downtown Association events, The Asheville Assault Home Games, Asheville Splash Home Games, and Asheville Grizzlies Home Games.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- The Sunset Stampede, scheduled for May 1, is a run and event that will raise funds for Big Brothers/Big Sisters.

- The Mountain Sports Festival, scheduled for May 7-9, is an event to draw attention to the vast opportunity for Asheville as a destination for adventure sports.

- The Asheville Independent Restaurants' Taste of Asheville, scheduled May 22, is an event to promote the many independently owned restaurants in the Asheville area.

- Asheville Parks and Recreation produces the 4th of July Celebration and Fireworks spectacular as a community celebration and to attract visitors to the downtown area.

- For many years, the Bele Chere Board in cooperation with the Asheville Parks and Recreation Department has produced Bele Chere to bring both the public and visitors to the downtown area. This year the request is being made for July 23-24, 2004. The Bele Chere Board and Asheville Parks and Recreation has requested permission to allow possession and consumption of beer and wine during this event as they have been allowed in the past.

- The Asheville Goombay Festival is a unique celebration of African heritage and traditions. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held August 27-29. The 2004 Goombay Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

- Sisters on Stage is an event to raise funds for Helpmate, an organization committed to assisting battered women. This year's event is scheduled on September 4.

- For several years, the Annual Brewgrass Festival has served as a unique celebration of the art of brewing beer in the spirit of Oktoberfest with a Smokey Mountain twist. This year's event is scheduled for September 18.

- The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City/County Plaza. The Festival is co-sponsored by the Asheville Parks and Recreation Department and will be held September 24-26. The 2004 Greek Festival has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

- The World of Ice, scheduled for October 10, is an event showcasing the regions best Ice Carvers and restaurants in downtown Asheville.

- The Grove Arcade's Harvest Festival, scheduled for October 16, is an event to promote downtown as a shopping destination.

- The Hardlox Café Jewish Food Festival, scheduled for October 17, is a celebration of Jewish cuisine and heritage.

- For many years, the Asheville Downtown Association has co-sponsored with the City of Asheville events to bring both the public and visitors to the downtown area. These events include: *Moonlight Over Downtown* and four *Downtown After Five* *activities*. The Asheville Downtown Association has requested permission to allow possession and consumption of beer and wine during these events as they have been allowed in the past.

- The Asheville Assault, Splash, and Grizzlies are all semi-professional sports teams that seek to serve alcohol at their home games throughout the summer.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Councilwoman Jones moved for the adoption of the resolutions. This motion was seconded by Councilman Dunn and carried on a 6-1 vote with Vice-Mayor Bellamy voting "no."

Resolution No. 04-86 - **RESOLUTION BOOK NO. 28 – PAGE 204**
Resolution No. 04-87 - **RESOLUTION BOOK NO. 28 – PAGE 206**
Resolution No. 04-88 - **RESOLUTION BOOK NO. 28 – PAGE 208**
Resolution No. 04-89 - **RESOLUTION BOOK NO. 28 – PAGE 210**
Resolution No. 04-90 - **RESOLUTION BOOK NO. 28 – PAGE 212**
Resolution No. 04-91 - **RESOLUTION BOOK NO. 28 – PAGE 217**
Resolution No. 04-92 - **RESOLUTION BOOK NO. 28 – PAGE 219**
Resolution No. 04-93 - **RESOLUTION BOOK NO. 28 – PAGE 222**
Resolution No. 04-94 - **RESOLUTION BOOK NO. 28 – PAGE 224**
Resolution No. 04-95 - **RESOLUTION BOOK NO. 28 – PAGE 226**
Resolution No. 04-96 - **RESOLUTION BOOK NO. 28 – PAGE 228**
Resolution No. 04-97 - **RESOLUTION BOOK NO. 28 – PAGE 230**
Resolution No. 04-98 - **RESOLUTION BOOK NO. 28 – PAGE 232**
Resolution No. 04-99 - **RESOLUTION BOOK NO. 28 – PAGE 234**
Resolution No. 04-100 - **RESOLUTION BOOK NO. 28 – PAGE 237**
Resolution No. 04-101 - **RESOLUTION BOOK NO. 28 – PAGE 240**

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 86 CRAYTON ROAD BE DEMOLISHED

Mayor Worley said that this public hearing was scheduled for April 13, 2004, and at the owner's request, was postponed until this date.

On April 27, 2004, a letter was received from Mr. Craig Justus, attorney for the owner, D.P.S. Properties, requesting the public hearing be continued until July 13, 2004 because the property is under contract to be sold with a closing date of June 22, 2004.

Councilman Dunn moved to continue this public hearing until July 13, 2004, without further advertisement. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 59 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO CONVERT A RESIDENTIAL USE TO OFFICE USE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Cast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:22 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Shannon Tuch submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of a request to rezone property located at 59 Arlington Street from RS-8 Residential Single-Family High Density District to Office District/Conditional Use and a request to issue a conditional use permit to convert a residential use to office use.

She said that the subject property is located within the City limits on the corner of Arlington Street and Furman Avenue, exactly one block east of Charlotte Street near the I-240 Interchange and Central Business District zoning district (City Exhibit 3 – Location Map). Surrounding land uses are all zoned RS-8 with a non-conforming grandfathered Office use to the west, a non-conforming duplex to the north, a 'Use by Right Subject to Special Requirements' daycare use and single family use to the east, along with some additional single family use to the south. The applicant wishes to rezone the property in order to renovate and convert the existing vacant single family home into limited office use. The conditional use component of this project will be a site Master Plan showing the proposed off-street parking, currently accessed off of Furman Avenue which connects to the off-street parking for the grandfathered office use on the west side of the subject property. It is the applicant's intention to demolish the existing detached garage and improve the off-street parking provided including handicap accessibility and a potential shared parking arrangement with the adjacent office use. In addition, sidewalks, street trees, landscaping and other site improvements are proposed to bring the site into compliance while maintaining the appearance of a single family home. This application is being presented in conjunction with the rezoning requests for 51 and 53 Arlington Street to result in a continuous strip of office use from Charlotte Street to Furman Avenue on the north side of the street.

The blocks that include Arlington, Furman, Reed, Broad, and Chestnut Streets were zoned R-4 prior to the wide scale zoning changes that occurred in 1997. At that time, the R-4 zoning designation allowed limited office use and multi-family. This, combined with the streets close proximity to downtown, residential neighborhoods, and major vehicular corridors, encouraged the renovation of many of the larger homes into higher density or non-residential uses, changing the face of the once predominantly single family neighborhood. More recent development is incorporating some of the characteristics of older, more traditional urban development characterized by interconnected street systems, sidewalks, single family and small scale multi-family residential uses, small commercial and office uses easily accessible to residential areas, and less parking that relies upon the accessibility of different uses to reduce the dependence upon the automobile for making all trips. There are no specific land use goals for this area but Charlotte Street is targeted for future mixed-use development.

The purpose of the RS-8 zoning district is to establish a high density single family district in areas where public infrastructure is sufficient to support such densities. The purpose of the Office zoning district is to provide small scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition as residential areas convert to other uses or between residential and commercial areas (City Exhibit 3 – Land Uses & Zoning Map).

At their February 16, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use rezoning request and made a positive recommendation with conditions that the project be forwarded to the Planning and Zoning Commission.

At their March 3, 2004, meeting the Asheville Planning & Zoning Commission reviewed the request and on a 4-3 vote, voted not to recommend the approval of the conditional use rezoning citing concerns over traffic, encroachment, and potential loss of residential character. The applicant has chosen to appeal this decision to the City Council.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards have not been met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
The project must meet the technical standards set forth in the UDO and there appear to be some significant challenges to meeting the off-street requirements resulting in parking encroachments and necessitating on-street parking (City Exhibit 3 – Site Plan). In addition, the limited site area will make meeting the landscape buffers difficult resulting in Alternative Compliance that could result in a reduced benefit to the public (City Exhibit 3 – Site Photos).

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The proposed parking area must be increased to accommodate the off-street parking requirement and will result in significant land disturbing activity relative to the lot size. Due to site limitations, landscape buffers will have to be reduced through Alternative Compliance.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
The existing single family home's appearance will only be altered in relation to the renovation and improvements, however, the parking improvements will result in the loss of a "backyard" which will be difficult to buffer against due to site limitations. In addition, the increase in activity associated with an office use could be perceived as a nuisance and the value of adjacent properties could be negatively affected.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
The single family home will not be removed and will continue to be in scale, bulk, coverage, density and character with the neighborhood. However, the parking area is not typical of the neighborhood and will not be in coverage or scale. In addition, The change of use could affect the harmony of the adjacent residential uses.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The proposed application is difficult to support through official plans adopted by the City when the Asheville City Development Plan 2025 specifically calls for an initiative to strengthen and enhance neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
This proposed development is within close proximity to transportation facilities and other utilities appear adequate. The project area is located near major road facilities, interstate connections and other service centers. The proposed project will not require a change in water or sewer service and preliminary review by other service providers has not revealed any problems for future service to the development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed Master Plan shows off-street parking that does not comply and will require the balance of parking to be made up on-street. This combined the with off-street parking being accessed off the more residential Furman Avenue has the potential for increasing traffic congestion and hazards. In addition, the office use has the potential for increasing traffic in an already heavily trafficked neighborhood.

After a period of stagnation and deterioration that began in the 1960's, older neighborhoods close to urban areas began to experience a rejuvenation as people recognized the value of living in walkable neighborhoods close to services and a mix of activities. On both sides of Charlotte Street are residential areas with a mix of single family and multifamily uses. Office uses complement the retail and service uses located in close proximity to the residential uses but should not be allowed to encroach into the residential areas when the result is the loss of valuable residential properties and loss of community character. 59 Arlington has been historically a single family home and contains no unusual features that would prohibit easy, cost-effective residential renovation.

Approval of this conditional use rezoning request would allow for the further deterioration of the viable single family neighborhood and would perpetuate the problems initiated by the severing of some of Asheville's oldest and most viable neighborhoods by the construction of I-240. Despite some positive aspects to a change of use, in consideration of the above seven standards and the adjacent zoning and land uses in the area surrounding site, the proposed zoning change does not appear to be consistent with the intent and purpose of the UDO and other official plans and policies adopted by the City.

Pros:
1. Allows for the redevelopment of a vacant piece of property.

2. Provides for office use in an area easily accessible to residential and commercial services.
3. Provides for office use that is easily served by alternative transportation that lessens the need for vehicular traffic.
4. Conditional use component preserves the character and integrity of the single family home.
5. Office use can serve as a transition between single family uses and higher intensity commercial use.
6. Improves pedestrian amenities by installation of sidewalk and handicap ramps on Furman Avenue

Cons:

1. Allows for increased encroachment of the Office zoning district and further deterioration of a viable residential neighborhood.
2. Reduced potential for residential use (Office zoning does not preclude residential use but a residential component is not part of this application).
3. Project will require some site work to include additional off-street parking, handicap accessibility, and required landscaping that will significantly alter the appearance of the rear of the property.
4. Project could potentially increase traffic (pedestrian and vehicular) to the neighborhood during the day, and leave an unoccupied zone during the night reducing the viability of the residential community.

City staff, along with the Planning & Zoning Commission, do not recommend approval of the conditional use rezoning request to rezone property from RS-8 to Office/Conditional Use.

Mr. Bob Deutsch, attorney for the applicant, presented City Council with responses to the seven conditional use standards (Applicant Exhibit 1). Using a map (Applicant Exhibit 2), Mr. Deutsch felt that the City staff used an arbitrary zoning line to draw the zoning district lines and this property should have been zoned Office District. He pointed out the existing office uses in the surrounding area including the house next door at 53 Arlington Street and the day care center immediately across the street from this property. He said the block almost has no single-family homes. He said that an agreement has been reached with Ms. Stephanie Citron (owner of 53 Arlington Street) for a joint turn-around easement where their properties meet so the vehicles would not have to back out onto Arlington Street. The City's Traffic Engineer has approved the traffic pattern and felt there is no problem with congested on-street parking and in fact, this will be a traffic-calming measure. He said that surrounding and adjacent property owners support this conditional use rezoning and they do not think it will reduce their property values. He felt this type of mixed use development is exactly what the official City Plans call for (Applicant Exhibit 1). He felt this is a buffer/transition area and urged City Council to support the conditional use zoning request.

Ms. Jaan Ferree, owner of 59 Arlington Street, said that she is asking for a conditional use rezoning in order for her to build her office in the house. She showed Council photographs of the general neighborhood, her front and back yard; the adjoining house (which has an office use in it) at 53 Arlington Street; and other offices located on Arlington Street and on the other side of Furman Avenue (Applicant Exhibit 3). Offices have not hurt the quality of the neighborhood in this area. She felt that paving her backyard will not injure the way the area looks as seen in her photos in Applicant Exhibit 3). She reviewed with Council where the turn-around easement would be with her neighbor (Applicant Exhibit 4). She said that the City's Traffic Engineer, Mr. Anthony Butzek, has no problem with the parking and feels that the parking is adequate (Applicant Exhibit 5). To further address the parking concerns, she presented Council with a report she accumulated from March 24-April 24, 2004, which showed the parking patterns at various times of day on Arlington Street and Furman Avenue (Applicant Exhibit 6). She said the report shows that there is very little parking now so she could get three parking spaces in her backyard and three parking spaces in the front or side. She presented Council with letters from Town & Country Realty of Asheville Inc. (Applicant Exhibit 7) and Appalachian Realty Associates (Applicant Exhibit 8), which stated that they don't think the rezoning would decrease property values. She then presented Council with a letter from Nancy Kern (Applicant Exhibit 9), who owns the property behind the subject property and who is also a realtor, that shows support of her rezoning. She said that Mr. Sylvester, who testified at the Planning & Zoning Commission but could not be at this meeting, who supported her rezoning and didn't feel the property values would be decreased. She felt the area has a wonderful balance of office and residential She said we would like to have a light office on that property and according to the zoning she could put a quadraplex on that site. She wants to keep the way it is but if she has to turn it into apartments, it would have to be torn up. With apartments it would require more parking and have a larger impact on the community. She felt the neighbors are emotional about this request because of erroneous information originally sent out by City staff (Applicant Exhibit 10), which stated she was going to construct 12 additional apartments on the property. The erroneous information has since been corrected (Applicant Exhibit 11) but she feels that many of the neighbors still feel she is constructing the 12 apartments. She also presented City Council with a letter from Drew C. Nichols, a neighbor who had signed the protest petition, asking that his name be withdrawn from the petition after understanding what she was proposing (Applicant Exhibit 12). When she first approached the Planning & Development Department about her rezoning request, they suggested she contact the people adjacent to her and the next office zoning go in together because her rezoning alone could be considered spot zoning. They suggested she make application for a conditional use rezoning/permit and the other property owners make application for only a rezoning, because they do not intend to change the use of their properties. The owner at 53 Arlington Street is grandfathered in as an office use and the owners at 51 Arlington Street will keep their property as a single-family residence. She urged Council to grant her request to use her property for light office.

Upon inquiry of Councilman Dunn, Ms. Ferree said that she is a consultant and most of what she does she goes on site. She presently has an office in her home but to do circumstances, she would now like to move it out of her home and onto this property.

The following individuals spoke in favor of issuing the conditional use zoning for various reasons, some being, but are not limited to: the change of zoning to Office will not harm the value of adjoining property owners; support for an office than apartments; there are numerous apartments in the area and this property would be better suited for a small office; there is no parking problem on Arlington Street; property will be well maintained as an office use; if apartments were built, that would add parking on the street; there are 4 offices at 53 Arlington Street in which the psychologists park in the back and the clients in the front with no problem; easement for turnaround will benefit both properties; and there is a good mix of residential and office in the area:

Ms. Betsy Reiser, owner of Appalachian Realty and 23 and 35 Arlington Street
Mr. Larry Williamson, owner of 51 Arlington Street
Ms. Dale Smith, owner of the Lots of Love Child Care across the street from 59 Arlington Street
Ms. Stephanie Citron, owner of 53 Arlington Street
Mr. Langdon Ammon, owner of apartment building on Furman Avenue
Mr. Dennis Ponder, co-owner of 17 Arlington Street

Mr. Deutsch felt it would be appropriate to zone the remaining properties on the north side of Arlington Street to Office District. As presented earlier (Applicant Exhibit 1), Mr. Deutsch said that the conditional use zoning complies with the Smart Growth Plan, Economic

Development Plan, Smart Growth Initiatives Notes, Smart Growth Land and Transportation Notes, and 2025 Plan. He urged Council to vote in favor of the conditional use zoning.

The following individuals spoke against issuing the conditional use zoning for various reasons, some being, but are not limited to: the neighborhood is not reacting to misinformation; the use does not provide an essential service to the area; encroachment into the neighborhood will injure the value of the neighborhood's character and quality of life; change in use is not in harmony with the rest of the neighborhood; in order to meeting the parking requirements, the backyard will have to be paved which will create an eyesore along Furman Avenue; this property is 112 feet from an Office District; Furman Avenue is a residential street; rezoning is not compatible with the 2025 Plan; possible demolition of structures and construct of large office building; project will increase traffic to neighborhood and will endanger children loading and unloading at the day care center across the street; possibility of more than one office on property; dangerous intersection at Arlington Street and Furman Avenue; parking vehicles make up a congested area; property values in the area will be decreased; remaining residential on other side of Arlington Street might be forced to ask for rezoning to business in the future; precedent might be set if we allow people to pave their backyards and reduce the amount of porous surface; more business encroachment in the area will mean fewer people and possibly an increase in crime because people do not live in the homes; parking congestion currently exists on Furman Avenue and Arlington Street; need to keep remaining housing stock; and the balance of the neighborhood will be disrupted by office zoning:

Mr. Mark Allison, owner of 127 Furman Avenue (Neighborhood Exhibit 1)
Ms. Joan Morris, resident of 70 Arlington Street (Neighborhood Exhibit 2)
Mr. John Holland, resident at 3 Oak Park Road
Mr. Dean Nanney, resident at 79 Furman Avenue (Neighborhood Exhibit 3 – CD disc)
Ms. Janet Hart, resident at the corner of Furman Avenue and Baird Street (Neighborhood Exhibit 4)
Resident at 65 Furman Avenue
Ms. Abby Holland, resident at 3 Oak Park Road

Ms. Ferree said that she doesn't want to change the house and that is why she is asking for a conditional use zoning and permit in order for her to have a light office use. She doesn't want to have to convert the house into apartments, but if she is not rezoned, she will have to build apartments, which will result in more parking and traffic congestion on that corner.

Upon inquiry of Mayor Worley, Ms. Ferree said that she will only have one office in the house.

After hearing no further rebuttal, Mayor Worley closed the public hearing at 6:45 p.m.

Upon inquiry of Councilwoman Bellamy, Ms. Tuch was not able to respond regarding the reasons for the no parking signs but said the parking in the area was typical for residential streets in Asheville.

Upon inquiry of Vice-Mayor Mumpower, Ms. Tuch said that 15 people signed the protest petition and reviewed her analysis of said petition (City Exhibit 4). City Attorney Oast explained the law regarding protest petitions and said that it's not the number of people that sign the petition but the amount of the area of the property they own.

Councilwoman Jones asked if staff had a sense of the breakdown of office space and RS-8 space available in the City. Ms. Tuch said that she did try to make a determination, but all she could surmise was that available office space downtown is self-sustaining.

Mr. Deutsch pointed out that the City's Economic Development Plan notes the lack of office space as a weakness and there is an increased demand for smaller office spaces. In addition, the Plan calls for commercial rehabilitation.

Councilman Dunn felt that small office spaces are important and he did feel that there is a shortage of that in the City.

Councilwoman Bellamy was concerned if Council makes their determination solely on the request for 59 Arlington Street and not the other two rezoning applications, it might be considered spot zoning. City Attorney Oast said that only a court of law can determine whether something is spot zoning or not. However, given the uses that are directly adjacent to the property, he was not sure that rezoning this property to permit an office use by condition would be spot zoning.

Councilman Davis explained his concern about the parking situation, especially if the office use next door is working at maximum capacity with only one maneuvering space in the back.

Upon inquiry of Councilman Dunn about Ms. Ferree turning the house into apartments, Ms. Tuch said that the property is zoned RS-8 Single-Family and does not allow apartments. There are conditional use permits for duplexes, triplexes and quadraplexes, but the size of the lot also prohibits a certain density and the size of that lot will only support one unit.

Mr. Deutsch presented Council with a photo (Applicant Exhibit 13), which showed that the backyard of 59 Arlington Street adjoins parking lots.

Upon inquiry of Councilman Newman, Ms. Tuch explained what the alternative compliance might look like if the permit were approved.

In response to Councilman Newman, Ms. Tuch said that one of the conditions in the permit, if approved, would be that that home could not be altered.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that Council can limit the number of offices that exist within the structure.

Vice-Mayor Mumpower moved to deny the conditional use rezoning for property located at 59 Arlington Street from RS-8 Residential Single-Family High Density District to Office District/Conditional Use. This motion was seconded by Councilwoman Bellamy.

Vice-Mayor Mumpower felt the applicant failed to meet condition no. 5 in respect to encroachment into the neighborhood, and condition no. 7 regarding the traffic and parking impact.

Councilman Dunn felt the parking concern is not valid because in Asheville people park everywhere. He felt this was no bigger safety issue than other streets. If the house was converted into a duplex, that would result in more traffic and additional parking. He did not think the office use would decrease property values and did feel the zoning line was arbitrarily drawn.

The motion to deny carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy and Councilwoman Jones voting "yes" and Councilman Davis, Councilman Dunn and Councilman Newman voting "no."

C. PUBLIC HEARING TO CONSIDER THE REZONING OF 53 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

At the request of Mr. Bob Deutsch, Vice-Mayor Mumpower moved to continue the public hearings to consider the rezonings of 53 Arlington Street and 51 Arlington Street to June 8, 2004, without further advertisement. This motion was seconded by Councilwoman Jones and carried unanimously.

D. PUBLIC HEARING TO CONSIDER THE REZONING OF 51 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

At the request of Mr. Bob Deutsch, Vice-Mayor Mumpower moved to continue the public hearings to consider the rezonings of 53 Arlington Street and 51 Arlington Street to June 8, 2004, without further advertisement. This motion was seconded by Councilwoman Jones and carried unanimously.

E. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE CONDITIONAL USE PERMIT CONDITION REQUIRING A TRAFFIC CALMING/ INTERSECTION IMPROVEMENT MITIGATION FEE OF $500 PER UNIT FOR APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD

Mayor Worley said that earlier today a letter was received from Mr. Rod Hubbard requesting the public hearing be continued until May 11, 2004, due to a family emergency.

Vice-Mayor Mumpower moved to continue this public hearing until May 11, 2004, without further advertisement. This motion was seconded by Councilman Dunn and carried unanimously.

F. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 19 DORCHESTER AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE, AND THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION OF A PARKING LOT

ORDINANCE NO. 3112 - ORDINANCE REZONING PROPERTY AT 19 DORCHESTER AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3113 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED 19 DORCHESTER AVENUE FOR THE CONSTRUCTION OF A PARKING LOT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:15 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

Mayor Worley said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of a request to rezone property located at 19 Dorchester Avenue from RM-8 Residential Multi-Family Medium Density District to Community Business II District/Conditional Use and a request to issue a conditional use permit for the construction of a parking lot (City Exhibit 3 – Location Map).

She said that the applicant (Trinity United Methodist Church) has requested a rezoning of .47 acres of RM-8 property to be rezoned to Community Business II/Conditional Use in order to construct a 25-space parking lot to be utilized by Trinity United Methodist Church. The proposed development is located at 19 Dorchester Avenue. The lot also has frontage on Balm Grove Avenue directly across the street from the church.

Trinity United Methodist Church is located on the corner of Haywood Road and Balm Grove Avenue, directly across the street from the subject parcel. The property is split zoned CB-II and RM-8. Places of Worship are permitted in an RM-8 district as a Use By Right Subject to Special Requirements. However, because the proposed parking lot is on a remote parcel other than on the lot where the main facility exists and because commercial parking lots are not permitted uses in an RM-8 zoning district, the applicant has no other option than to pursue a rezoning request to a district that would permit the use. The proposed zoning to CB II-CUZ would permit a stand-alone parking lot provided the plan meets the design and landscape standards set forth in the Unified Development Ordinance (UDO).

The parking lot will be constructed to allow one-way traffic with ingress from Balm Grove Avenue and egress onto Dorchester Avenue. Based on the number of seats in the sanctuary the church is permitted a minimum of 50 parking spaces up to a maximum of 134 parking spaces. The church currently has 82 parking spaces on its primary parcel. If this request is approved the church would be well within the amount of spaces permitted by the ordinance.

A 20-foot landscape buffer will be installed along the north property line where adjacent to residential uses. In addition to several existing large deciduous trees, street trees and buffer shrubs will be provided along the east and west sides of the property (City Exhibit 3 – Site Plan). Along the southern property line where adjacent to an existing commercial parking lot, a five-foot landscape strip will be installed. In addition, parking lot landscaping will be provided throughout the site to provide a mature tree canopy that will assist in reducing heat generated by the paved surface.

The Community Business II zoning designation was intended to establish areas of medium- to high-density business and service uses along minor and major thoroughfare streets that would serve the surrounding residential neighborhoods. Community Business II districts should be designed in a manner that is sensitive to a significant pedestrian population while providing safe and adequate vehicular access. To encourage the use of shared and remote parking and other methods of transportation, a 20% reduction in parking is permitted. In this district, buildings may be constructed up to 45,000 s.f. and may be one or several stories tall. Parking is to be placed at the side or rear of the structure.

At their March 15, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the conditional use rezoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission subject to the conditions outlined in the TRC Staff Report and the following condition: The design of required buffering and removal of the existing retaining wall is to be determined after redesigning the parking area and consultation with neighboring property owners.

At their April 7, 2004, meeting, the Planning and Zoning Commission reviewed this request and made a favorable recommendation to approve it subject to the conditions outlined in the staff report and with one additional condition that the concrete retaining wall shall be removed and no similar wall shall be erected to replace it.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1) That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project area is relatively flat. Grading of the site will be necessary to comply with stormwater and erosion control requirements. In complying with these standards the unattractive retaining wall structure, which is along portions of the northern property line, will be removed. In addition to the 20-foot landscape buffer requirement, earth berming and/or screening may be utilized to assist in mitigating any negative impacts the parking lot may have on adjoining residential uses. Parking lot landscaping will also be provided to provide a mature tree canopy and assist in reducing heat that radiates from paved surfaces.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The parking lot will be restricted for church use only, with activity occurring only 2-3 days a week. Landscaped berms and/or screening will serve to mitigate the impacts of the proposed development to adjoining residential uses. In addition, the adjoining residential properties to the north of the site will have improved conditions with the removal of an unattractive retaining wall that borders the property line.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   Places of Worship are permitted in an RM-8 district as a Use by Right Subject to Special Requirements. Had this lot been contiguous with the church it would have been a

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permitted use. Additionally, the use of the property will not involve the construction of any building or result in significant grading of the site. Landscape buffers and parking lot landscaping will be installed along with the preservation of several existing large trees at the entrance and exit of the site.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The City's 2025 plan does not address Places of Worship or the expansion of such facilities when located in a residential district. The Unified Development Ordinance, however, permits Places of Worship as a Use By Subject to Special Requirements in residential districts provided they meet the required design standards. The City's 2025 plan places emphasis on encouraging the use of other modes of transportation, (i.e. transit bus service, carpooling, vanpooling, etc.), rather than promoting full dependency on the automobile. Shared and remote parking is also encouraged by utilizing existing infrastructure, which reduces the need for non-residential encroachments into neighborhoods and reduces the need for additional impervious surfaces.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

Transit Service is available at multiple locations along Haywood Road. _In addition, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Public Works Department.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

No increase in traffic is expected on Balm Grove Avenue. Due to egress from the proposed parking lot, a slight increase in traffic may be noticed on Dorchester Avenue. However, with the installation of recent traffic-calming measures on Dorchester Avenue and because the road is serviced by a traffic signal, impacts should be minimal to none. In addition to the required sidewalks on Dorchester Avenue and Balm Grove Avenue, the applicant will be required to improve pedestrian connections by tying into delineated crosswalks leading to the church.

Pros:
1. The development will improve conditions on a vacant lot by providing stormwater management to control run-off on the site.
2. An unattractive retaining wall, adjacent to residential properties, will be removed.
3. The installation of landscaping will improve the appearance of the lot and provide a mature tree canopy to assist in reducing heat generated by the proposed parking lot and abutting commercial lot.
4. Any potential increase in traffic on Dorchester Avenue will be limited to 2-3 days a week since the parking lot will be restricted for church use only.

Cons:
1. The proposed project does not appear to support the goals of smart growth or compatible infill development.
2. The development will result in the loss of valuable multi-family residential property.
3. The development could set a precedent for the encroachment of other non-residential uses into the neighborhood.

4. Underutilized parking lots from neighboring businesses could provide shared and remote parking opportunities reducing the need for additional parking.

Staff feels that a careful balance is necessary in cases where non-residential uses are permitted in neighborhoods to ensure that the integrity of the neighborhood remains, yet allows for the growth of essential non-residential elements that contribute to the neighborhood. Since Places of Worship are permitted as a Use By Right Subject to Special Requirements in the RM-8 district and because the church does not exceed it maximum number of parking spaces permitted we believe that balance can be achieved with the approval of this request. We have found that all seven standards have been met, and that any potential impact by the proposed development will be mitigated by appropriate measures required by the Unified Development Ordinance.

Staff recommends approval with the following conditions: (1) All conditions by the Technical Review Committee be met; (2) Site lighting is to be provided meeting the Use by Right Subject to Special Requirements for Places of Worship standards; additionally, any such lighting shall be equipped with 90-degree cutoff fixtures and be directed away from residential areas; (3) Developer shall meet with neighboring property owners in developing the design of required landscape buffers; (4) The applicant shall pursue shared and/or remote parking with neighboring businesses; and (5) The concrete retaining wall shall be removed and no similar wall shall be erected to replace it.

Mr. Dennis Ponder, representing Trinity United Methodist Church, said that they have met with the community and as a result there have been 3-4 design changes that resulted in a better design. He explained the site plan design and felt the parking lot will be a positive addition to the neighborhood. He urged City Council to support the conditional use rezoning and permit.

Hearing no further rebuttal, Mayor Worley closed the public hearing at 7:29 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Ponder said that the property was acquired by the Church approximately two years ago.

Councilman Dunn moved for the adoption of Ordinance No. 3112 to rezone property located at 19 Dorchester Avenue from RM-8 Residential Multi-Family Medium Density District to Community Business II District/Conditional Use. This motion was seconded by Vice-Mayor Mumpower.

Councilman Newman felt this is a good parking lot design, however, he felt Asheville has very little multi-family land available for development and therefore, he could not support the conditional use zoning.

Councilman Davis also felt this is a good parking lot design and it meets the desires of the Haywood Road Corridor Plan.

The original motion to approve the conditional use zoning carried on a 6-1 vote, Councilman Newman voting "no."

ORDINANCE BOOK NO. 21 - PAGE 134

Councilman Dunn moved for the adoption of Ordinance No. 3113 to issue a conditional use permit for the construction of a parking lot, subject to the following conditions: (1) All conditions by the Technical Review Committee be met; (2) Site lighting is to be provided meeting the Use by Right Subject to Special Requirements for Places of Worship standards; additionally, any such lighting shall be equipped with 90-degree cutoff fixtures and be directed away from residential areas; (3) Developer shall meet with neighboring property owners in developing the design of required landscape buffers; (4) The applicant shall pursue shared and/or remote parking with neighboring businesses; and (5) The concrete retaining wall shall be removed and no similar wall shall be erected to replace it. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 141

G. PUBLIC HEARING TO CONSIDER THE REZONING OF TWO LOTS LOCATED ON HAWKINS LANE FROM COMMUNITY BUSINESS II DISTRICT TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 3114 - ORDINANCE REZONING TWO LOTS LOCATED ON HAWKINS LANE FROM COMMUNITY BUSINESS II DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 7:32 p.m.

Urban Planner Carter Pettibone said that this is the consideration of rezoning two lots located on Hawkins Lane from Community Business II District to Institutional District. This public hearing was advertised on April 16 and 23, 2004

The property is located within the City limits on the west side of Hawkins Lane south of Hazel Mill Road. Surrounding land uses and zoning include residential to the north zoned RM8, commercial uses zoned Highway Business (HB) to the east and south and vacant property zoned Community Business II to the west.

The applicant, Temple Baptist Church, wishes to rezone the properties in order to utilize them for uses permitted in the Institutional District. The purpose of the Institutional District is to address the needs of major institutional uses and minimize conflict with adjacent uses.

Currently, the property is used for recreational purposes and includes a number of ball fields. The owner, Temple Baptist Church whose main facility is located approximately 400 feet to south along Hawkins Lane, plans to expand the recreational facilities on the site. The Church believes it is not able to develop the property according to the requirements of the Community Business II District, especially as they relate to the requirements for buildings to be located along the street and parking to be located behind and/or to the side of the building.

Rezoning the properties would allow the Church the opportunity to further develop the property for uses permitted in the Institutional District. It would provide the property a zoning district that is similar in intensity to what it is currently. As such, it would maintain a transition between the high intensity commercial uses to the south and east and the residential properties to the north.

In terms of building location and parking, a rezoning would allow the applicant more flexibility in where to locate them on the site. A rezoning to Institutional District would also eliminate a great number of potentially adverse and high traffic generating uses from locating on the site and accessing Hawkins Lane.

Advantages (Pros)
- More flexibility for building and parking location on site.
- A number of potentially adverse and traffic generating uses eliminated from consideration.
- Transition between neighboring commercial and residential zoning districts to remain.

Disadvantages (Cons)

- An "island" of Community Business II zoning remains where its properties do not have direct access onto a public street.

In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the UDO.

The Planning and Zoning Commission, at its April 7, 2004, meeting, voted 5-0 to recommend approval. Staff recommends approval of the rezoning request as well.

Mr. Gary Davis, engineer for Temple Baptist Church on this project, briefly reviewed with Council this history of the project and asked for City Council's support in the rezoning change.

Mayor Worley closed the public hearing at 7:38 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Pettibone said that he only received one phone call from a neighbor regarding the buffering requirement, which he explained.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3114. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 147

H. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE CERTAIN DIMENSIONAL REQUIREMENTS IN THE URBAN VILLAGE DISTRICT

ORDINANCE NO. 3115 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO REVISE CERTAIN DIMENSIONAL REQUIREMENTS IN THE URBAN VILLAGE DISTRICT

Mayor Worley opened the public hearing at 7:40 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for certain revisions of the dimensional requirements in the Urban Village District. This public hearing was advertised on April 16 and 23, 2004.

This code amendment is a general "housekeeping" type amendment intended to revise certain dimensional requirements for the urban village zoning district. With the adoption of the 2025 Plan, it became apparent that several areas identified for urban village locations did not meet the 10-acre minimum acreage requirement. This amendment would reduce the minimum acreage requirement to five acres. Additionally, there are several areas of site design inconsistency between the Neighborhood Corridor District and the Urban Village District; this amendment would resolve those inconsistencies.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and Council of Independent Business Owners for review and comment.

Pros –

- The 2025 Plan and the UDO will be in greater compliance.

- The Urban Village District would be able to be applied to a larger number of properties (a potential con), allowing it to be used in a greater variety of circumstances.
- There would be greater design consistency between the Neighborhood Corridor District and the Urban Village District.

Con –

- The Urban Village district would be able to be applied to a larger number of properties (a potential pro).

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 7:41 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3115. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 149

IV. UNFINISHED BUSINESS:

A. RESOLUTION REGARDING ANNEXATION SERVICES PLAN FOR THE LONG SHOALS ANNEXATION AREA

Mayor Worley announced that this item will not be considered at this meeting.

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Board/Commission Vacancies

Vice-Mayor Mumpower announced vacancies on the Civil Service Board and the Downtown Commission. He encouraged interested residents to apply by calling the City Clerk's Office.

For Our Kids

Vice-Mayor Mumpower thanked Ms. Daisha Merritt and Mars Hill College; Chris Young and the staff from Office Environments; and the residents from Lee Walker Heights for their participation in the For Our Kids Program.

Claims

The following claims were received by the City of Asheville during the period of April 2-22, 2004: Leda Neale (Police), Brian Blackwell (Streets), Tommy Hill (Streets), Jane Williams (Water) and David Lee Welch (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English spoke in opposition of public access television. He did not feel that the City is proceeding in the right direction, especially if they consider rail service. He suggested the City rename Amboy Road to Bob Pressley Boulevard, in memory of Mr. Pressley who gave so much to the Asheville community.

Mr. Randy Bray was concerned that City Council would allow the consumption of malt beverages and/or unfortified wine at events, especially since Asheville has so much to offer.

Brother Christopher Schemata spoke about the homeless problems in Asheville.

Mr. Joseph Smith hoped City Council will continue to investigate the problems associated with the Alcoholic Beverage Control Board.

Councilwoman Bellamy praised Mountain Housing Opportunities for receiving the highest score in the State on their Griffin project. This project will bring 50 units in downtown Asheville of which 15 are specifically for people who were homeless.

Councilwoman Jones commended the Asheville Police Department on how they handled the unwelcomed visit by people preaching hate and desecrating the flag. She also commended the communities of faith and how they responded with love and not judgment.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:58 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 11, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Councilman Dunn led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 8-15, 2004, AS "STRIVE NOT TO DRIVE WEEK"

Mayor Worley read the proclamation proclaiming the week of May 8-15, 2004, as "Strive Not To Drive Week" in the City of Asheville. He presented the proclamation to Ms. Terri Zimmerman March, Buncombe County's Health Promotion Program Coordinator, and Ms. Linda Giltz, with the Land-of-Sky Regional Council, who briefed City Council on some activities taking place during the week.

Ms. Giltz then presented a Golden Wheel Award to Transit Services Director Bruce Black and to former Chairman of the Asheville Transit Commission Ron Lambe who have made a difference over the year regarding transit.

II. CONSENT AGENDA:

Councilman Dunn asked that Consent Agenda H be removed from the Consent Agenda due to his conflict of interest.

Councilwoman Bellamy asked that Consent Agenda I be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 27, 2004

B. RESOLUTION NO. 04-102 - RESOLUTION ACCEPTING SWEET SPIRE RIDGE IN REYNOLDS MOUNTAIN SUBDIVISION AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Sweet Spire Ridge in Reynolds Mountain Subdivision as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Sweet Spire Ridge is a developer constructed street that has an average paved width of 20 feet and a length of 0.16 miles. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Sweet Spire Ridge will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council adopt a resolution to accept Sweet Spire Ridge in Reynolds Mountain Subdivision as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 243

C. RESOLUTION NO. 04-103 - RESOLUTION ACCEPTING VANDERBILT PARK DRIVE OFF HENDERSONVILLE ROAD AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept Vanderbilt Park Drive off Hendersonville Road as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Vanderbilt Park Drive is a developer constructed street that has an average paved width of 20 feet and a length of 0.25 miles. Engineering Department staff has reviewed the density tests and inspection reports and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Vanderbilt Park Drive will be added to the official Powell Bill list A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway. The first section of the roadway from Hendersonville Road to the entrance to the old Biltmore School is exempt for this warranty because it was constructed prior to this development.

City staff recommends City Council adopt the resolution to accept Vanderbilt Park Drive off Hendersonville Road as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 244

D. RESOLUTION NO. 04-104 - RESOLUTION SETTING A PUBLIC HEARING ON JUNE 8, 2004, TO CONSIDER CLOSING A PORTION OF REED STREET

RESOLUTION BOOK NO. 28 – PAGE 245

E. RESOLUTION NO. 04-105 - RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Summary: The consideration of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

The City of Asheville entered into a Joint Cooperation Agreement with twelve governmental units within Region B on March 31, 1992, and formed the Asheville Regional Housing Consortium.

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The U.S. Dept. of Housing & Urban Development (HUD) regulations require execution of a new Cooperation Agreement for the Asheville Regional Housing Consortium to continue receiving entitlement allocations under the HOME grant program.

On March 9, 2004, the City sent a letter to HUD stating its intent to participate again as a consortium in the HOME program, and also stating it will submit to HUD prior to June 30, 2004, all other required documents for participation, including a new Cooperation Agreement and authorizing resolutions from member governmental units.

The Cooperation Agreement states in Section 14: "The Lead Entity and the Cooperating Units agree to remain in the Consortium at least through September 30, 2007. Thereafter, each party shall continue to participate in the Consortium to the extent required by HUD regulations or other applicable law."

Since formation of the Consortium in 1992, the region has received entitlement allocations totaling $14,787,335. The City of Asheville has received $5,326,515 for its affordable housing programs and administrative costs as Lead Entity since the beginning of the program.

Pro: Allow the City to continue to operate as Lead Entity of the Consortium and to receive an annual entitlement of HOME Program funds from HUD,

Con: Rejection of the resolution will jeopardize the Consortium's standing with HUD and may terminate future entitlement funding through the HOME Program.

Community Development staff recommends adoption of the resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

RESOLUTION BOOK NO. 28 – PAGE 246

F. RESOLUTION NO. 04-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR SIDEWALKS ON LONG SHOALS ROAD

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation (NCDOT) for the installation of concrete sidewalk along NC 146 (Long Shoals Road) from Hendersonville Road to the corporate limits of the City of Asheville, excluding bridges.

NCDOT is currently in the process of widening NC 146 (Long Shoals Road). As part of this project we have requested that sidewalk be installed along the section of roadway adjacent to the construction within the cooperate limits.

The agreement will require NCDOT to pay 60% of the cost and the City of Asheville to pay 40% of the costs. The cost of the sidewalk is estimated at $288,134. The City's portion of that cost will be $115,254. This payment is not due to NCDOT until the project is complete which is estimated to be Fiscal Year 2006.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State maintained roadways.

The benefit of having the sidewalk installed by NCDOT is that we are only required to pay 40% of the cost of the sidewalk as opposed to 100%. Additionally, the cost to construct the sidewalk is cheaper because it is being constructed at the same time as the road is being widened.

The only negative consequence of the project is that the City has to pay $115,254 for the sidewalk installation and cost associated with maintaining the sidewalk.

The consideration of a resolution authorizing the City Manager to sign a municipal agreement with NCDOT for the installation of concrete sidewalk along NC 146 from Hendersonville Road to the corporate limits of the City of Asheville, excluding bridges.

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G. RESOLUTION NO. 04-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH GREEN LIGHT ELECTRIC INC. FOR TRAFFIC SIGNAL MAINTENANCE

Summary: The consideration of a resolution authorizing the City Manager to amend the existing agreement with Green Light Electric, Inc., to continue preventative maintenance of traffic control devices through December 31, 2004, in the amount of $72,000.

In April 2001, the Public Works and Engineering staff undertook the project of reengineering the Division of Traffic Operations, given the fact that two signals technicians resigned and the impending retirement of the traffic signal supervisor. City staff determined that preventative maintenance activities could, and should be, contracted to the private sector.

It was further determined that a minimum staff level of two signal technicians, whose pay scale and classification would more closely emulate the N. C. Dept. of Transportation technicians with similar responsibilities, would be maintained to insure emergency response and guarantee that timely repairs were enacted. Their primary responsibility, beyond emergency response, is to maintain and update signal system data and functions of coordination and timing.

Bids were solicited to determine actual costs for a comprehensive preventative signal maintenance program by the private sector. Green Light Electric, Inc.'s bid was the lowest, with the 2nd lowest bidder approximately 67% higher.

The overall cost savings from the reengineering idea, along with the improved services mentioned above, is approximately $40,000 per year.

Pros:
- Preventative maintenance of traffic signals is necessary to ensure public safety.
- Green Light Electric, Inc.'s fees are very competitive.

Cons:
- There is some cost associated with traffic signal maintenance.

Staff requests that City Council approve a resolution authorizing the City Manager to enter into an agreement with Green Light Electric, Inc. for preventative maintenance of traffic control devices.

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H. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY ON KENILWORTH ROAD TO DR. JOSEPH DUNN FOR A PRIVATE RESIDENTIAL SEWER LINE

This item was removed from the Consent Agenda due to a conflict of interest.

I. **RESOLUTIONS MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PINK BALL FESTIVAL ON JUNE 19, 2004, AND THE PINK RIBBON CELEBRATION ON SEPTEMBER 16, 2004**

This item was removed from the Consent Agenda due to a conflict of interest.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA

RESOLUTION NO. 04-108 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY ON KENILWORTH ROAD TO DR. JOSEPH DUNN FOR A PRIVATE RESIDENTIAL SEWER LINE

Councilwoman Jones moved to excuse Councilman Dunn from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Newman and carried unanimously.

Summary: The consideration of a resolution authorizing the City to convey an easement over a portion of City-owned property on Kenilworth Road to Dr. Joseph Dunn for a private residential sewer line.

The City owns property (PIN 9648.16-84-1232) located on Kenilworth Road. The property is known as the Harvest House Community Center. A portion of the property near the rear line is wooded and steep and is crossed by a sewer main. The intended use for that portion of the property is for green space.

Dr. Joseph Dunn owns property on Lakewood Drive, which backs up to the City's property on Kenilworth Road. Dr. Dunn is building a house on his property. Due to the topography and the location of the sewer main, the most direct and efficient route to provide sewer to the new house is across a portion of the City's property. The requested easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the use of the easement area for green space, which is the proposed use of that portion of the property. The portion of land encumbered by the permanent easement comprises approximately 656 square feet

A Comparative Market Analysis was prepared by Derek S. Weekly, Realtor and his opinion letter dated April 28, 2004, indicated a land value for the easement area of $446. The easement value is calculated at 50% of the land value rendering an easement value of $223.

The advantages of conveying the easement are:

1. The easement will enable Dr. Dunn to proceed with construction of a new home on his property which will increase the tax base, generate economic activity, further smart growth objectives of urban densification and provide needed housing.
2. The easement will provide the most practical and efficient access to the public sewer.

The disadvantage is the land within the easement area (656 sq. ft.) cannot be built upon nor planted with large trees; however that is mitigated by the fact that the encumbrance is on a portion of the property that is unsuitable for construction and is covered with natural vegetation.

Approval of the resolution will authorize conveyance of the easement to Dr. Joseph Dunn for the purpose of a private residential sewer line.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the City to convey an easement over a portion of City-owned property in Kenilworth to Dr. Joseph Dunn.

Councilwoman Jones moved for the adoption of Resolution No. 04-108. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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RESOLUTION NO. 04-109 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PINK BALL FESTIVAL ON JUNE 19, 2004

RESOLUTION NO. 04-110 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PINK RIBBON CELEBRATION FESTIVAL ON SEPTEMBER 16, 2004

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: The Pink Ball benefiting the Asheville Area Arts Council, and the Pink Ribbon Celebration.

The below listed groups have requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- The Pink Ball, scheduled for Saturday, June 19, 2004, raises funds to benefit the Asheville Area Arts Council, a community arts organization dedicated to developing cultural resources, city and audience development, fund raising, and grant allocations.

- The Pink Ribbon Celebration, scheduled for September 16, 2004, is an event to raise funds for the American Cancer Society in conjunction with the Grape Escape wine bar.

The Asheville Parks and Recreation Department recommends approval of the resolutions to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned events at specific locations and times noted in the resolutions.

Vice-Mayor Mumpower moved for the adoption of Resolution Nos. 04-109 and 04-110. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilwoman Bellamy voting "no.".

RESOLUTION NO. 04-109 - RESOLUTION BOOK NO. 28 – PAGE ~~251~~ 250
RESOLUTION NO. 04-110 - RESOLUTION BOOK NO. 28 – PAGE 253 252

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 673 SAND HILL ROAD FOR THE CONSTRUCTION OF 12 ADDITIONAL APARTMENTS IN AN RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

This item has been removed from the agenda for consideration.

B. PUBLIC HEARING TO CONSIDER CLOSING AN UNNAMED ALLEY OFF COMMERCE STREET

RESOLUTION NO. 04-111 - RESOLUTION CLOSING AN UNNAMED ALLEY OFF COMMERCE STREET

Mayor Worley opened the public hearing at 5:17 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close an unnamed alley off Commerce Street. This public hearing was advertised on April 16, 23, 30 and May 7, 2004.

N. C. Gen. Stat. sec. 160A -299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville close an unnamed alley off Commerce Street, the entry of which is located approximately 135 southwest of the intersection of Commerce and Church Streets. From Commerce Street, the alley proceeds southeasterly approximately 100 feet, then southwesterly approximately 150 feet to its intersection with Buncombe Street.

Public Works Department staff has researched and determined that this alley is not a City maintained street and is not the sole means of ingress and egress for any of the abutting properties. There are six lots that abut this unnamed alley. They are identified by PIN Nos. 9649.18-30-7001; 9648.06-39-6929; 9648.06-39-5988; 9648.06-39-5927; 9648.06-39-5867; and 9648.06-39-7227.

City staff recommends that City Council adopt the resolution to close an unopened unnamed alley off Commerce Street.

Mayor Worley closed the public hearing at 5:20 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-111. This motion was seconded by Councilman Dunn and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER A MODIFICATION OF THE CONDITIONAL USE PERMIT CONDITION REQUIRING A TRAFFIC CALMING/ INTERSECTION IMPROVEMENT MITIGATION FEE OF $500 PER UNIT FOR APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD

ORDINANCE NO. 3116 - ORDINANCE MODIFYING THE CONDITIONAL USE PERMIT CONDITION REQUIRING A TRAFFIC CALMING/ INTERSECTION IMPROVEMENT MITIGATION FEE OF $500 PER UNIT FOR APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD

Mayor Worley said this public hearing was originally scheduled for April 27, 2004, and continued until this date pursuant to the applicant's request.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of an amended conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:21 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Shuford said that this is the consideration of a modification of the conditional use permit condition requiring a traffic calming/intersection improvement mitigation fee of $500 per unit for Appeldoorn Condominiums (formerly Appledorn) located at 200 Brooklyn Road. This public hearing was advertised on April 16 and 23, 2004.

On August 13, 2002, the City Council approved a conditional use permit and rezoning to allow the 168 unit Appeldoorn condominium project to be constructed in the Shiloh neighborhood. Since the project would increase traffic in the neighborhood, staff recommended, and Council approved, a condition that the developer set aside $500/unit for traffic calming and intersection improvements; this totaled $84,000 for the entire project. Subsequently, at the developer's request, staff agreed to collect the $84,000 at the time of occupancy rather than at permit issuance.

The developer has submitted a letter requesting that Council rescind the conditional use permit condition that establishes the $84,000 exaction. He notes the increased cost of construction materials as the rationale for his request.

Staff agrees that there has certainly been a steep "spike" in the cost of many types of construction materials. Staff also notes that the developer is further limited financially by another condition that mandates his pricing to be within the housing affordability guidelines of the City; as noted in the table below, his pricing is generally well below the maximum that low income households could afford at today's interest rates. However, staff must point out that the project does create a traffic impact on the Shiloh neighborhood. If Council is inclined to rescind this condition, staff feels some alternative funding arrangement needs to be identified to implement

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the necessary traffic mitigation measures. This could be accomplished in a number of ways, including:

- Allowing the developer a higher "cap" for his proposed housing sales, giving him more revenue to pay the fee (this, of course, affects affordability and may not mesh well with either the developer's marketing or with market realities).
- Substituting City Affordable Housing Trust Fund monies for the mitigation exaction. (NOTE: The loss of the Foxwood project has freed up $125,000 in Trust Fund money, some of which can be allocated to this project if Council wishes to deviate from its current policies regarding the use of these funds for this unique case – please note that this would be a grant not a loan.)

This project is an important component of the City's overall affordable housing effort. The City's Consolidated Strategic Housing and Community Development Plan for 2000-2005 identified a need for 160 new affordable units for homeownership each year within the City of Asheville, where "affordable" means within the purchasing power of households with less than 80% of area median income adjusted for family size. Since 2000, production of such units has been less than 50 units a year. Meanwhile median house prices are increasing at 5-7% a year, while median income has increased about 2.5% a year, putting the existing housing stock increasingly out of range for first-time homebuyers. Undeveloped parcels of land suitable for developments of significant scale (10 units or more) are increasingly hard to find within the City limits.

Sales Price Information for Low Income (80% Annual Median Income) Persons Adjusted for Family Size

Unit Size	Appeldoorn Initial Sales Price Range*	Upper Limit of Affordable Sale Price**
One Bedroom	$69,900 – 74,900	$85,745
Two Bedrooms	$89,900 – 109,900	$102,929
Three Bedrooms	$114,900 – 119,900	$118,924

* From price list provided by developer
** Assumes a 7% fixed interest rate and a 30 year mortgage

Cost of housing is one element of our affordable housing effort, but community support for affordable housing is another element. Mitigating the impacts of development is a key method of building community support for affordable housing projects (and for denser development, in general). Staff feels that if the developer is relieved of this requirement, the public should fund the improvements.

Pro:
- Supports a critical large-scale affordable housing project that essentially meets a one year affordable housing production goal by itself.

Cons:
- Creates a situation where mitigation costs are borne by the local taxpayer.
- Would be an exception to Council's stated policy that Trust Fund monies are to be loans, not grants.

Should City Council choose to grant this request, staff recommends the substitution of the following additional conditions, as well as providing the traffic calming/intersection improvement mitigation funding through an allocation from the Housing Trust Fund:

- The units shall have an initial sales price range as stated by the developer:

- One Bedroom –$69,900 – 74,900
- Two Bedroom – $89,900 – 109,900
- Three Bedroom - $114,900 – 119,900

- The developer shall ensure that at least 20% of the units will be sold to income-qualified buyers under 80% AMI (adjusted for family size).

Mr. Rod Hubbard, developer, said that he has been working two years to create an affordable home ownership development. However, due to substantial increases in material costs, he is over $1.5 Million over budget. He does realize that some of the increase his responsibility. He asked that City Council delete the condition on his conditional use permit that requires him to pay for a traffic calming/intersection improvement mitigation fee of $500 per unit. He is not saying that traffic calming issues do not need to be addressed in the community; however, he is asking City Council to take that financial burden away from him and the City to contribute to the development by addressing those issues. If Council decides to relieve him of the $84,000 but the City will not contribute, then he would pay because they are necessary for the community. He then showed City Council the exterior of the building (Applicant Exhibit 1). He said they changed the design of the building dramatically to incorporate a stone entranceway, independent balconies, increased ceiling heights, etc. They have spent more money on the aesthetics and the design of the building. They feel the community will be proud of this development. He has been able to maintain their pricing system and five weeks ago they started their pre-sales. With very limited advertising, they have sold over 50% of Phase I, $3.5 Million worth of real estate and 68% of that is to first homebuyers. In the next five years, he will be generating over $1 Million in property taxes. He then passed out some information (Applicant Exhibit 2) about the development.

The following residents spoke about the need for traffic calming measures in the Shiloh Community that will be created by this project, for several reasons, some being, but are not limited to: streets in the Shiloh community are narrow; developer should be required to pay for the traffic calming measures and not ask to be relieved of that condition because most developers anticipate additional construction costs; $500 per unit is not too much to pay for the safety of our children and the Shiloh neighborhood; the developer should be giving something back to the community; since the developer is a for-profit company, he should pay for the improvements himself; the taxpayers of Asheville are already over-burdened and should not have to pay for the traffic calming improvements; if project generates $1 Million in property taxes, how much will go directly back into the Shiloh community; Shiloh Community Task Force should have been informed of this request prior to being brought before City Council; Shiloh is the only historic African American neighborhood in Asheville and should be revitalized in the best interest of the entire community; traffic calming is needed in the area for the children; and the intersection of Brooklyn Road and West Chapel Road is a dangerous intersection:

Ms. Norma Baynes, representing the Shiloh Community Association
Mr. Fred English
Ms. Michael Tracy, resident in the Shiloh community
Ms. Johnnie Walker, resident on High Meadow Road
Ms. Judy Williamson, resident on Wyatt Avenue
Mr. Clyde Maurice Washington, resident on Brooklyn Road

Upon inquiry of Councilman Davis, Mr. Shuford said that the $84,000 figure is for intersection improvements and traffic calming in the area, which would be caused by the development. The Shiloh area suffers from a number of intersections with limited site distance, etc., and a good bit of that money will be for those improvements. It certainly is not sufficient to fix all the problems in the neighborhood, but we feel if we work with the neighborhood through our normal traffic calming process and with the Shiloh Task Force we can identify the correct places to apply this amount of money. He felt that $84,000 is a reasonable amount of money, given the extent of the work necessary to be done.

Using a map (City Exhibit 4), Mr. Anthony Butzek, the City's Traffic Engineer, said that they have looked preliminarily at which streets the $84,000 would go for traffic calming or intersection improvements. They have identified London Road, West Chapel Road and Brooklyn Road.

When Councilwoman Bellamy asked about the process to identify the improvements, Mr. Butzek said that anytime a traffic calming project is started, we give the community significant input in what kind of project they would like to see. Our job is primarily to offer recommendations and assistance and let the community take that information and determine what they would like to see. The entire process will take approximately 6 months to a year before implementation and he hoped the Shiloh Task Force will be involved in that process. If the Shiloh community feels that other streets should be included for traffic calming, he would explain that the City has criteria (traffic volume and traffic speeds) that they utilize for determining when a street qualifies for traffic calming. The City would suggest that the streets that meet those criteria be included.

Upon inquiry of Councilwoman Bellamy, using a map (City Exhibit 5), Mr. Shuford explained how and why City staff is suggesting the traffic calming/intersection improvement mitigation funding be through an allocation from the Housing Trust Fund.

Councilman Newman asked if there was any flexibility in the use of the $84,000 to address pedestrian traffic issues if the community would prefer that. Mr. Shuford responded that to leave the door open for the neighborhood to decide, if Council amends the conditional use permit, they should put that flexibility into whatever direction is given.

At the request of Councilman Dunn, Mr. Shuford explained how the Housing Trust Fund works and that it's a Fund that builds each year. This year we had approximately $730,000 in the Housing Trust Fund - $600,000 allocated and $130,000 of funds, which have been returned by the development community - for-profit and non-profit. He felt that if this project had made an application to the Housing Trust Fund, it would have scored very high because of the affordability range and the scale of the project.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek explained why he felt the traffic mitigation is more of a quality of life issue and safety in the Shiloh community and not a level of service issue.

When Vice-Mayor Mumpower asked how many neighborhoods in Asheville have similar traffic problems, Mr. Butzek felt that most neighborhoods have at least one street with traffic problems, but that would, of course, depend on how you define the size of neighborhoods. The traffic problems in the Shiloh community have existed a significant period of time. He does expect a noticeable traffic impact in the neighborhood with this project being built out.

Upon inquiry of Vice-Mayor Mumpower, Mr. Butzek said that $50,000 is dedicated for traffic calming on an annual basis.

Hearing no rebuttal, Mayor Worley closed the public hearing at 6:07 p.m.

Vice-Mayor Mumpower moved to modify the conditional use permit condition located at 200 Brooklyn Road to delete the condition requiring a traffic calming/intersection improvement mitigation fee of $500 per unit for Appeldoorn Condominiums and substitute conditions in lieu thereof that (1) as well as providing the traffic calming/intersection improvement mitigation funding through an allocation from the Housing Trust Fund in the amount of $84,000; (2) that the units shall have an initial sales price range as stated by the developer: One Bedroom –$69,900 – 74,900; Two Bedroom – $89,900 – 109,900; and Three Bedroom - $114,900 – 119,900; and (3) the developer shall ensure that at least 20% of the units will be sold to income-qualified buyers under 80% AMI (adjusted for family size). This motion was seconded by Councilwoman Bellamy.

After discussion about allowing flexibility of multi-modal transportation, Vice-Mayor Mumpower moved that the conditional use permit issued for Appeldoorn Condominiums on August 13, 2002, be modified as follows: (1) to remove the condition that the developer be responsible for providing for traffic calming improvements, and that the City provide for those traffic calming improvements up to the amount that the developer had originally been required to provide; (2) that the units shall have an initial sales price range as stated by the developer: One Bedroom –$69,900 – 74,900; Two Bedroom – $89,900 – 109,900; and Three Bedroom - $114,900 – 119,900; and (3) the developer shall ensure that at least 20% of the units will be sold to income-qualified buyers under 80% AMI (adjusted for family size). This amended motion was accepted and seconded by Councilwoman Bellamy.

Councilman Newman addressed his question about the flexibility in the $84,000. He felt if staff and the neighborhood feel like they are sure that the money will be well spent on traffic calming, then he would be happy for it to be for intersection improvements. He feels that the $500 per unit amount might have been an arbitrary number, but we need to keep our commitment to the neighborhood. But, considering the scale of this development in this neighborhood we might need to be doing some additional things so that the neighborhood has the infrastructure in place to support this new development and the new people living in that development have a good quality of life. He would appreciate staff working with the Task Force to hear if there is a compelling need for the City to do more on sidewalks or other kinds of infrastructure to make sure that we can support the new density that is going to be going in there.

Councilwoman Jones clarified some justice issues, which were raised.

The amended motion made by Vice-Mayor Mumpower and seconded by Councilwoman Bellamy carried unanimously.

City Attorney Oast said that he would prepare an ordinance amending the conditional use permit and bring it back to City Council for wording approval at their May 25, 2004, formal meeting on the Consent Agenda.

ORDINANCE BOOK NO. 21 – PAGE 154

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE INTENT OF HILLSIDE REGULATIONS CONCERNING NON-RESIDENTIAL USES

ORDINANCE NO. 3117 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO CLARIFY THE INTENT OF HILLSIDE REGULATIONS CONCERNING NON-RESIDENTIAL USES

Mayor Worley opened the public hearing at 6:17 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) to clarify the intent of hillside regulations concerning non-residential uses. This public hearing was advertised on April 30 and May 7, 2004.

This code amendment is a general "housekeeping" type amendment intended to clarify the intent of the hillside regulations concerning nonresidential uses. Hillside regulations address density and grading requirements for steep slope areas above a certain elevation. The current wording of the hillside regulations implies that these requirements only apply to residential uses. Since other uses, including commercial, institutional, and office uses, can occur in hillside situations, this change allows the grading requirements to apply to those types of uses.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners for review and comment.

Pro – Hillside regulations will be able to be applied to nonresidential situations in a manner consistent with how they are applied to residential situations, allowing the ordinance purposes to be met in a more effective fashion. This appears to be consistent with Council's direction at the recent goal-setting meeting.

Con – Applying hillside regulations to nonresidential situations may make it more difficult for nonresidential uses to be established in hillside situations.

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3117. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 156

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CLARIFY THE REQUIREMENTS FOR FLEXIBLE DEVELOPMENT STANDARDS

ORDINANCE NO. 3118 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO CLARIFY THE REQUIREMENTS FOR FLEXIBLE DEVELOPMENT STANDARDS

Mayor Worley opened the public hearing at 6:23 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance amending the Unified Development Ordinance to clarify the requirements for flexible development standards. This public hearing was advertised on April 30 and May 7, 2004.

This code amendment is a general "housekeeping" type amendment intended to clarify the requirements for flexible development standards. This code section has been very useful in streamlining the development review process and we are interested in making sure the requirements are as clear as possible, including the addition of corner side setbacks to the standards.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners for review and comment.

Pro – The amendment will be easier to use and the staff interpretation allowing corner side setbacks will be added.
Con – None noted.

The Planning and Zoning Commission recommended approval of this code amendment on April 7, 2004, by a vote of 5-0. City staff recommends approval of the proposed code amendment as well.

Mayor Worley closed the public hearing at 6:25 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3118. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 158

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 04-112 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A PASSENGER RAIL FACILITY

Economic Development Director Mac Williams said that this is the consideration of a resolution authorizing the City Manager to enter into a municipal agreement with the N. C. Dept. of Transportation (NC DOT) for 10% of funding for acquisition of the site for the proposed passenger rail station.

As preparation for eventual passenger rail service to Asheville, the NC DOT Rail Division is in the process of securing the site for the proposed Asheville station in Biltmore Village. Property appraisals and estimates of related costs have been completed and a project budget for this site acquisition phase has been developed. Before the State can go forward with the actual purchase, by requirement, the NC DOT and the City of Asheville must first enter into a municipal agreement outlining the roles, responsibilities, and costs each agency will incur for this phase of the project. The municipal agreement requires the City provide 10% of the project cost.

The project cost for this phase was initially estimated at $1,418,830 but had recently been updated and revised downward to $1,083,830. Thus, the required City match, initially (not to exceed) $141,883, may be revised downward to $108,383. However, in later discussion with DOT officials, they have asked that the original project estimate and 10% match continue to be the working numbers. DOT is still in negotiations and the project cost may be adjusted again up or down. While City funds are not needed immediately, the City commitment for the funding, via the municipal agreement, is requested immediately for the project to move forward. Actual funding would be contingent upon a future appropriation from City Council. An appropriation of $141, 883 is currently included in the proposed Fiscal Year 2004-05 budget.

In addition, it is envisioned that an inter-modal City transit hub could be co-located with the passenger rail station. In order to access federal funding for that portion of the facility, it is necessary to conduct a Transit Study for the Biltmore location. The study is intended to assess the suitability of the proposed location for the transit system. It will quantify transit needs. Additionally, the study will explore facility size, number of bays, etc. and explore how transit would tie in with rail as well as assess the suitability of the location for transit, in light of the needs and plans in the southern part of the city. The estimated cost for the Transit Study was $12,000 of which the City's share was $9,600. The NC DOT Rail and Transit Divisions felt the study was a priority and needed immediate funding. At its 2/24/04 formal meeting, Council approved funding for the transit study.

Mr. Williams reported on Council's visit on April 30, 2004, to Raleigh in which they visited the NC DOT Rail Division Chief and the Assistant Secretary for Transportation for Transit.

The positive impact(s) to the implementation of the recommendation include:

- Purchase of an economic development site for 10% of cost
- Demolition of existing site in preparation for construction at 10% of cost
- Potential to develop rail station at fraction of cost
- Potential to place something else prepped on site if rail does not materialize
- Small area plan for area with high potential for continued and future development
- Information concerning cost and feasibility of locating a transit sub-station at Rail Station

The negative impact(s) to the implementation of the recommendations include:

- Expenditure of city funds needed to create asset
- Possibility that this location is not optimal for transit sub-station

City staff recommends approval of the resolution authorizing the City Manager to enter into the municipal agreement.

Mr. Fred English felt that the City of Asheville does not need rail transportation.

Ms. Judith Calvert Ray, Chair of the WNC Rail Corridor Committee Chair, recognized five individuals representing the towns of Marion, Black Mountain, Old Fort, Morganton and Valdese, which are the stops from the route from Salisbury to Asheville. The Committee has submitted to Council a resolution in support of the City funding to develop a multi-modal transportation center to serve Asheville and western North Carolina. She spoke about the importance of rail service to our area.

The Honorable Everett Clark, Mayor of the Town of Marion and also Vice-Chair of the WNC Local Government Caucus, spoke in support of the passenger rail service to WNC.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 04-112. This motion was seconded by Councilwoman Bellamy.

Councilman Newman explained his reasons for his support for the rail service. He felt it has potential to be a significant regional economic development opportunity for Asheville and WNC. It's not so much about people from Asheville taking the train to Raleigh, but it offers people from all across North Carolina and all across the Country to come to Asheville. This will be a beautiful route through the mountains. He said that all forms of transportation receive public funding and none of the forms of our transportation infrastructure pay for themselves. It seems like even if the rail service never does get restored, which he hoped it will, the development of the transit center in Biltmore Village will be good for the Asheville taxpayers.

Councilman Dunn felt that the density and ridership projections are in error, but he does agree that the plan for the future to gain access to the right-of-way is important. However, his future support for additional funding will not be there for passenger rail service. He felt rail service would not help air quality unless you remove a significant number of people from the highways. For heavy rail service to work, you need a density of 5-7 million people per square mile and we are talking about 2.2 million in 26 counties. He agreed that stations along the route will have an economic benefit, but that will happen anyway, even without the subsidy. He would support the resolution because in the future the right-of-way will be needed, but he felt the State of North Carolina will be making a major mistake just for people to be able to ride a train to Raleigh.

Councilman Dunn said he was not optimist about passenger rail coming to Asheville in the near future, but he does see a need to secure the right-of-way. We may need the land for our multi-modal transit center, depending on the outcome of the study. He, too, will be hesitant to speak in favor of future efforts in this matter.

Vice-Mayor Mumpower said that his concern is that there is a lot of misinformation about heavy rail, one of which is the subsidies for heavy rail across the country. From information received, the impact on I-240 of this recreational rail effort will be minimal. There are significant concerns about how reliable the federal dollars will be and for us to dedicate too far into the process without a little more reliability is a concern. Our density in North Carolina does not match density that is typically required for even reasonable success with a heavy rail system. From different sources of information, he has found that Europe, which is cited as a model of rail excellence, has increasingly gotten away from rail and is considering America the model with privately owned vehicles. We need to proceed with caution. According to DOT, this rail services is about 10 years out and that is a long time. The 90% is still tax money. We don't have a recreational rail service crisis in North Carolina, but we have other crises that "shout louder" than rail service. He does like trains, but he has a hard time in going forward with tremendous enthusiasm. The two pros he sees however, is (1) we need to keep our options open and buy the property and not build anything on it; and (2) supporting our neighbors is also a positive thing.

Councilwoman Jones supported the motion with enthusiasm. She received encouraging data from her visit to Raleigh about the passenger rail service breaking even by covering its operating costs. She was also encouraged to see how well NC DOT was using its small slice of money and still producing. She is convinced that there will be more economic development and it will have a regional impact.

Mayor Worley pointed out that it is Council's decision is whether or not to invest 10% of the cost of acquiring property that will be available for our use for future rail service, if it comes. The decision to bring rail service to Asheville is the State's decision. He would support rail service coming to Asheville because he felt it would be very beneficial to Asheville and its citizens and also to the region.

The motion made by Councilman Newman and seconded by Councilwoman Bellamy carried unanimously.

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V. NEW BUSINESS:

A. ZONING STUDY OF THE ST. DUNSTAN'S AREA

Planning & Development Director Scott Shuford said that this is the consideration of a request from property owners for a zoning study for a portion of the St. Dunstan's neighborhood located off Biltmore Avenue south of the hospital.

Section 7-7-2 of the Unified Development Ordinance (UDO) provides property owners with a method to petition Council to authorize a zoning study for property not entirely owned by them. The code requires that a certain percentage (51%) of property owners join the request and, in this case, the percentage has been reached. The petition process does not require Council to ask staff to undertake the zoning study; it only requires that Council consider the request.

The area is described on a map labeled Map #1. In the staff's opinion, the request area does not contain all relevant property that should be examined in a zoning study, so if Council directs that we analyze the zoning of this neighborhood, we recommend that the area be expanded to that illustrated on a map labeled Map #2.

The request is prompted by the underlying zoning of the neighborhood, RS-8, that corresponds well with the existing setbacks for most lots and with the lot sizes of the smaller properties in the neighborhood. However, there is concern that existing larger lots could be further subdivided to create additional smaller lots under the existing zoning; this has in fact happened on a couple of occasions. The petitioners would prefer a zoning designation of RS-4, even though that zoning district would create some nonconformities with setbacks and lot sizes. Map #1 indicates the properties whose owners are in support and those opposed to the zoning change.

Pro – The zoning study would enable the issue about the appropriate zoning of this neighborhood to be decided by City Council.
Con – The study will consume limited staff resources that could be devoted to other projects.

City staff recommends that if City Council determines that a zoning study of the St. Dunstan's area is to be conducted, that the area be expanded to that illustrated on Map #2.

Upon inquiry of Vice-Mayor Mumpower, it will not be a major staff effort to study the larger area but it will consume time on the Planning & Zoning Commission's agenda along with time on the City Council's agenda.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford suggested that if Council directs a zoning study be performed that it be with the understanding that if are any properties that will be split zoned in the area that the entire parcel be include the study area.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that one of the issues that staff has identified has been the fact that there will be setback problems created going from an RS-8 to and RS-4 district. Our preliminary analysis of the study is that about half of the people who want the study will find that their setbacks will be made non-conforming by what they have asked for. But, by the same token, this may be an opportunity for some education of the neighborhood regarding the consequences of their proposal. There may be a way for staff to come up with a creative idea that might address the needs of those opposed to it in order for them to get appropriate use of their property and at the same time address some of the concerns being raised by the neighborhood.

Vice-Mayor Mumpower asked how consistent would this be with the trends in our 2025 Plan. Mr. Shuford said the Plan includes policies and strategies that address further densification in many cases in corridor areas of the City and in appropriate neighborhoods. But it also contains language that addresses the need to make sure existing neighborhoods remain stable. He felt you can make an argument using the 2025 Plan both for and against of what is being proposed.

Mr. Shuford responded to Vice-Mayor Mumpower by saying that given the Planning & Development Department's workload, their enthusiasm on conducting the study would be margin.

Councilman Davis said that historically, there have been zoning problems in that neighborhood and if we deal with those issues in a piecemeal fashion, it will probably take more time and resources. Mr. Shuford said that he has had several requests for staff to initiate a study and now the neighborhood has gotten sufficient support to at least study a portion of the area. He said it may well be good to address this issue head-on and have Council make a decision, which may be timesaving in the long run.

Upon inquiry of Vice-Mayor Mumpower, Mr. Shuford said that not counting the time spent in public meetings or going to a neighborhood meeting, he felt it would be about 20-40 hours worth of staff time to complete the study. Roughly it would be a weeks worth of work for one person.

Councilwoman Bellamy moved to direct staff to conduct an expanded zoning study of the St. Dunstan's area with the understanding that if staff has left off a part of the property through the designation of the boundaries that staff would expand that to include the entire property. This motion was seconded by Councilman Davis.

Councilman Newman felt there will be some very significant development issues in our City that will take a lot of staff time. When he looks at all the growth and development challenges facing Asheville right now that are on the front burner, it will take a lot of leadership from our Planning Department staff. With no lack of sympathy for the concerns of the neighborhood, he would prefer to have the Planning Department focus their resources on those priorities issues for Council right now.

Councilwoman Bellamy said that the study would take only one week and it will point out what is happening in that community and with community input, what could happen in that community.

Vice-Mayor Mumpower felt we may be getting in the middle of a neighborhood issue in terms of who wants to do what with their neighborhood and he has hesitancies in funding that kind of effort.

Mayor Worley expressed concerns of the study as well, most importantly the creation of substantial nonconformities within the neighborhood.

The motion made by Councilwoman Bellamy and seconded by Councilman Davis failed on a 3-4 vote, with Councilwoman Bellamy, Councilman Davis and Councilwoman Jones voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Dunn and Councilman Newman voting "no."

VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of April 23-May 6, 2004: Sharon Stevens (Water), Chris Johnson (Streets), Gwendolyn Walker (Streets), Michele Souma (Police) and Asheville High School (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English comments on why the City of Asheville should not allow public access television.

At 7:12 p.m., Mayor Worley left the meeting.

Ms. Jan Howard questioned the item on the consent agenda regarding the City's ability to convey an easement to Councilman Dunn over a portion of City-owned property on Kenilworth Road.

Mr. Joseph Smith presented City Council with information about his employment records at the ABC Agency. Basically Mr. Smith felt that since City Council appointed the ABC Board that they would hear his side of the story and help him get his job back.

Mr. Mike Fryar expressed concern about the recent annexation of his property on Smoky Park Highway, about the zoning laws in the extra-territorial jurisdiction area, and about the need for more police officers in the City.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:20 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 18, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Jan B. Davis

CONSENT AGENDA:

Ten-Year Plan to End Homelessness Appointments

Summary: The consideration of a resolution to create a City-County Task Force to develop a Ten-Year Plan to End Homelessness and appointment of suggested Steering Committee members.

On March 23, City Council approved the formation of a joint City-County Steering Committee to develop a Ten-Year Plan to End Homelessness. The Downtown Social Issues Task Force stated at that time that they would come back to Council with a suggested list of appointees. Staff and Task Force members have worked to develop a list of suggested appointees that will represent the agencies critical to the writing and implementation of the Plan.

The Task Force will be presenting their recommendation and list of appointees to the Buncombe County Commissioners at their June 1, 2004, meeting. It is hoped that the Steering Committee will start meeting early in June.

Advantages:

- Key agencies from the County, the City and the private sector will be represented on the Steering Committee to oversee the preparation of the Ten Year Plan to End Homelessness. Investment of these agencies is critical to the implementation and success of the resulting plan.

Disadvantages:

- None noted

City staff recommends the adoption a resolution to create a City-County Task Force to develop a Ten-Year Plan to End Homelessness and appointment of suggested Steering Committee members.

Councilwoman Jones felt the Steering Committee was a little too heavy on the provider end and would like to narrow the service providers a bit and add some stakeholders with corporate clout. She suggested Council identify someone with visibility from the business world to chair or co-chair the initiative.

Discussion surrounded the size of the Steering Committee and the reasons behind the suggested members, who suggested the members, and the pattern of change in the mental health area.

Ms. Caplan said that the plan will come back to Council in draft form from the Steering Committee.

Vice-Mayor Mumpower personally had apprehensions about the realism of this effort, but would be comfortable with "putting eyes on it" and exploring possibilities, but with the understanding that any plan developed City Council will vote on it in a visible fashion.

It was the consensus of City Council to add three additional people from the corporate section (business representatives). Ms. Caplan invited City Council suggestions for those three positions.

Contract Renewal with Ball-Janik

Summary: The consideration of a resolution authorizing the City Manager to renew the contract with Ball-Janik, LLP, for the provision of federal representation services.

The City of Asheville entered into the initial contract with Ball-Janik in April 2003 for a 12-month period. In doing so, it was suggested at that time to consider the approach of engaging federal representation for at least three years but using annual contracts. The initial contract called for monthly payments of $5,000 "inclusive" of out-of-pocket expenses. The renewal contract is the same except that Ball-Janik is now asking for out-of-pocket expenses to be "exclusive" of the $5,000 monthly fee. Ball-Janik is proposing that out-of-pocket expenses would not exceed $5,000 annually.

The current Fiscal Year 2004-05 City budget proposal includes adequate funding for this proposed contract.

Support statement:
- Representation services enhance positioning of and advocacy for City agenda items by our own elected representatives as well as other Members of Congress and their staffs who also have influence over decisions affecting City agenda items.

Challenge statement:
- Representative Taylor, in particular, as a member of the House Appropriations Committee, is uniquely positioned to respond to City funding requests without the need for City funding of professional representation services.

Staff recommends approval of the resolution authorizing the City Manager to renew the contract with Ball-Janik, LLP, for the provision of federal representation services.

When Councilman Dunn asked if there have been any monies obtained for the City that we can directly attribute to our consultant's involvement, Mr. Williams said that there have been two specific funding earmarks for projects. One for $300,000 for a new transit bus and the other is $2,000,000 for traffic signal upgrades.

Upon inquiry of Councilman Dunn, Mr. Williams said that to date the City has paid Ball-Janik $5,000 for 12 months, for a total of $60,000.

Mr. Williams said that monies obtained for the City that can be indirectly attributed to Ball-Janik's involvement include: (1) they lobbied for inclusion of language in the reauthorization of the federal transportation bill known as TEA-21 which extends flexibility to Asheville and the Asheville Transit System to use federal transit funds for operational assistance. Without this legislative fix, the Asheville Transit System would lose approximately $800,000 in federal funding that it now receives for operational assistance. This effort has been ongoing as Congress continues to debate the reauthorization of TEA-21. (2) they supported two additional earmarks that made their way into Omnibus spending bill – a $1 million earmark to NC DOT for the WNC Passenger Rail Initiative which will be distributed to transit systems throughout the state for buses and bus facilities.

Mr. Williams also promote the City's priorities to the Congressional delegation staff, subcommittee, committee staff and the delegation members on a regular, sustained and on-going basis. Given the time pressures placed on the members of the Congressional delegation, considerable behind-the-scenes work takes place at the staff level and our lobbyists work hard to maintain and build strong relationships with delegation and committee staff. In doing so, they are able to gain access to these staff at critical points in the legislative process and to remind them of the City's funding priorities.

Mayor Worley explained Ball-Janik's support during a trip to Washington. He felt they are instrumental in keeping Asheville's funding priorities in the forefront.

Community Meeting – June 29, 2004 – North Asheville Community Center

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

TRANSPORTATION ENHANCEMENT GRANT APPLICATIONS

Mr. Dan Baechtold, MPO Coordinator, said that this is the consideration of a (1) resolution authorizing the City Manager to apply for grants from the N.C. Dept. of Transportation (NCDOT), through the Transportation Enhancement Program, for New Haw Creek Road Sidewalk Improvements - Phase II, and for the French Broad Greenway Trail along Riverside Drive; and (2) resolution for City sponsorship of grant applications from Pack Square Conservancy and Mountain Housing Opportunities.

Every two years, the NCDOT puts out a call for applications for transportation enhancement funds. These are federal funds for projects in specific categories such as pedestrian and bicycle improvements, streetscape improvements, beautification, and water quality improvements. If a project is awarded through the state selection process, costs are reimbursed at a rate of eighty percent (80%). The local match is twenty percent (20%).

Any public or private agency may apply for these funds, but each application must have a local government agency as the sponsor. In past years, the City of Asheville has received enhancements funds for projects such as the Urban Trail and the Weaver Boulevard Greenway. In 2002, the City received a grant for sidewalk improvements on New Haw Creek Road. Also in 2002, the City sponsored applications from the Pack Square Conservancy and Mountain Housing Opportunities. All three of these projects were partially funded in 2002. Construction will begin on these projects this year.

This year, the City of Asheville has prepared two applications: 1) Phase II of sidewalk improvements on New Haw Creek Road. 2) French Broad Greenway Trail on the Progress Energy site located along Riverside Drive. If awarded, the City of Asheville will provide the local match of twenty percent (20%) for both of these projects. If both projects are funded, the total City of Asheville match required would be $43,000.

In addition to the application from the City of Asheville, both the Pack Square Conservancy and Mountain Housing Opportunities are applying for additional funding. The City of Asheville would be the local government sponsor for these applications. The City is not responsible for the local match for these two projects. The match will be provided by the applying agency. For these applications, the City of Asheville will be responsible for maintenance of any improvements that fall within public right of way, and may provide staff support for project implementation.

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The NCDOT will review applications and award Enhancements Grants in the Fall of 2004. Listed below are summaries of the four grant applications presented for approval.

1. New Haw Creek Road Sidewalk Improvements – Phase II
   City of Asheville Match: $ 25,000
   Enhancement Funds Requested: $ 229,200
   Total Project Cost: $ 354,200 (Total project cost with other match sources)

   Project Description: The proposed project entails construction of sidewalk, curb, gutter and storm drainage along the south side of New Haw Creek Road from Arco Road west to the end of the NCDOT right-of-way. This project is adjacent to a Phase I project partially funded by a 2002 Enhancement Grant.

2. French Broad Greenway Trail on Progress Energy Site – Riverside Industrial District
   City of Asheville Match: $ 18,000
   Enhancements Funds Requested: $ 72,000
   Total Project Cost $ 90,000

   Project Description: This greenway path project will complete another portion of the French Broad River Greenway that will be the primary north-south bicycle and pedestrian route in the City of Asheville. This 700 linear foot bike path segment will eventually be united with other greenway routes along the French Broad River and throughout the City of Asheville. Progress Energy currently owns the property that will be conveyed to the City of Asheville in 2004. The project site is bounded by Riverside Drive to the East and the French Broad River on the west. The property is comprised of existing Jean Webb Park and an undeveloped parcel that will be developed as a municipal park in the future.

3. Pack Square Streetscape Improvements – Phase II and III
   City of Asheville Match: None
   Match by Pack Square Conservancy: $ 69,949
   Enhancements Funds Requested: $ 279,796
   Total Project Cost: $ 349,745

   Project Description:

   Phase II – Intersection of Biltmore Avenue and Patton Avenue to the west of Pack Square. Improvements include realigning the current on-street parking from diagonal to parallel spaces in an effort to make the intersection safer. Work will be comprised of new crosswalks located at the corners, sidewalks, curbing, and asphalt paving.

   Phase III – Spruce Street, bisecting the center of the new park. This 155-linear foot segment of street will be resurfaced with decorative pavers to indicate it as a special route and encourage slower speeds by vehicular traffic. The pavers will also allow the space to be used as a pedestrian plaza during special events in the park. Other improvements include new curbs, sidewalks, and ADA ramps to work with the new layout and increase safety.

4. Clingman Avenue Streetscape and Greenway – Phase II
   City of Asheville Match: None
   Match by Mountain Housing Opportunities (and other sources): $ 57,780
   Enhancement Funds Requested: $ 231,120
   Total Project Cost: $ 288,900

Project Description: This project proposes a continuation of streetscape improvements along the Clingman Avenue and Haywood Road Corridor. This project includes the design and construction of a single-lane, traffic circle at the intersection of Haywood Road and Roberts Street, which will include sidewalks and pedestrian crossings. A second component of this project includes the design and layout of a greenway on the southern side of the West Asheville RiverLink Bridge over to Haywood Road. The greenway will include barriers separating pedestrians from vehicular traffic movement. Along with the greenway, the pedestrian area will feature benches, a sun shelter and safe crosswalks. The West Asheville RiverLink Bridge, one of three crossings over the French Broad River serving west Asheville has been traditionally the favorable route for pedestrian and bicycle transit commuters to and from downtown. These changes will enhance the existing corridor and reinforce its identity as Asheville's gateway to the riverfront and West Asheville. The proposal will create a safer intersection solution at Haywood Road and Roberts Street and provide over 1,000 feet of on-road greenway into west Asheville.

CONSIDERATIONS:

- If awarded, these grants will bring in federal funds to complete transportation projects in the City of Asheville.
- A local cash match of 20% is required on all of the projects. The City of Asheville would only be responsible for the cash match on two of the projects.
- This is a competitive process across the State of North Carolina. If the money is not awarded to local projects, it will be spent on enhancements in other Counties.
- Staff time will be required to manage and implement the projects.
- City of Asheville will assume maintenance responsibilities for the improvements that are installed. In the case of Pack Square improvements, however, the Conservancy is taking steps to provide for long-term maintenance.

City staff recommends City Council (1) approve a resolution authorizing the City Manager to apply to the State of North Carolina for grant applications for New Haw Creek Road Sidewalk Improvements – Phase II, and for the French Broad Greenway Trail; and (2) approve a resolution designating the City of Asheville as the local government sponsor for grant applications for Pack Square Streetscape Improvements – Phase II and III, and Clingman Avenue Streetscape and Greenway – Phase II.

Upon inquiry of Councilman Newman, Mr. Baechtold explained how the funding for our division is decided, which limits the number and size of projects the City of Asheville can apply for. Parks & Recreation Director Irby Brinson also explained how the City of Asheville decides which projects move forward. He said that the projects have to be built to NC DOT specifications so they could not submit the Reed Creek Greenway as one of the projects, due to the topography around the Creek.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place these items on the next formal City Council agenda.

UPDATE ON THE JOINT PLANNING AREA

City Attorney Bob Oast updated City Council on the progress of City staff discussions with the Buncombe County staff regarding the Joint Planning Area (JPA), and the joint meetings between the City's Planning and Zoning Commission and the Buncombe County Planning Board, also regarding the JPA.

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Legal Issues. Back in February, the City Attorney prepared a draft of an interlocal agreement for the implementation of the JPA designation and ordinance adoption. This draft was based on discussions with Council and among the City and County staffs.

The County staff has reviewed the draft agreement and noted a few procedural and other issues that will need to be addressed. These were covered in my March 17, 2004, report to Council. One of the issues was transmitting the JPA ordinances from the planning agencies of the City and County to the governing boards. The draft JPA interlocal agreement provided for recommendations to be forwarded from the City and County planning commissions to the Council and Commissioners within a certain time period, or it would be forwarded automatically. Under State law applicable to counties; however, the County planning board must certify the ordinance to the Commissioners before the Commissioners can act on it. There is no parallel requirement for cities.

Largely for this reason, efforts have been refocused on working with the two planning boards to arrive at some agreement as to the ordinance to be forwarded to the governing bodies. The City and County staffs and planning commissions have continued to meet with this end in mind, but have failed to come to agreement yet on some issues that are important to both the City and the County. It is fair to say that those meetings have been – of necessity – detail-oriented discussions, and that they have taken considerable time, involving review of multiple drafts.

Planning & Development Director Scott Shuford said that the City Planning and Engineering staff continue to meet periodically with County staff and with both the City and County planning boards. The planning boards are meeting jointly at least once a month. They are methodically going through the draft JPA ordinance, making progress in both understanding its provisions and in making adjustments to it for both practicality and to meet certain basic policy goals (such as the JPA ordinance should generally not be more strict than the Unified Development Ordinance (UDO)).

City staff continues to hold firm on a few critical issues in our discussions with both the County staff and planning boards. These issues are listed below. Mr. Shuford will keep Council apprised of anything that appears to be moving us off these key issues.

- Large-scale development needs a heightened level of review to ensure that its infrastructure impacts are mitigated (including traffic impact analysis), that it generally fits the community character of the area where it is proposed to be located, and that its environmental impacts are addressed.

- Policy-related matters, such as Board of Adjustment (BOA) makeup, procedures for amending the zoning map and text, initial size and future expandability of the JPA, etc. must be consistent with earlier policy-level agreements between the Council and Commission.

- Infrastructure standards must be sufficient to ensure appropriate durability and function consistent with anticipated ultimate City responsibility for this infrastructure, with building and life-safety codes, with existing and anticipated future federal mandates, and with City Fire Insurance Service Office (ISO) ratings.

City staff is starting to see the need for a few additions to the JPA to provide greater flexibility for those property owners wanting to do higher quality development. We may shortly be broaching the idea of including opportunities for conservation subdivisions (where overall development is concentrated in a relatively small portion or portions of the property, allowing the remainder of the site to be undisturbed) and a City UDO overlay zone (where a developer could request review under the provisions of the UDO rather than the JPA code).

Assuming that our differences with the County can be worked out, we will come to Council with a revised draft of the JPA interlocal agreement that reflects a new timetable for adoption and implementation, and addresses the other procedural issues that have been identified. At that time, the ordinances should be ready for transmittal to the governing boards. In essence, then, the planning boards are already deep into one of the phases of initial adoption that are outlined in the draft interlocal agreement. Accordingly, at least one of the steps outlined in the draft interlocal agreement for initial adoption of the JPA will have been completed, and it may be possible to remove it from the agreement.

Discussion surrounded a possible deadline of bring the interlocal agreement to the County Commissioners and City Council. City Attorney Oast explained that City Council deals with zoning every week, but it is a different concept for the Commissioners. Mr. Shuford felt that the meetings have been constructive and there has been no foot-dragging.

Vice-Mayor Mumpower wondered, since there are some key issues still pending, if it would be beneficial to bring those key issues to the Council to provide some policy support. He understands that the City is taking the lead role and being creative, positive and proactive, but suggested if a compromise can't be reached within a reasonable period of time (perhaps 30-60 days) that staff report back to Council for additional policy discussion.

Councilman Newman felt that as long as staff feels the meetings are productive, he would not be in favor of giving staff a different direction. However, if there is an impasse, then he felt a discussion on how to proceed would be warranted.

Councilman Dunn wanted to make sure that we don't bog ourselves down with too many regulations, some of which are already covered by various other Codes, e.g. State Building Code.

Mr. Shuford assured Council that if they feel they need additional policy direction they will bring the issues back to Council.

At 4:20 p.m., Mayor Worley announced a short break.

CITY COUNCIL'S STRATEGIC OPERATING PLAN

Mayor Worley said that this is the result of Council's retreat and planning sessions over the past several months culminating into the development of Council's vision and Strategic Plan. He said there was great Council participation in that process.

There was discussion on the various goals, objectives and tasks, which included fine-tuning, additions, corrections, suggestions, etc. which were noted by City staff for revision prior to the next formal meeting.

Vice-Mayor Mumpower said that he would be voting against the Plan. He pointed out that when you look at specific content that is in the Plan, to sign off on it requires that we all support things that we don't necessarily agree with. Council as a whole has decided that we are willing to compromise or bend in certain areas in order to have a collective voice, which takes the City forward. He is not sure that that approach serves us or that we will honor it. He is hard-pressed to understand to what good place this document is going to take us. He recognizes the work that people have put into it, but he sees an effort to pull us together on paper that has not been supported in action and will not be supported from this point forth. He felt this document is about building a bigger government and it dances around services and emphasizes some good things and some not good things. He personally would like to see Council have a strategic plan, but he thinks it should be one that emphases what we really do – core services (things that people can't do for themselves), and not these other activities that may have value but, to him, just expand the cities government. An example is the discussion we have had about drug interdiction and public safety. He feels this document goes around those core services and not having an emphasis on those at all. He did emphasized that this is not personal and he does not feel bad toward any Council member because we disagree. But, he does feel it's a responsibility for all of Council to voice their philosophical position and then let the process move forward by a vote, which the majority then takes it forward.

Councilman Newman questioned what, in the Plan, is inappropriate for the City to deal with or outside the realm of what is Council's job is to do.

Councilman Dunn agreed that the document is not perfect and will always be subject to change. However, he does think the document contains basic thoughts and good ideas. He did stress that there will never been a united voice on every issue.

Mayor Worley echoed Councilman Dunn's thoughts. He also felt it goes chart a good future for Asheville.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

BOARD/COMMISSION VACANCIES

It was the consensus of City Council to direct the City Clerk to prepare the proper paperwork for an appointment to the Civil Service Board.

It was the consensus of City Council to postpone taking action on the Downtown Commission vacancy until June 15, 2004, in order to give the Commission an opportunity to make a recommendation.

It was the consensus of City Council to direct the City Clerk to arrange interviews for two vacancies on the URTV Inc. Board of Directors.

MISCELLANEOUS

After a brief discussion, it was the consensus of City Council to have the City Attorney bring to them the draft management agreement on URTV in order for Council to give input and direction, prior to any negotiations with the URTV Inc. Board of Directors.

CLOSED SESSION

At 5:40 p.m., Councilman Dunn moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Carolina Power & Light Company, City of Asheville, Lamar Outdoor Advertising, and Morris Communications d/b/a Fairway Outdoor Advertising. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:18 p.m., Vice-Mayor Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:18 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – May 25, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Veteran from the U.S. Marine Corp Danny Roberts led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF CITY OF ASHEVILLE RESERVISTS

On behalf of City Council, Mayor Worley recognized Darrell McCurry and Brian Freelan, employees with the Asheville Police Department who have recently returned from military service in the 211th Military Police Company.

B. PROCLAMATION PROCLAIMING THE WEEK OF JUNE 5-12, 2004, AS "NATIONAL NEIGHBORWORKS WEEK"

Councilman Davis read the proclamation proclaiming June 5-12, 2004, as "National NeighborWorks Week" in the City of Asheville. He presented the proclamation to Mr. William Sewell, Interim Executive Director of Neighborhood Housing Services, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Mayor Worley, Councilwoman Bellamy moved to continue Consent Agenda E until the Consent Agenda on June 8, 2004. This motion was seconded by Councilman Davis and carried unanimously.

Councilwoman Bellamy asked that Consent Agenda Item H be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 11, 2004, AND THE WORKSESSION HELD ON MAY 18, 2004

Councilman Davis asked that the May 18, 2004, minutes be amended to delete his presence at the meeting.

B. RESOLUTION NO. 04-113 - RESOLUTION ADOPTING A JOINT RESOLUTION WITH BUNCOMBE COUNTY TO CREATE A CITY-COUNTY TASK FORCE TO DEVELOP A 10-YEAR PLAN TO END HOMELESSNESS AND STEERING COMMITTEE MEMBERS

Summary: The consideration of a resolution to create a City-County Task Force to develop a Ten-Year Plan to End Homelessness and appointment of suggested Steering Committee members.

On March 23, City Council approved the formation of a joint City-County Steering Committee to develop a Ten-Year Plan to End Homelessness. The Downtown Social Issues Task Force stated at that time that they would come back to Council with a suggested list of appointees. Staff and Task Force members have worked to develop a list of suggested appointees that will represent the agencies critical to the writing and implementation of the Plan.

The Task Force will be presenting their recommendation and list of appointees to the Buncombe County Commissioners at their June 1, 2004, meeting. It is hoped that the Steering Committee will start meeting early in June.

Advantages:

- Key agencies from the County, the City and the private sector will be represented on the Steering Committee to oversee the preparation of the Ten Year Plan to End Homelessness. Investment of these agencies is critical to the implementation and success of the resulting plan.

Disadvantages:

- None noted

City staff recommends the adoption a resolution to create a City-County Task Force to develop a Ten-Year Plan to End Homelessness and appointment of suggested Steering Committee members.

RESOLUTION BOOK NO. 28 – PAGE 258

C. MOTION SETTING A PUBLIC HEARING ON JUNE 8, 2004, TO CONSIDER ADOPTION OF THE FISCAL YEAR 2004-05 ANNUAL OPERATING BUDGET

D. RESOLUTION NO. 04-114 – RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO INCLUDE A COMMUNITY MEETING ON JUNE 29, 2004, AT THE NORTH ASHEVILLE COMMUNITY CENTER

RESOLUTION BOOK NO. 28 – PAGE 259

E. APPROVE FORM OF ORDINANCE NO. 3116 – ORDINANCE AMENDING THE CONDITIONAL USE PERMIT OF APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD

This matter was continued until the Consent Agenda on June 8, 2004.

F. RESOLUTION NO. 04-115 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Summary: The term of Sophie Dixon, as a member of the Civil Service Board, expired on May 21, 2004.

It is the consensus of City Council to reappoint Ms. Dixon, as a member of the Civil Service Board, to serve an additional two-year term. Her term will expire May 21, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 260

G. RESOLUTION NO. 04-116 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO THE N.C. DEPT. OF TRANSPORTATION FOR GRANTS FOR (1) NEW HAW CREEK ROAD SIDEWALK IMPROVEMENTS – PHASE II; AND FRENCH BROAD GREENWAY TRAIL IN THE RIVERSIDE INDUSTRIAL DISTRICT

Mr. Dan Baechtold, MPO Coordinator, said that this is the consideration of a (1) resolution authorizing the City Manager to apply for grants from the N.C. Dept. of Transportation (NCDOT), through the Transportation Enhancement Program, for New Haw Creek Road Sidewalk Improvements - Phase II, and for the French Broad Greenway Trail along Riverside Drive; and (2) resolution for City sponsorship of grant applications from Pack Square Conservancy and Mountain Housing Opportunities.

Every two years, the NCDOT puts out a call for applications for transportation enhancement funds. These are federal funds for projects in specific categories such as pedestrian and bicycle improvements, streetscape improvements, beautification, and water quality improvements. If a project is awarded through the state selection process, costs are reimbursed at a rate of eighty percent (80%). The local match is twenty percent (20%).

Any public or private agency may apply for these funds, but each application must have a local government agency as the sponsor. In past years, the City of Asheville has received enhancements funds for projects such as the Urban Trail and the Weaver Boulevard Greenway. In 2002, the City received a grant for sidewalk improvements on New Haw Creek Road. Also in 2002, the City sponsored applications from the Pack Square Conservancy and Mountain Housing Opportunities. All three of these projects were partially funded in 2002. Construction will begin on these projects this year.

This year, the City of Asheville has prepared two applications: 1) Phase II of sidewalk improvements on New Haw Creek Road. 2) French Broad Greenway Trail on the Progress Energy site located along Riverside Drive. If awarded, the City of Asheville will provide the local match of twenty percent (20%) for both of these projects. If both projects are funded, the total City of Asheville match required would be $43,000.

In addition to the application from the City of Asheville, both the Pack Square Conservancy and Mountain Housing Opportunities are applying for additional funding. The City of Asheville would be the local government sponsor for these applications. The City is not responsible for the local match for these two projects. The match will be provided by the applying agency. For these applications, the City of Asheville will be responsible for maintenance of any improvements that fall within public right of way, and may provide staff support for project implementation.

The NCDOT will review applications and award Enhancements Grants in the Fall of 2004. Listed below are summaries of the four grant applications presented for approval.

1. New Haw Creek Road Sidewalk Improvements – Phase II
   City of Asheville Match: $ 25,000
   Enhancement Funds Requested: $ 229,200
   Total Project Cost: $ 354,200 (Total project cost with other match sources)

   Project Description: The proposed project entails construction of sidewalk, curb, gutter and storm drainage along the south side of New Haw Creek Road from Arco Road west to the end of the NCDOT right-of-way. This project is adjacent to a Phase I project partially funded by a 2002 Enhancement Grant.

2. French Broad Greenway Trail on Progress Energy Site – Riverside Industrial District
City of Asheville Match: $ 18,000
Enhancements Funds Requested: $ 72,000
Total Project Cost $ 90,000

Project Description: This greenway path project will complete another portion of the French Broad River Greenway that will be the primary north-south bicycle and pedestrian route in the City of Asheville. This 700 linear foot bike path segment will eventually be united with other greenway routes along the French Broad River and throughout the City of Asheville. Progress Energy currently owns the property that will be conveyed to the City of Asheville in 2004. The project site is bounded by Riverside Drive to the East and the French Broad River on the west. The property is comprised of existing Jean Webb Park and an undeveloped parcel that will be developed as a municipal park in the future.

3. Pack Square Streetscape Improvements – Phase II and III
City of Asheville Match: None
Match by Pack Square Conservancy: $ 69,949
Enhancements Funds Requested: $ 279,796
Total Project Cost: $ 349,745

Project Description:

Phase II – Intersection of Biltmore Avenue and Patton Avenue to the west of Pack Square. Improvements include realigning the current on-street parking from diagonal to parallel spaces in an effort to make the intersection safer. Work will be comprised of new crosswalks located at the corners, sidewalks, curbing, and asphalt paving.

Phase III – Spruce Street, bisecting the center of the new park. This 155-linear foot segment of street will be resurfaced with decorative pavers to indicate it as a special route and encourage slower speeds by vehicular traffic. The pavers will also allow the space to be used as a pedestrian plaza during special events in the park. Other improvements include new curbs, sidewalks, and ADA ramps to work with the new layout and increase safety.

4. Clingman Avenue Streetscape and Greenway – Phase II
City of Asheville Match: None
Match by Mountain Housing Opportunities (and other sources): $ 57,780
Enhancement Funds Requested: $ 231,120
Total Project Cost: $ 288,900

Project Description: This project proposes a continuation of streetscape improvements along the Clingman Avenue and Haywood Road Corridor. This project includes the design and construction of a single-lane, traffic circle at the intersection of Haywood Road and Roberts Street, which will include sidewalks and pedestrian crossings. A second component of this project includes the design and layout of a greenway on the southern side of the West Asheville RiverLink Bridge over to Haywood Road. The greenway will include barriers separating pedestrians from vehicular traffic movement. Along with the greenway, the pedestrian area will feature benches, a sun shelter and safe crosswalks. The West Asheville RiverLink Bridge, one of three crossings over the French Broad River serving west Asheville has been traditionally the favorable route for pedestrian and bicycle transit commuters to and from downtown. These changes will enhance the existing corridor and reinforce its identity as Asheville's gateway to the riverfront and West Asheville. The proposal will create a safer intersection solution at Haywood Road and Roberts Street and provide over 1,000 feet of on-road greenway into west Asheville.

CONSIDERATIONS:

- If awarded, these grants will bring in federal funds to complete transportation projects in the City of Asheville.
- A local cash match of 20% is required on all of the projects. The City of Asheville would only be responsible for the cash match on two of the projects.
- This is a competitive process across the State of North Carolina. If the money is not awarded to local projects, it will be spent on enhancements in other Counties.
- Staff time will be required to manage and implement the projects.
- City of Asheville will assume maintenance responsibilities for the improvements that are installed. In the case of Pack Square improvements, however, the Conservancy is taking steps to provide for long-term maintenance.

City staff recommends City Council (1) approve a resolution authorizing the City Manager to apply to the State of North Carolina for grant applications for New Haw Creek Road Sidewalk Improvements – Phase II, and for the French Broad Greenway Trail; and (2) approve a resolution designating the City of Asheville as the local government sponsor for grant applications for Pack Square Streetscape Improvements – Phase II and III, and Clingman Avenue Streetscape and Greenway – Phase II.

RESOLUTION BOOK NO. 28 – PAGE 261

H. RESOLUTION DESIGNATING THE CITY OF ASHEVILLE AS THE LOCAL GOVERNMENT SPONSOR FOR GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY INC. AND MOUNTAIN HOUSING OPPORTUNITIES TO THE N.C. DEPT. OF TRANSPORTATION THROUGH THE TRANSPORTATION ENHANCEMENTS PROGRAM

This item was pulled from the Consent Agenda due to a conflict of interest.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTE

RESOLUTION NO. 04-117 - RESOLUTION DESIGNATING THE CITY OF ASHEVILLE AS THE LOCAL GOVERNMENT SPONSOR FOR GRANT APPLICATIONS FROM PACK SQUARE CONSERVANCY INC. AND MOUNTAIN HOUSING OPPORTUNITIES TO THE N.C. DEPT. OF TRANSPORTATION THROUGH THE TRANSPORTATION ENHANCEMENTS PROGRAM

For summary see Consent Agenda Item G above.

Councilman Dunn moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilwoman Jones moved to adopt Resolution No. 04-117. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 262

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED OFF WHITE PINE DRIVE FOR THE CONSTRUCTION OF A 60 UNIT APARTMENT COMPLEX (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley said that a letter has been received from Mr. Robert M. Grasso, on behalf of the developer Virginia May, requesting a continuance of the hearing until July 27, 2004.

Councilman Dunn moved to continue the public hearing until July 27, 2004. This motion was seconded by Councilwoman Bellamy and carried unanimously.

B. PUBLIC HEARING TO CONSIDER CLOSING A PORTION OF AN UNOPENED SECTION OF APPALACHIAN WAY

RESOLUTION NO. 04-118 - RESOLUTION CLOSING A PORTION OF AN UNOPENED SECTION OF APPALACHIAN WAY

Mayor Worley opened the public hearing at 5:18 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close a portion of an unopened section of Appalachian Way. This public hearing was advertised on April 30, May 7, 14 and 21, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, City of Asheville staff has initiated a request to close a portion of an unopened section of Appalachian Way. The closing of this portion of right-of-way will facilitate the realignment and connection of a greenway to a proposed extension of Oakcrest Place.

Closure of this section of right-of-way will have no impact on the ingress and egress for any of the abutting properties. There are three lots that abut this section of right-of-way. They are identified by PIN Nos. 9628.14-34-2261; 9628.14-34-5074; and 9628.14-34-2396.

City staff recommends that City Council adopt the resolution to close a portion of an unopened section of Appalachian Way.

Mayor Worley closed the public hearing at 5:22 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-118. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 263

C. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY IDENTIFIED AS BILTMORE POINTE LOCATED AT 100 FAIRVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO CONSTRUCT 136 NEW TOWNHOME UNITS

ORDINANCE NO. 3119 - ORDINANCE REZONING PROPERTY ON 100 FAIRVIEW ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3120 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY IDENTIFIED AS BILTMORE POINTE LOCATED AT 100 FAIRVIEW ROAD TO CONSTRUCT 136 NEW TOWNHOME UNITS

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:24 p.m.

All Council members disclosed that they have visited the site and/or have talked to the developer, prior to having any knowledge that the matter would come before Council as a conditional use permit. City Council said that they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Heard said that this is the consideration of a request to rezone property located identified as Biltmore Pointe located at 100 Fairview Road from Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Use, and a request to issue a conditional use permit to construct 136 new townhome units.

The Asheville City Development Plan 2025 (ACDP 2025), through its "Land Use and Transportation" goals and strategies, clearly supports and encourages efforts to provide affordable housing particularly in areas where public transit and alternative modes of transportation are available. In addition, both the ACDP 2025 and the City's Sustainable

Economic Development Strategic Plan describe the connection and need for affordable housing to support economic development.

The applicant, Bruce Goforth, has requested a rezoning of 13.04 acres of Commercial Industrial District property to RM-16 (Residential multi-family, high density) to allow for the new construction of 136 individual affordable townhome units (City Exhibit 3 – Aerial Map). The Conditional Use component of this project will be a site master plan showing the location of the proposed townhome units, amenities, open space, landscape buffers, drives, and new road access. The project site is located within City limits near the northwest corner of Fairview Road and Stoner Road, directly adjacent to the Slosman property from which the 13 acres under consideration is being subdivided. The subject property is surrounded on three sides by industrial or commercial warehousing/storage land uses. The fourth side borders a mix of commercial storage, single family residential, and vacant CI zoned property.

The site is a moderately sloping wooded site with frontage on two city maintained roads. Principal access will be located off of Fairview Road (City Exhibit 3 – Utilities & Grading Plan). A secondary access is required off of Stoner Road per the City of Asheville Ordinance and State Fire Code requirements, to be established before more than 30 units are built and occupied. This access will be gated and used only during emergency situations. In addition, a new loop road built to City of Asheville standards will be constructed to provide access to the individual townhome units. The rezoning component of this project is not being sought for higher density purposes. The CI zoning district currently allows the same density permitted in RM-16 (16 units per acre). Rather, this designation is being sought for its compatibility with the proposed use and reduced front setbacks more typical of residential developments. CI normally requires a 35' front setback meant to separate the more industrial uses from road traffic, while the RM-16 district has only 15' setbacks. Residential developments in CI are typically multi-family apartment developments with outdoor parking lots that do not require additional setbacks from new road frontage. In order to provide a less monolithic residential development of townhomes (with garages) that provide opportunity for ownership, the developer would prefer to rezone to RM-16.

The purpose of the CI zoning district is to provide areas for a wide range of commercial and industrial uses including but not limited to, light manufacturing, wholesale, and warehousing with outdoor storage, office, and residential. This district is to be established in areas where environmental conditions and urban infrastructure are adequate to support these uses.

The purpose of the RM-16 zoning district is primarily to encourage a full range of high density multi-family housing types to be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development.

At their April 19, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission, stipulating the following project conditions summarized as follows:

1. Sidewalk (or fee in lieu of) and street trees be provided along road frontage for Fairview and Stoner Roads. (Staff is not recommending a fee in lieu of.) If not feasible along the subject property, the Stoner Road sidewalk can be located across the street.
2. Show sewer easements and ensure that no required tree falls within the easement.
3. Revise required landscapes buffers per section 7-11-2(d) of the Unified Development Ordinance (UDO)
4. Obtain encroachment permits from Norfolk Southern (if necessary).

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5. Show location and species of required street trees.

6. Delineate open space requirements.

7. Show and label building setbacks. Setbacks are to be measured from perimeter parcel lines and rights-of-way for existing and proposed roads. RM-16 requires a 15' front setback where some proposed footprints encroach.

8. Provide a revised site plan showing the following missing information:

   Label and dimension all rights-of-way.

   Label proposed road.

   Show location of required fire hydrants.

   Show location of required street lights.

   Provide information describing the number of bedrooms per unit.

   Provide plant schedule.

9. Provide a second entrance required per the City Ordinance and State Fire Code.

10. Provide accessible sidewalk connection to all common areas.

11. Show pedestrian protection on proposed retaining walls.

12. Turning radii must be less than 20'.

13. Traffic impact analysis is required.

14. A covered bench should be provided at the entrance of the neighborhood by the completion of Phase II.

15. A recorded subdivision will be required before grading or final approval.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The project area is moderately sloped and will require clearing and grading. Given the typical Asheville terrain, the amount of grading is not unusual for a project of this type or size. Care will need to be taken to provide open space and roads that do not exceed a certain maximum percent slope. Minor retaining walls (under 8') are shown and may need to be extended to meet other project requirements.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
There is a significant amount of literature that describes how "affordable" housing does not negatively impact adjacent property values. Developments of this size in the City do require a homeowner's association that manages the common open space and typically has minimum site standards that control the deterioration that can contribute to a decrease in property values. These will be individually owned units that, historically, inspire care and upkeep. In addition, the higher density development could serve as a buffer/transition area to the existing single family residences that could be impacted by the more intense uses permitted in the CI zoning district.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
The surrounding properties are primarily light manufacturing and warehousing/storage uses with significant work traffic. The proposed development will be residential but through its density and activity, will not be out of character/harmony or scale with these uses. Along the majority of the eastern side of the property are small, modest single-family homes on small lots (some lots are vacant) located on the opposite side of the right-of-way for Stoner Road. These homes are similar in size and are expected to be harmonious with the proposed development. The only area of concern is a smaller portion of the eastern boundary where there are two moderately sized single-family homes on comparatively larger lots. These homes are larger and less typical of the development in the area and are separated from the proposed development by a vacant lot and a 30' Type C buffer required where adjacent to the subject property. It is expected that these lots will not be significantly impacted by the proposed development.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
***The Asheville City Development Plan 2025 (ACDP 2025)*, through its "Land Use and Transportation" goals and strategies, clearly supports and encourages efforts to provide affordable housing particularly in areas where public transit and alternative modes of transportation are available. In addition, both the ACDP 2025 and the City's *Sustainable Economic Development Strategic Plan* describe the connection and need for affordable housing to support economic development.**

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
This proposed development is within close proximity to transportation facilities with the Route 12 bus line running regularly down Fairview Road. In addition, there are some infrastructure improvement plans in place for new sidewalk, road resurfacing, and stormwater control that will improve access along this corridor along with improvements that will be part of the proposed development (additional sidewalk, bus shelter, etc.). The project area is also located in clear and close proximity to other major road facilities and interstate connections, service centers, and easily accessed employment centers. Technical review has not revealed any problems for future utility service to the development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed project will include the construction of a new road to provide clear and safe access to the individual units. In addition, a second entrance will be

provided to help facilitate traffic movement and to accommodate alternative access in the event of an emergency. Lastly, preliminary review by the City's traffic engineer does not reveal any significant concern over traffic loads generated by a development of this size but is requiring a traffic impact analysis for verification.

Pros:

1. Clearly supports City goals to provide affordable housing in appropriately located areas.
2. Provides opportunity for infill residential development.
3. Proposed land use will provide a lesser impact than some potential land uses under current zoning designation.

Cons:

1. High density residential development that will contribute to the traffic load of Fairview Road and Stoner Road.
2. Located adjacent to commercial industrial zoning whose current land uses could change to a heavier impact over time.
3. Will require moderate to large amounts of clearing and grading to accommodate proposed density and road layout.
4. Removes opportunity for Commercial Industrial development in a generally Commercial Industrial area.

For the reasons outlined in this report, staff concurs with the Planning & Zoning Commission's recommendation to approve of the zoning change from CI to RM-16/Conditional Use and to approve the associated conditional use permit, as proposed by the applicant, subject to all TRC conditions being met.

Mr. Bob Grasso, land planner for the project, felt this is a great opportunity for affordable housing and it's a great urban infill project. When the project was laid out, they tried to create a sense of neighborhood. They have provided a basketball court, volleyball court and playground equipment to serve the residents in the development. There will be 2-bedrooms with a third bedroom option. Each unit will have a single-car garage and parking in front. They have provided the emergency access on the backside of the development. Questions arose at the TRC meeting if they could provide a second street access onto Stoner Road. He explained that (1) the residents on Stoner Road said that they did not want to see any traffic from the development onto Stoner Road; (2) he didn't think that Norfolk Southern would grant them any kind of right-of-way on top of their right-of-way; and (3) the intersection where Stoner Road comes out onto Fairview Road is a blind intersection. Therefore, he felt it was a good compromise to have the emergency access. He explained that the sidewalks along Stoner Road on the opposite side of the development would be very difficult from a grade standpoint, pointing out that they are trying to preserve as many of the mature trees along Stoner Road and also along Fairview Road as possible. He felt the scale of the project fits in well with the adjoining properties and he urged Council to support the conditional use rezoning and permit.

Mr. Doug Hill, partner of Biltmore Pointe, LLC, spoke in support of the development, however, asked that City Council amend a couple of the conditions, which will affect the cost of the affordability of the units. Regarding sidewalks along the road frontage for Fairview and Stoner Roads, he explained that along Stoner Road it is steeply elevated and there are mature trees and dense foliage. He felt the natural way it is might be a better fit for the neighborhood. He also pointed out that no other side streets in that neighborhood have sidewalks. Regarding sidewalks on the Fairview Road side, there is a concrete drainage ditch that runs the length of their property that will have to be removed and something done to have the water rerouted. The cost of the sidewalks and trees alone would add $1,000 to each unit. He explained that after all the units are sold, there will be approximately $16 Million to the City's tax base. He hoped the City would cover the sidewalk costs with the additional tax revenue brought in by their development. The other condition they asked to be relieved of was the requirement to provide a Traffic Impact Analysis (TIA). The City's Traffic Engineer said he didn't think the development would cause any significant traffic loads but was still requiring a TIA. A TIA will cost approximately $6-7,000. He felt that if there was no impact, the requirement for a TIA should be waived. He said the units will sell for approximately $120-125,000 per unit. He said it is their goal to keep the unit costs under $120,000. He also mentioned the secondary access road issue required by the Fire Department. He explained by putting in the emergency access road they have lost two units. He said that is another cost which will be added to the development fees, ultimately increasing the cost of the units by approximately $500 per unit.

Planning & Development Director Scott Shuford explained that it is a requirement of the State Fire Code that a secondary access road be built. When Councilman Newman asked if there could be two accesses onto Fairview Road, Mr. Heard said that there is a requirement that the accesses be a certain distance apart, thus eliminating the idea of two accesses on Fairview Road.

When Councilman Newman asked how the gate would work on the secondary road access, Mr. Shuford said that Fire Department will be able to access the road through a special arrangement that they have with a type of lock-box that is placed there. This is something that the Fire Department accesses all the time and it is a very routine type of situation for them.

Councilman Newman asked what other type of infrastructure improvements are planned for the area. City Engineer Cathy Ball said that a sidewalk will be built within the next 6 months, regardless of this development, from the church on Fairview Road down toward Sweeten Creek Road across the street from this development. Regarding sidewalks on Fairview and Stoner Roads, they feel like the impact of this project is significant enough to warrant the sidewalks being constructed and not allowing a fee in lieu of, particular with it being an affordable housing project. Regarding the condition that a sidewalk can be being constructed across the street from the development on Stoner Road, the Engineering Department staff surveyed Stoner Road and determined that there isn't enough of an easement for that to happen. Therefore, that is not an option.

Councilman Davis felt that the topography on the Stoner Road side of the project lends itself to not having sidewalks. He did think, however, that sidewalks on the Fairview Road side was appropriate.

City Engineer Ball explained the charges per linear feet for sidewalks in the Fees & Charges Manual. She also pointed out that the Fees & Charges Manual says that if it's an affordable housing project, and if Council decides to allow the fee in lieu of construction for the Stoner Road sidewalks, then after the last unit is sold and they can show that they are all affordable housing were sold under the affordable housing threshold, then the developer can get back 50% of the amount they paid in.

Councilwoman Bellamy asked what affordable housing rebates could be sought for this development. Mr. Shuford said that we have an arrangement with the Water Authority where they would get half their tap fees back, half of their building permit fees and half of their sewer tap fees back from MSD. In a project this size, it would be approximately $1,000-$1,500 per unit. He did note that the affordable housing rebates would be whatever affordable housing threshold is in place when they get their Certificate of Occupancy.

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Regarding a comment from Mr. Hill about street trees, Mr. Shuford said we have an alternative compliance provision in our landscaping ordinance and if they are preserving the natural vegetation, that may very well substitute for the street trees.

Upon inquiry of Councilwoman Bellamy, Mr. Anthony Butzek, City Traffic Engineer, said that he does have a particular concern about concentrating traffic from this many units through one single entryway, which is the original reason why they requested a second access point. After hearing concerns of the residents on Stoner Road about that access point, we agreed with the Fire Department that an emergency access road would be adequate and requested that be conveyed to the City in either the form of a right-of-way or an access easement. The TIA is intended to determine what, if any, improvements are needed to be made to that primary access point. We did try to be reasonable in only requiring the study be done to show that that access point would work adequately. He said that they anticipate 1,000 trips per day to be generated by this development. He said that a TIA would cost approximately $3-4,000, depending on the consultant they select to do the study.

Mayor Worley asked what would happen if when the TIA analysis comes in and it indicates a need for some traffic measures. Mr. Butzek responded that if Council approves the conditional use permit, staff would ask for an additional condition of approval that gives staff the authority to make any corrections generated by the review of the traffic study for this project. If the developer objected to those, then he would have the ability to come back to Council and ask for a waiver.

Mr. Butzek explained that without having the study, they cannot project what traffic problems might ensue from the development. Since Fairview Road is such a busy street, there will be a significant number of vehicles turning in and out of this development, particularly in the morning peak hours. There will be a lot of cars exiting the development through one single point onto a very busy street. The traffic analysis might show that they need to provide a turn lane exiting the site, maybe a turn lane entering the site or maybe the need for a signal. The cost for a turn lane would be approximately $50,000. The City would like to know that ahead of time so the City is not burdened with that responsibility at a later date.

When Councilman Dunn asked why a TIA was not done prior to this meeting, Mr. Butzek responded that staff would have preferred that the study be done before now, but it was his understanding that the developer wanted to move forward quickly, and to require the TIA before going to Council would have delayed their process significantly.

Councilman Dunn suggested the developer pay for the TIA, and if the analysis calls for a turn lane at approximately $50,000, then Council use Trust Fund dollars to pay for it.

Councilwoman Bellamy agreed with Councilman Dunn, however, she recommended that a condition of approval be that the initial sales price have a cap of whatever the affordable housing rebate threshold will be, in order to make it eligible for Housing Trust Fund dollars. She said that the threshold is now $120,000, but anticipates that being raised to $130,000 in the very near future.

Upon inquiry of Mayor Worley, Mr. Hill said they have done their cost study based on $120,000 for a 2-bedroom unit. The $120,000 per unit already takes into account the affordable housing rebates. It does not include the cost for sidewalks outside the development, which will increase the per unit cost by over $1,000 per unit.

Councilman Newman asked Mr. Hill if he would be confident they could meet the affordable housing threshold. Mr. Hill replied that costs rise over time and this will be a 3-4 year project. He didn't want to get about 2 years down the road and find it's not feasible to build any more units because they are locked into a threshold. However, he said the $130,000 threshold is fine now and in the foreseeable future.

Ms. Smith, resident of Stoner Road, said that her community club has come to Council in the past to ask for sidewalks on their road. She stressed that they do want sidewalks. She said that most of the trees on the developer's side of Stoner Road are dead and always seem to be falling onto the road. The traffic on Stoner Road is getting to where the residents are thinking about asking the City for speed humps.

Mr. Alan Ditmore felt the traffic assumptions were incorrect in that the unit density reduces traffic by allowing people to walk or bus, instead of driving. He felt the more you build, the less traffic there will be.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:24 p.m.

Councilwoman Bellamy said that in the past, City Council has approved development that had issues related to Norfolk Southern and they did give the developer permission to use access for their right-of-way. Mr. Butzek also noted that this is not a rail crossing, but just putting a street near a rail line.

Upon inquiry of Councilman Davis, Ms. Ball said staff cost estimates differ from the developer's estimates. They did some sidewalk costs for Stoner and Fairview Roads and their estimate of the maximum cost was $60,000, which is about $300 per unit for the sidewalks. The TIA requested is only a limited one just for the driveway (City Exhibit 4), which would be about $4,000 or $24 per unit. The estimated fee in lieu of for Stoner Road would be approximately $24,000.

Upon inquiry of Councilwoman Jones, Mr. Shuford recalled some of the items being discussed regarding building permit fees for affordable housing.

Vice-Mayor Mumpower felt the developer would not want Council to do anything that would step outside our standards. Therefore, he asked if City Council has the ability to waive the sidewalk requirement on Stoner Road in terms of the building a sidewalk or the fee in lieu of. Ms. Ball said that for Level 3 projects staff makes a recommendation to Council. Council has the option of accepting or rejecting staff's recommendation. City Attorney Oast also responded in that some cases Council has authorized forms of alternative compliance with sidewalks, i.e., through the use of sidewalks that may not necessarily be on a road, but are more in the nature of greenways.

When Vice-Mayor Mumpower asked if Council has the ability to waive the TIA requirement, Ms. Ball replied that Council also has the option of not requiring that analysis.

Mayor Worley explained why he would support waiving the sidewalk requirement on Stoner Road. He felt the entrance and the pedestrian activity generated by this development will clearly be on Fairview Road and there will be sidewalks inside the development. He would be willing to waive the sidewalk requirement on Stoner Road only. Councilman Dunn agreed with Mayor Worley.

Councilman Newman supported waiving the sidewalk requirement on Stoner Road. He suggested maintaining the sidewalk requirement (or a fee in lieu of) on Fairview Road and require the TIA with the understanding that if the TIA does indicate there are some additional improvements that need to be made on Fairview Road that the public handle those costs. Also, if certain requirements are waived, he felt Council needs to make sure that the homes will be affordable. He recommended an affordable housing threshold of $130,000 per unit.

City Attorney Oast said that until Council knows what the cost of the improvements are on Fairview Road, if any are recommended by the TIA, Council should stay away from a commitment to pay for them. He suggested City Council consider funding such improvements as recommended at the time they have such recommendations.

Councilwoman Jones supported the recommendations by Councilman Newman. However, she think that Council needs to have a more intentional conversation about the Housing Trust Fund than just saying that is for affordable housing. To date Council has been very clear, up until the last exception on Appeldoorn Condominiums, that the Fund would be for money being paid back at a certain percentage rate. She is fine with going outside those bounds, but would like to have that conversation.

Mr. Shuford said that we are not pursuing sidewalks in the Joint Planning Area, but when new streets are created we are asking that grading occur to allow sidewalks to be put in more effectively. He offered that as a compromise if no sidewalks will be required on Stoner Road and/or Fairview Road.

Vice-Mayor Mumpower thanked the developer for bringing affordable homes to Asheville, but he was concerned that Council may be taking steps that we don't normally take. He thinks we are stepping further than we should and ultimately are not going to realize that great of savings to this project. He felt that we have standards for a reason and even though he does not agree with all of them, we do have them and should try to apply them as consistently as we can.

Councilman Davis supported the TIA being performed and liked the suggestion about grading for sidewalks on Fairview Road or a fee in lieu of. However, regarding sidewalks on Stoner Road, he felt we would be losing valuable trees for sidewalks that will never be used.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3119 to approve the conditional use rezoning for property located at 100 Fairview Road from Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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Councilman Newman moved to adopt Ordinance No. 3120 to issue a conditional use permit for property located at 100 Fairview Road to construct 136 new townhome units, subject to (1) waving the sidewalk requirements on Stoner Road; (2) maintain the sidewalk requirement (or a fee in lieu of) on Fairview Road; (3) require a Traffic Impact Analysis, with the understanding that City Council will consider funding such improvements at the time they have such recommendations; (4) the initial sales price of the units may not exceed the affordable housing threshold established by the City; and (5) all other TRC conditions being met as outlined above. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no".

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At 7:00 p.m., Mayor Worley announced a short break.

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 50 OREGON AVENUE FOR A PROPOSED TELECOMMUNICATION FACILITY/FLAGPOLE

ORDINANCE NO. 3121 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 50 OREGON AVENUE FOR A PROPOSED TELECOMMUNICATION FACILITY/FLAGPOLE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site-specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 7:28 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); City Exhibit 3 (Staff Report); and City Exhibit 4 (other information required by the ordinance).

Mr. Heard said that this is the consideration of the issuance of a conditional use permit for property located at 50 Oregon Avenue for a proposed telecommunication facility/flagpole.

The Asheville City Development Plan 2025 thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development both through the further stimulation of investment and technology and through the improved quality of life desired by residents and tourists. In addition, the proposed installation supports the notable Smart Growth Goal of 'adaptive reuse/infill' through the seamless co-operation with an existing site.

The applicant (Triton, PCS) is requesting a Conditional Use Permit for a 0.86 acre parcel to allow for the installation of a concealed monopole telecommunication tower on Institutional zoned property (City Exhibit 3 – Aerial Map). The City owned property being considered for this installation is located at 50 Oregon Avenue (corner of Oregon and Louisiana Avenues) and currently houses City Fire Station #3. The telecommunication tower will be located within a lease area of approximately 810 s.f. and will be housed within a 100' tall concealed monopole capable of accommodating up to 3 separate users (City Exhibit 3 – Tower Elevation). In addition to the monopole, a small (214 s.f.) building addition will be built to house the necessary ground equipment. This addition will be designed to blend into the existing fire station's architecture through material and form (City Exhibit 3 – Landscaping Plan and Details). Two separate areas will also be dedicated to accommodate future user's ground equipment; one of which will be concealed within a second building addition, the other is to be screened by a free standing brick wall and proposed vegetation. In addition to the site plan changes designed to accommodate the tower and equipment, other minor site improvements are planned as part of this development project. Specifically, a sidewalk, 4 additional parking spaces, a utility easement, storage space for firehouse use, a new generator, and a newly paved maneuvering area for vehicles and maintenance crews.

The original application called for the installation of a 100' tall stealth flagpole that would fly an American flag and be up lighted for visual effect (City Exhibit 3 – Site Plan). The recent discussion at the Technical Review Committee (TRC) meeting resulted in the recommended condition that in lieu of the flagpole design, a concealed monopole design be considered by City Council due to the maintenance concerns over the long term care and attention being afforded to the flag, as well as the presence of existing flags on the site, a bank on the adjacent property, and across Louisiana Avenue on the Army Reserve site (City Exhibit 3 – Tower Elevation).

The subject property is a corner lot located within the City Limits just one block south of Patton Ave. Although the lot is located on the corner, the lease area for the monopole is located to the rear of the site, behind the fire station adjacent to the ABC store. At ground level, the pole is well buffered from adjacent properties by existing vegetation.

Separate from this development review is a parallel review for a lease/contract agreement between the City and Triton PCS.

As part of the special requirements applied to Conditional Uses in the Institutional zoning districts per Sec. 7-16-2(c)(3), the project must meet a number of conditions for 'telecommunication towers' including those technical conditions addressed in the TRC report. In addition to the technical conditions, the following, non-technical standards must also be met:

f. Applicants shall first be encouraged to consider properties owned by the City or Buncombe County before considering private properties.
The site located at 50 Oregon Avenue is City of Asheville owned property.

l. No telecommunication facility shall interfere with usual and customary radio and television reception.
Triton PCS has stated in their application and notification letters that no interference is expected.

t.7. Generators may not be used as a primary electrical power source.
Generators will not be used as a primary electrical power source.

t.13. The City Council may require any other conditions deemed necessary or desirable to ameliorate the impact of the tower on the adjacent properties and uses.
Additional conditions to be proposed as deemed necessary by Council.

u. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city.
In order to annually renew this permit the applicant must certify the information described in Sec. 7-16-2(c)(3)(u)1-6.

v. Conditional use permits for telecommunication towers shall be valid for an initial period of five years.
In order to review the permit for an additional five year period, the applicant must submit a renewal request within 60 days prior to the expiration of the initial permit period. A review shall be conducted to determine whether and under what conditions the conditional use may be extended for successive five year periods. Additional details of this renewal process are described in Sec. 7-16-2(c)(3)(v).

w. A conditional use approval for a telecommunication tower shall become null and void if the facility is not constructed and placed in service with one year of the date of approval.
Approval will become null and void after a period of one year; however, the conditional use approval may be extended for a period of 6 months if substantial

construction has commenced before the end of the initial year. If construction has not begun before the end of the initial year, re-application for a new conditional use permit would be required.

At their May 3, 2004, informal meeting, the TRC reviewed the Conditional Use Permit request and made a positive recommendation that the project be forwarded to City Council stipulating the conditions outlined in the TRC staff report with the additional recommendation that City Council consider the concealed monopole design in place of the stealth flagpole design.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)). Staff's review indicates that all seven standards are met as proposed in the site plan.

1) That the proposed use or development of the land will not materially endanger the public health or safety.
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The proposed tower and accessory building additions, as a technical condition, must be designed to blend with the surrounding environment and is expected to have a nominal impact on the site area. In addition, the installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
The proposed telecommunication tower is designed to blend with the surrounding environment, is well screened at ground level, and is most visible from the adjacent commercial corridor where the impact of a concealed tower will be nominal. In addition, no reception interference is expected which could potentially affect other quality of life issues for adjacent or nearby residents.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
As mentioned earlier, the lease/installation area for the tower is extremely small (810 s.f.) and, by definition, is designed to be in harmony with the scale, bulk, coverage, density and character of the area or neighborhood. The height of the pole is somewhat atypical but is located in proximity with other poles and objects of significant height including; flagpoles, power poles, light poles, signage, church steeples, and transmission lines. In addition, part of the justification for the concealed monopole, in place of the flagpole, was to minimize attention being drawn to the pole by the flying of a flag and possible uplighting.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The Asheville City Development Plan 2025 **thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development both through the further stimulation of investment and technology and through the improved quality of life desired by residents and tourists. In addition, the proposed installation supports the notable Smart Growth Goal of 'adaptive reuse/infill' through the seamless co-operation with an existing site.**

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed installation is not expected to cause any increase in traffic to the site other than the occasional maintenance visit.

Pros:
1. Generates revenue for the City that is long term and increases annually.
2. Provides public benefit through better cell phone coverage.
3. Tower designed for co-location and use of three antennae, which eliminates the need for additional towers in the future.
4. Using stealth technology, the tower will not be obtrusive.
5. Installation can operate simultaneously and independently of other existing land use and does not occupy developable space.
6. As part of the license agreement, Fire station #3 will receive other site improvements.

Cons:
1. Encumbers the property for 5 years with the ability to renew for subsequent 5 year periods, potentially impacting the redevelopment of the property.
2. Monopole will be 100' tall and visible above tree line and from a significant distance.

Staff concurs with the Technical Review Committee recommendation of approval with the conditions outlined in the TRC report with the additional condition that a 'concealed monopole' design be used in lieu of the originally proposed 'stealth flagpole'.

Mr. Heard updated City Council on a letter dated April 20, 2004 (Attachment in City Exhibit 4). He said they (1) changed their proposal to a concealed monopole design; (2) received their letter of determination from the FAA in that the pole could present no hazard; (3) received their environmental determinations from the EPA; (4) received the Emissions Safety Report stating that the site will be in full compliance with FCC standards; and (5) a balloon test was not conducted pursuant to the TRC.

A resident on Louisiana Avenue asked if there are any possible or known health risks associated with the tower, will the licensor remedy any interference if it should arise, and where are the other towers located at in the west Asheville area.

Mr. Chad Groseclose, Property Management Specialist with Triton Systems, responded to the questions raised by a resident on Louisiana Avenue. Throughout his presentation, Mr. Groseclose used the following to support his responses to each conditional use standard:

Applicant Exhibit 1 (photo of tower); Applicant Exhibit 2 (analysis of the impact of communication towers on sale prices in residential neighborhoods by Charleston Appraisal Service Inc.); Applicant Exhibit 3 (map showing other towers in the west Asheville area); and Applicant Exhibit 4 (letter dated May 19, 2004, regarding the stability of a proposed flagpole/communications tower from Paul J. Ford and Company Structural Engineers).

Upon inquiry of Councilman Newman of the terms of the lease, Field Services Coordinator Ed Vess said that the developer will initially be doing improvements to the fire station that should cost them around $60-70,000, including the new generator, the new storage area, sidewalks, paved parking, etc. Then there will be a lease fee that they will begin paying. First year - $18,000; second year - $22,500; third year $25,960; the fourth year $27,000; and the fifth year $28,000. After that, the rate will increase 4% per year from then on.

After rebuttal, Mayor Worley closed the public hearing at 8:05 p.m.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3121, granting a conditional use permit for property located at 50 Oregon Avenue for a proposed telecommunication facility/flagpole, subject to the Technical Review Committee conditions being met and that a "concealed monopole" design be used in lieu of the originally proposed "stealth flagpole." This motion was seconded by Councilwoman Bellamy and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER REZONING ONE LOT AT 555 BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

ORDINANCE NO. 3122- ORDINANCE TO REZONE ONE LOT AT 555 BREVARD ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMERCIAL BUSINESS II DISTRICT

Mayor Worley opened the public hearing at 8:06 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to rezone one lot at 555 Brevard Road from RM-8 Residential Multi-Family Medium Density District to Commercial Business District. This public hearing was advertised on May 14 and 21, 2004.

Mr. Heard said that the Asheville City Development Plan 2025 discusses land use and transportation goals and strategies for infill development that include pursuing, "compatible infill development in order to actively promote appropriate development and redevelopment within the City and its ETJ" along with assuring that the City of Asheville, "continues to serve as the regional commercial center for western North Carolina by providing opportunities for the location of large commercial uses within the City." The proposed rezoning and redevelopment of the Brevard Road corridor support these land use goals.

Two properties located on the northwest corner of Brevard Road and Pole Creasman Road were recently (12-16-03) rezoned from RS-4/RM-8 to Community Business II District.

The applicant (Progress Energy) has requested a rezoning from RM-8 (Residential Multi-family, Medium Density) to CB-II (Community Business II) to allow for further commercial development of the Brevard Road corridor. The subject property currently supports a CP&L Substation with numerous lines running across the property, but is otherwise undeveloped. The property is bordered by commercial retail and low density residential (mobile home sites) to the north, low density residential (zoned RM-8) to the east across Brevard Rd., vacant commercially zoned property to the south, and vacant residentially zoned property to the west There are some additional CB-II zoned properties to the north and south along Brevard Rd. The majority of CB-II properties on the Brevard Road corridor are non-conforming.

Understanding the recent and anticipated changes to the Brevard Road corridor, the Asheville City Council recently directed the staff of Planning and Development to conduct a zoning study for the corridor to determine whether there was need to consider rezoning areas along Brevard Road to better reflect the goals and guidelines of the City's development plan(s) and Smart Growth goals. As a result of the preliminary study, the subject parcel was noted as property better suited for commercial and/or mixed use development.

The purpose of the RM-8 district is to provide medium density multi-family housing types along with single family detached and attached residences. This district is also intended to provide a transitional area between medium density single family dwellings and other higher density residential uses and/or uses of a heavier impact.

The Community Business II district is established to provide business and service uses to medium/high density residential areas, serving several residential neighborhoods.

With the recent commercial rezoning to the properties on the corner of Brevard Road and Pole Creasman Road, the remaining RM-8 zoned property no longer serves as an effective transition area between low density residential and higher impact uses. In addition, it is recognized that the subdivision of the larger RM-8 parcel and proximity of the power substation remaining on site has decreased the opportunity for a quality multi-family development. Lastly, there is precedent for rapid turnover of non-conforming properties in areas where new conforming development and increased traffic spurs new demand. With the current road widening underway, increasing residential density, and the potential for new conforming CB-II commercial uses, it is believed that there is significant potential for quality commercial development along this corridor.

Pros:

1. Allows for opportunities of quality, conforming commercial and/or mixed use development.
2. Could spur the redevelopment of non-conforming, vacant, or underutilized properties.
3. Allows for infill development that supports City adopted plans and goals.
4. Rezoning will better support the commercial character of Brevard Rd.

Cons:

1. Reduces potential for residential multi-family development along a major corridor.
2. Rezoning has the potential to stall the turnover of existing non-conforming, vacant, or underutilized properties currently commercially zoned through the opportunity for new construction.

As a result of recent and anticipated changes to the Brevard Rd. corridor and for the reasons stated above, Planning and Development concurs with Planning and Zoning's recommendation to approve this rezoning request from RM-8 to CB-II.

Mr. Lou Bissette, attorney representing Progress Energy, urged City Council to support the rezoning in that the pretty is better suited to commercial use.

Councilwoman Jones felt this was an appropriate rezoning, however, she continues to be concerned about the multi-family residential districts being "whittled away" and at some point Council needs to figure out how we are going to replace what we are rezoning.

Mayor Worley closed the public hearing at 8:13 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3122. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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F. PUBLIC HEARING TO CONSIDER REZONING 142 N. BEAR CREEK ROAD FROM INSTITUTIONAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 3123 - ORDINANCE TO REZONE 142 N. BEAR CREEK ROAD FROM INSTITUTIONAL DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley opened the public hearing at 8:14 p.m.

Urban Designer Alan Glines said that this is the consideration of an ordinance to rezone 142 N. Bear Creek Road from Institutional District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on May 14 and 21, 2004.

Mr. Glines said that the property is located within the City limits in the western area of the City. The property appears to have been zoned Institutional based on its proximity to Institutional uses and to create compatibility with the underlying higher density manufactured housing units that are located on this parcel and the surrounding parcels.

The 2025 Asheville City Development Plan does not show any major changes expected in this area of west Asheville. The plan does recognize the need to strengthen residential neighborhoods and to provide a mixture of housing types in a wide range of prices to serve the needs of the community.

Surrounding properties to the north, west and south are zoned Institutional and have residential uses on them. To the east, across Bear Creek Road from this parcel the area is zoned RM-8 and include single family uses.

The Buncombe County parcel data does not entirely agree with a survey that has been prepared for this lot. The discrepancies are of a dimensional nature and location of the right-of-way for Bear Creek Road. Staff has spoken with Buncombe County who agreed with the survey information provided for the property. County staff will update the GIS map layer for this parcel. For the consideration of this rezoning, we will consider the survey information as most accurate for our review.

The parcel under review contains two single family homes and a single manufactured home. The rezoning would allow uses permitted in the RM-8 district and would allow some relief for the subdivision requirements for the property since the lot area is reduced and street frontage requirement is also reduced.

The Institutional District reserves land for the development of major educational, medical and offices uses and multifamily residential uses while minimizing conflicts with adjacent land uses.

RM-8 Residential Multi-Family Medium Density District establishes areas to provide a full range of medium density multifamily and single family housing types and limited non-residential development normally required to provide basic services in a community.

PROS: RM-8 Zoning is consistent with the properties located across the street. The zoning change will more closely align with the current use of the property.

CONS: The rezoning will remove the possibility of future institutional uses from this property.

The Planning and Zoning Commission, at its May 5, 2004, meeting, voted 7-0 to recommend approval. City staff recommends approval of this rezoning request as well.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that due to the size of the parcel it might look like spot zoning, however, he thinks that Mr. Glines has done a good job explaining the foundation of his recommendation and if you look at the aerial photograph it is actually zoning it to a use that is more compatible with what it is already being used for.

Mayor Worley closed the public hearing at 8:20 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3123. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 180

IV. UNFINISHED BUSINESS:

A. RESOLUTION NO. 04-119 - RESOLUTION APPROVING CITY COUNCIL'S STRATEGIC OPERATING PLAN

Mayor Worley said that this is the consideration of a resolution approving City Council's Strategic Operating Plan. He said this Plan is the outgrowth of Council's retreat process, visioning process and goal-setting process.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Bellamy moved to adopt Resolution No. 04-119. This motion was seconded by Councilwoman Jones.

Councilman Newman said that the planning process that we went through as a Council to create this strategic plan was really valuable. He knows Council all has a lot of different ideas that are not reflected in this document but it was really useful to work together to identify some of the areas that there are large areas of agreement on. He came out of the process realizing there are some really critical community needs that have been talked about for a long time but we haven't have the collective voice to tackle them. He was excited that some of those challenges have been identified and are committing ourselves to work together.

Councilman Dunn said there is no perfect plan. He said that sometimes his vision conflicts with other Council members but it's healthy. He felt this document is very important. His support on this document means he will listen to what the other visions are as long as others will listen to his vision. The statement that Council will all speak in one voice probably won't happen because we are all individuals. He was pleased, however, that Council has finally decided to tackle some of the big issues.

Vice-Mayor Mumpower felt this was a well-intended effort initiated by our Mayor and City Manager. He finds himself in an awkward position in that there are parts of this document that he agrees with a lot and there are parts that he disagrees with a lot. At its core, he has a concern that this document represents a distraction from our main mission, which is city services. He feels the document represents an expansion of our city government at a level that exceeds his personal comfort zone. He feels we are growing our government faster in some respects than we are of people and he has discomfort with that. The strongest point to take him away from signing this document, however, is that he believes we have fundamental things that we need to focus on (core city services) and that we are stepping in so many other directions that we tend to neglect some of those fundamental services. He pointed to sidewalks. We have a $100 Million budget and are only earmarking (for several years) $50,000 a year for new sidewalk construction and $150,000 for sidewalk repair. He said that is a very nominal portion of our budget for a fundamental infrastructure issue. There are other monies that go to sidewalks, like fee in lieu of, but those are inconsistent monies. We have had recent discussion about a hard drug interdiction program that the majority of Council spoke against. That to him is fundamental. Public safety is fundamental. We can talk about other exciting initiatives that can have a good and special impact on Asheville, but before we go to the exotic, we should stay with the basic and he believes this document takes us too far away from that. With regret, he will have to vote against the strategic plan.

Councilwoman Jones encouraged all citizens to go to the City's website and read the document. She believed that this document is very grounded in housing, economic development, infrastructure and planning. We are a growing community and it is part of what we are elected to do is to anticipate the growth so that we are able to deliver those critical services well into the future for our children. She felt this document will take us in a good direction in next 20 years.

Mayor Worley felt the process to arrive at this document was a good process, a very collaborative process and had a lot of give and take from Council. He felt this is a good vision for Asheville. He doesn't think it takes away from our core services and he doesn't think it expands government, but he does think it's a recognition of what we are and the direction we are going in as a City The document reflects what makes Asheville the 8th best place in the country to live. Also, it's clear that this is a high level vision supported by strategic goals. He felt that each of us, while we may buy in the overall vision, all have different ideas about how we institute it. He does believe that this document moves us in a good direction.

The motion made by Councilwoman Bellamy and seconded by Councilwoman Jones carried on a 6-1 vote with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 28 – PAGE 265

V. NEW BUSINESS:

A. RESOLUTION NO. 04-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE CONTRACT WITH BALL-JANIK, LLP, FOR THE PROVISION OF FEDERAL REPRESENTATION SERVICES

Economic Development Director Mac Williams said that this is the consideration of a resolution authorizing the City Manager to renew the contract with Ball-Janik, LLP, for the provision of federal representation services.

The City of Asheville entered into the initial contract with Ball-Janik in April 2003 for a 12-month period. In doing so, it was suggested at that time to consider the approach of engaging federal representation for at least three years but using annual contracts. The initial contract called for monthly payments of $5,000 "inclusive" of out-of-pocket expenses. The renewal contract is the same except that Ball-Janik is now asking for out-of-pocket expenses to be "exclusive" of the $5,000 monthly fee. Ball-Janik is proposing that out-of-pocket expenses would not exceed $5,000 annually.

The current Fiscal Year 2004-05 City budget proposal includes adequate funding for this proposed contract.

Support statement:

- Representation services enhance positioning of and advocacy for City agenda items by our own elected representatives as well as other Members of Congress and their staffs who also have influence over decisions affecting City agenda items.

Challenge statement:

- Representative Taylor, in particular, as a member of the House Appropriations Committee, is uniquely positioned to respond to City funding requests without the need for City funding of professional representation services.

Staff recommends approval of the resolution authorizing the City Manager to renew the contract with Ball-Janik, LLP, for the provision of federal representation services.

When Councilman Dunn asked if there have been any monies obtained for the City that we can directly attribute to our consultant's involvement, Mr. Williams said that there have been two specific funding earmarks for projects. One for $300,000 for a new transit bus and the other is $2,000,000 for traffic signal upgrades. He said that monies obtained for the City that can be indirectly attributed to Ball-Janik's involvement include: (1) they lobbied for inclusion of language in the reauthorization of the federal transportation bill known as TEA-21 which extends flexibility to Asheville and the Asheville Transit System to use federal transit funds for operational assistance. Without this legislative fix, the Asheville Transit System would lose approximately $800,000 in federal funding that it now receives for operational assistance. This effort has been ongoing as Congress continues to debate the reauthorization of TEA-21. (2) they supported two additional earmarks that made their way into Omnibus spending bill – a $1 million earmark to NC DOT for the WNC Passenger Rail Initiative which will be distributed to transit systems throughout the state for buses and bus facilities.

Mr. Williams said that the lobbyists also promote the City's priorities to the Congressional delegation staff, subcommittee, committee staff and the delegation members on a regular, sustained and on-going basis. Given the time pressures placed on the members of the Congressional delegation, considerable behind-the-scenes work takes place at the staff level and our lobbyists work hard to maintain and build strong relationships with delegation and committee staff. In doing so, they are able to gain access to these staff at critical points in the legislative process and to remind them of the City's funding priorities.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No.04-120. This motion was seconded by Councilman Dunn.

Vice-Mayor Mumpower felt this is an ex-officio level of government that we are creating artificially and he disagrees with it in principle. He thinks that it's the congressman's job and it's our job to work with our congressman in that regard. He believes that these connections can be developed independently. He felt it was hard to track the work and he doesn't think it's fair to say that they have created all these revenues for us, but he's sure they had an impact. He thinks that tracking what they do for us in a concrete way is extremely difficult. He also thinks it makes us an active participant in a system that is notorious for pork barrel politics and that's stepping out of the system that we have in place and that's wrong.

Councilman Dunn said that he voted against the contract last year. However, he will reevaluate them every year and if they can continue to produce, he will support them. He pointed out that Congressman Taylor does care for our community and will work for Asheville's need.

Councilman Davis agreed with Vice-Mayor Mumpower, however, he would support the contract for another year but look for more activity in the coming year.

Vice-Mayor Mumpower said that he has talked to Congressman Taylor's office and they have assured him that if we bring things to them, they will actively pursue them. He couldn't understand why Asheville doesn't do their own work and why we need the buffer of a lobbyist. Mr. Williams said that we can do our work for those individuals, but they only just one vote on the committees that they sit on. City Manager Westbrook also responded that Council decided about 1.5 years ago that we were not effective in Washington and we needed more professional assistance. He said it takes someone in Washington to pursue our items at this level.

Councilwoman Bellamy felt that our $60,000 investment has been returned and after reviewing our 2005 federal agenda requests, she felt having a lobbyist to assist the City was something she would support.

Ms. Hazel Fobes said that what Council could be using for the infrastructure of our water system is far more important than paying a lobbyist.

Councilwoman Jones said that delivery on basic infrastructure improvements was $2.3 Million. Part of what we are elected to do is to be smart, be strategic for Asheville, and to do what we need to do ethically to bring home our citizens what they need to be safer and to have better city services.

Mayor Worley spoke in support of the lobbyist. He was pleased that we have a congressman that works well with Asheville, however, he has a limited staff and we can't rely on his staff to do all the research. He felt this is a team effort.

The Secretary of the Libertarian Party of Buncombe County would rather see Asheville not hire a lobbyist.

Mr. Mike Lewis originally felt that hiring a lobbyist was not a good thing, however, after seeing what the lobbyist has helped the City obtain funds for, he now feels it is a good thing to continue and hoped Council will re-evaluates it again next year.

The motion made by Councilwoman Jones and seconded by Councilman Dunn carried on a 6-1 vote, with Vice-Mayor Mumpower voting "no."

RESOLUTION BOOK NO. 28 – PAGE 266

B. RESOLUTION NO. 04-121 - RESOLUTION APPOINTING MEMBERS TO URTV INC. BOARD OF DIRECTORS

Vice-Mayor Mumpower said that this is the consideration of appointing members to URTV Inc., the non-profit selected by Asheville and Buncombe County to manage the community's public access television station.

On December 16, 2003, City Council adopted Resolution No. 03-208 that the City and County would appoint two members each to the URTV Inc. Board of Directors.

At City Council's worksession on May 18, 2004, City Council instructed the City Clerk to arrange interviews for DeWayne Barton, Sandra Bradbury, Kofi Caldwell, Katina Turner and Mark Wilson. Ms. Bradbury was out of town and unable to attend the interview process.

Council was impressed with all candidates interviews and instructed the City Clerk to send the applications to Buncombe County and the URTV Inc. Board for their consideration.

DeWayne Barton received 2 votes, Sandra Bradbury received 7 votes, Kofi Caldwell received 0 votes, Katina Turner received 0 votes and Mark Wilson received 4 votes. Councilman Dunn noted that he was unable to attend the interviews and would only therefore vote for the person he knew and would recommend. Therefore, Sandra Bradbury and Mark Wilson will be the City representatives on the URTV Inc. Board of Directors to each serve a two year term respectively, terms to expire June 30, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 267

C. RESOLUTION NO. 04-122 - RESOLUTION TO AMEND OR TERMINATE THE RESTATED AND AMENDED SUPPLEMENTAL WATER AGREEMENT

Mayor Worley said that one of the things that came out of Council's goal setting process was a desire to regain control of the water. We talked about it in terms of what it means when we annex and the ability to have the potential to charge differential rates. There are also other financial and non-water issues involved. As a part of the resolution, we include in it a provision that directs the giving of one year's notice of termination of the Water Agreement and that will give us a one-year timeframe within which to conduct negotiations. Hopefully we will be able to conduct negotiations and arrive at some results satisfactory to both Asheville and Buncombe County, but it gives us some options down the road if those negotiations prove to be unsuccessful.

Mr. Brian Peterson, member of the Regional Water Authority but only speaking as a citizen of Asheville, applauded the Mayor and Council for taking this step. He has felt this is something that should have already happened. Even though some of comments he's heard has been about annexation or differential rates, but it's much more than that. Looking at where we are now, having been on the Regional Water Authority over a year, it's not that it's not properly managed, it's that it cannot be properly managed. He feels that the staff, governmental bodies and the Regional Water Authority do a good job, but the structure is dysfunctional. He thinks that making a significant change is the only thing we can do to be able to get out of that mess. Anytime we try to make some small improvements, this political dysfunction keeps coming up so that we can't really fix the system. He feels the fundamental problem is lack of accountability. If the people running the system don't do a good job, they are held accountable by the customers and voters. As it is now, no one is accountable. In looking at some of the negotiations with Hendersonville, it's hard for the members of Authority to think of themselves as Authority members – everybody thinks of themselves as looking out for their individual governmental body. He didn't think the Regional Water Authority works and thinks this is a good step. He hoped the City will get back into control and be held accountable.

Mr. Mike Lewis felt that this is a core issue in this community. If you can't supply the basics, and water is very basic, then you are not governing. He urged City Council to regain control and do something about our extremely high water bills.

Ms. Hazel Fobes, Chair of Citizens for Safe Drinking Water and Air, provided City Council with her comments. She attended the May 13 and 18 Regional Water Authority meetings to hear public comments on the budget. She was pleased that the entire group seemed to have a cooperative exchange about the water system. They were very interested in the amount of money that the Water Authority needs, the lack of sources and the fact that Asheville and Buncombe County were taking off the top $2 Million. She thought they were going to do something about getting all or part of that money back. Now there is this resolution which she feels was hastily drawn up. It seems that the City of Asheville wants to take over the Water Authority, but Council wants to take it over in a way that is not pleasant. She knows it is Asheville's water system, but if you take it over, then we don't have any Regional Water Authority. She wants an independent Water Authority. She urged Council not to pass this resolution immediately. The Water Authority now has a civil engineer who has the authority to practice water and systems and land planning in North Carolina, South Carolina and Florida. She asked Council to have an independent regional water system, but the resolution doesn't even talk about regionalism.

Councilman Dunn said that regionalism isn't about who owns the system, but about the water. The important thing is for everyone in this community to have water. The Regional Water Authority has not worked and he is pleased that this Council is going to do something about the Water Agreement. The citizens of Asheville elected City Council to do something and it's now time for the City of Asheville to regain control of our water system and five a break to the water users. He has been on the Regional Water Authority for approximately three month and agrees it is a broken system, which is not accountable to anyone. The City of Asheville taxpayers are paying the bonds on these water improvements – not Henderson County and not the City of Hendersonville, and the City Council needs to be accountable to our taxpayers. He feels that City Council is fair and will take into consideration what the County needs are. He felt the people in Henderson County should be able to have water, but it doesn't mean they should be making decisions for the City of Asheville taxpayers.

Councilman Newman said that families and businesses in Asheville pay twice the property taxes as all the other residents and businesses in Buncombe County and they pay some of the highest residential water rates in North Carolina. The Water Authority is currently proposing to increase water rates by 50% over the next five years and we still need to invest a lot more into the infrastructure. Someone needs to look out for the taxpayers of Asheville. He hoped we can negotiate successfully with the County and our neighbors but we need to start getting some kind of change in place.

Vice-Mayor Mumpower said we are only announcing the beginning of the process of looking at change. We are not locking ourselves into anything and we are not violating any agreements. We are announcing to other bodies that we think we have a broken system of management and we need to look at ways to fix that. We hear a lot about regional authorities and it is a good concept, but when you look across the state, that is not the model that exists in North Carolina. Most cities own their resources and they own them for a reason. Our not owning our resources is one of the reasons is one of the reasons we have such a difficult time with annexation. It is a fairness issue to the City and we can talk about regionalism as a good concept but when you get down to reality, that is not what everyone else is doing. We are trying to fix a broken system and do it in a fair, even-handed manner. Nothing will change quickly or thoughtlessly.

Councilwoman Bellamy said the primary purpose of the 1996 Water Agreement was to provide for the operation of a unified water distribution system that was regional in scope, and to provide a means for the orderly extension of water service to unincorporated areas of Buncombe County and beyond, and to provide for the cost-effective repair and maintenance of the existing water distribution system She doesn't feel like those purposes are being addressed today. She thinks it is regional in name only. When we did try to extend water lines into Henderson County, there was a lot of disagreement on how that should have been done. Conflict continues to arise when we think about decisions that need to be made with regard to the water system. She feels that putting this issue on the table for Council to review in detail over the next year will give the people the opportunity to give input on what they want to see as well as our elected officials. If we are going to look at being cost-effective, we need to look at every aspect of that happening, not just what it would look like from a regional approach. She supports looking at this for a year to decide if we want to continue with our current relationship under the 1996 Water Agreement.

Councilwoman Jones said that it is her observation is that the Regional Water Authority has very good people on it that care about the region and the entities that they represent, but that regional body has not been able to do what it needed to do for the region. A recent example is that Asheville wanted to work with the City of Hendersonville (the only other water distributor in our region) on a plan to scout out what would happen in an emergency. We couldn't even get an emergency plan for our people. That is not looking after the region. To assume that Asheville is moving towards controlling its taxpayers assets equals to a disregard of the water needs of our region is not the case.

Mayor Worley said the water system is a ¾ of a billion dollar asset and that is a pretty significant asset for us not to be managing ourselves. We do a disservice to our citizens in the water rates. Our citizens pay higher water rates than just about any other city in North Carolina. And, all of those cities have deferential rates involved, which serves as a tool for many aspects. It is a tool we don't have. This is also a process that will take considerable amount of time and we don't know what's going to come out of the negotiations. He anticipates a lot of give and take, a lot of discussion and a lot of ideas. He doesn't think the steps we are taking tonight or anything that will come out of the negotiations over the coming year in any way diminishes our regional commitment. Every member of this Council recognizes that in this day and age we have to be regional in nature. What benefits our neighbors benefits us and vice versa. We only succeed by working together. The provision of water is certainly a regional commitment and a regional asset, but we get a portion of our water from another county and it's only fair that we share that water with other counties and other jurisdictions that need it. We have done that in the past and we will continue to do that in the future. The way we are regional in nature may change, but he doesn't see any change whatsoever in the regional commitment. We will continue to have that commitment, will continue to work with our neighbors, and will continue to honor every regional agreement that we are a party to.

Following up on Councilman Dunn's comment, Mayor Worley said that it's easy to say the $1 Million Asheville gets out of the water revenues should be given back, but the water system is our asset. If we gave up that $! Million to replace it, we would have to raise our property tax rates by 2-cents on the dollar. We have to have that $1 Million to balance our budget. So, the question is do we get that as a return on the investment of our asset where all the water customers pay that bill (which a substantial number of whom do not live in the City of Asheville) or do we shift that burden to strictly City residents. That is how giving back the $1 Million affects Asheville.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-122. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 268

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced the following vacancies for June, 2004. He asked interested people to contact the City Clerk for an application form.

Vice-Mayor Mumpower reminded Council of the various ceremonies which will be taking place on Memorial Day. He especially invited the public to the Memorial Day Ceremony on May 31 at 2:00 p.m., in the City/County Plaza area.

Councilwoman Bellamy formally recognized the Asheville High Girl's Basketball Team, Asheville High Girl's Soccer Team and T.C. Roberson's Soccer Team on their successful seasons. She also congratulated the Asheville High School Seniors and was astounded to see the amount of community service these young people commit to.

All of City Council congratulated Councilman Newman and his wife Beth on their daughter, Tess Newman.

The following claims were received by the City of Asheville during the period of May 7-13, 2004: Natalie Baker (Police), Katherine Mccoy (Fire), Lisena Moss (Sanitation), Linda Buckner (Fire), Jimmy Cole (Water) and Bellsouth (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar asked City Council to approve an arbitrator to meet with him, his attorney Mr. Reidinger, the City Manager, and the City Attorney to discuss a fair solution of his concerns regarding annexation of his property on Smoky Park Highway. Mayor Worley responded that City Council has listened to Mr. Fryar for the past year and has carefully considered every aspect. City Council has not sided with the views of Mr. Fryar. He put Mr. Fryar on notice that Council is not going to continue having the same presentation on the same subject every time we meet.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 9:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 8, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Retired U.S. Marine Corp Veteran Charles Sherlin led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Dunn gave the invocation.

ADDITION TO THE AGENDA

Mayor Worley asked that an item be added under "New Business" regarding asking the N. C. Dept. of Transportation to rename "Amboy Road" to "Bob Pressley Memorial Roadway."

Mayor Worley asked that an item be added under "New Business" regarding an appropriation to the Grove Arcade in the amount of $25,000.

I. PROCLAMATIONS:

A. RESOLUTION NO. 04-123 - RESOLUTION EXTENDING AN INVITATION TO THE CITY OF KARPENISI, GREECE, TO BECOME A SISTER CITY AND INVITING THE PEOPLE OF KARPENISI, GREECE, TO PARTICIPATE IN THE ASHEVILLE SISTER CITIES PROGRAM

Mayor Worley was pleased to announce Asheville's newest Sister City – Karpenisi, Greece.

Mr. Ken Richards, State Coordinator for Sister Cities International, thanked City Council for their support of the Sister Cities Program and announced the 100th anniversary of the Greek community in Asheville.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved to adopt Resolution No. 04-123. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 270

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda "L" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 25, 2004

B. RESOLUTION NO. 04-124 - RESOLUTION AMENDING INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY TO PROVIDE FOR PARKING REGULATION ENFORCEMENT ON COUNTY FACILITIES WITHIN THE CITY

Summary: The consideration of a resolution amending an interlocal agreement for parking enforcement on County-owned lots within the City.

In August of last year, the City and Buncombe County entered into an interlocal agreement whereby the City enforced County parking regulations on County-owned/operated parking facilities within the City. The agreement included a list of the facilities where the City was authorized to do this.

The County wishes to add another lot to the list of those where the City enforces the regulations, and may wish to add others in the future. The resolution authorizes the August 2003 agreement to be amended so that facilities can be added by agreement of the City and County staff, without going through the formal amendment process, which would require governing body approval.

Our staff has reviewed the proposed change and has no objection to it.

Considerations:

- This amendment streamlines an existing agreement that is already working well.

If the Council approves of amending the agreement, adoption of the resolution amending an interlocal agreement for parking enforcement on County-owned lots within the City is recommended.

RESOLUTION BOOK NO. 28 – PAGE 271

C. RESOLUTION NO. 04-125 - RESOLUTION AUTHORIZING THE CHAIRMAN OF THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO EXECUTE A GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS TO THE ASHEVILLE REGIONAL AIRPORT

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the following project:

- AIP 28: Runway 34-16 Blast Pads, Snow Removal Equipment, Resurface Taxiways, Southeast ARFF Road Culvert Replacement, Baggage Claim Expansion (portion), Hold Room (portion)

The grant, in the amount of $171,413, has been approved by DOT based on a total estimated cost of $3,428,261.

City staff recommends adoption of the resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

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D. RESOLUTION NO. 04-126 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TEMPORARY SERVICES AGREEMENT WITH FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC.

Summary: The consideration of a resolution authorizing the City Manager to enter into a Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation Division), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past two years with excellent results.

Benefits to contracting with FIRST, Inc. include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all FIRST personnel requested, enabling operations to be fully productive at all times.

A negative aspect of using FIRST, Inc. is that the City of Asheville must negotiate an annual contract for this service.

City staff recommends approval of a resolution authorizing the City Manager enter into a Temporary Services Agreement with Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

RESOLUTION BOOK NO. 28 – PAGE 273

E. RESOLUTION NO. 04-127 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON JULY 13, 2004, TO CONSIDER THE CLOSING OF NELSON STREET

RESOLUTION BOOK NO. 28 – PAGE 274

F. RESOLUTION NO. 04-128 - RESOLUTION TO PURCHASE REAL PROPERTY ON CAUBLE STREET AT THE FAIR MARKET VALUE FOR THE REED CREEK GREENWAY PROJECT

Summary: The consideration of a resolution to purchase real property on Cauble Street from BATT Associates Inc. at the fair market value of $31,100 for the Reed Creek Greenway project.

The property on Cauble Street (owned by BATT Associates) is located about 200' west of the intersection of Cauble Street and Broadway. It is irregular in shape following the meandering of Reed Creek and containing approximately 0.32 acre. It is generally level with the street and forms a grassy plain along the bank of the creek. Its highest and best use per the appraisal is residential as permitted by the zoning. It is proposed to be acquired as part of the Reed Creek Greenway.

The property was appraised by Joseph Moore and Joel B. Dew, MAI. Ed Vess, Real Estate Manager, reviewed the appraisals. The recommended fair market value of the property is $31,100.

The positive aspects of the proposed acquisition are:

1. Offers a superior and more practical path compared to the land currently owned by the City on the east side of Reed Creek.
2. The savings realized in not having to build a bridge across the creek meeting ADA guidelines will offset the cost of the property.
3. Will expedite completion of the Reed Creek Greenway because a bridge will not be required.
4. It is a voluntary sale at fair market value.
5. Includes only the land necessary for the greenway leaving the owner with two good home sites.
6. Will free up a parcel for possible disposition once a parking area for the Greenway is selected.

The negative aspects are:

1. Removes property from the tax base.
2. Removes a residential lot from the market.

Approval of the resolution will establish $31,100 as the just compensation for the property and accept the Offer of Sale of Land from BATT Associates, Inc. for that amount.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution accepting an Offer of Sale for land on Cauble Street which is needed for the Reed Creek Greenway for the sum of $31,100.

RESOLUTION BOOK NO. 28 – PAGE 275

G. RESOLUTION NO. 04-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A 60-DAY EXTENSION OF AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE FOR REGION 6

Summary: The consideration of a resolution authorizing the City Manager to enter into a 60-day extension of an agreement with the N.C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region 6.

The N.C. Dept. of Crime Control and Public Safety is in the process of extending contracts by 60 days with seven North Carolina governmental units in North Carolina for provision of regional hazardous materials emergency response. The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-1995. The State of North Carolina provides funding that fully supports the operational costs of the program.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response. The region six area encompasses the westernmost twenty counties.

PROS:

- The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.
- The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.
- During the ten years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Strategic Operating Plan in partnerships.

CONS:

- None have been identified or known at this time.

City staff recommends City Council authorize the City Manager to enter into a 60-day extension of an agreement with the N.C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for region 6.

RESOLUTION BOOK NO. 28 – PAGE 276

H. RESOLUTION NO. 04-130 -RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES PLLC FOR AUDITING SERVICES FOR FISCAL YEAR 2003-04

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2003-2004.

N.C. General Statute Section 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

In 1998, the City solicited proposals from 36 accounting firms to perform the City's annual audit. City Council selected Dixon Hughes PLLC, formerly known as Crisp Hughes Evans LLP, to conduct the Fiscal Year 1997-98 audit and has re-engaged them annually through Fiscal Year 2002-2003. They completed all of those engagements in a satisfactory manner and have now submitted an engagement letter for the Fiscal Year 2003-2004 audit. The base fee has been proposed at $66,800. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

City staff recommends City Council adopt the resolution which authorizes the Mayor to execute a contract with Dixon Hughes PLLC for auditing services for Fiscal Year 2003-2004.

RESOLUTION BOOK NO. 28 – PAGE 277

I. RESOLUTION NO. 04-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE AMBOY ROAD TO HOMINY CREEK ROAD GREENWAY CONNECTOR PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for construction of a multi-purpose greenway facility from Amboy Road to Hominy Creek Park, and to amend the budget to accommodate up to $300,000 in reimbursements revenue from NCDOT for the project.

The City of Asheville has an allocation of $300,000 in construction funds from NCDOT to construct a greenway along the French Broad River from Amboy Road to Hominy Creek Park, overlapping Metropolitan Sewer District and Progress Energy easements. This portion of the City Greenway Master Plan will link the French Broad River Greenway and Park system to Hominy Creek Road and West Asheville. While no local match for these funds is required up front, the City is responsible for land/right-of-way acquisition, trail design and engineering, and any construction costs over the $300,000.

City staff provided an update on this project to Council on February 17, 2004, and has since completed a survey of the project area and met with key landowners. Staff will continue to work with landowners to secure needed right-of-way, to develop easement agreements with the Metropolitan Sewage District and Progress Energy, and to finalize the trail design.

The positives of this project are that:

- The execution of a Municipal Agreement releases $300,000 in reimbursement dollars to the City for implementation of the Greenway Plan;
- This portion of Greenway will connect West Asheville neighborhoods to the larger Greenway System along the French Broad River;
- This project will clean up and maintain an area along the river which has long attracted pedestrians and fisherman, making it safer and easier to patrol; and
- This project will establish a greenway that will be integrated into the I-240 widening project.

The potential negatives of this project are that:

- The execution of the Municipal Agreement will bind the City to complete construction within a three-year period and to cover any construction costs over the $300,000; and
- The City will need to work with multiple landowners to obtain the required right-of-way. This will require expenses for Phase I studies, appraisals, legal fees, and possibly out-right purchase of property in cases where the landowners will not dedicate or donate the needed area.

Staff recommends that City Council authorize the City Manager to execute the municipal agreement with the N.C. Dept. of Transportation for construction of a multi-purpose greenway facility from Amboy Road to Hominy Creek Park and to amend the budget to accommodate up to $300,000 in reimbursement revenue for trail construction.

RESOLUTION BOOK NO. 28 – PAGE 278

J. ORDINANCE NO. 3124 - BUDGET AMENDMENT FOR THE AMBOY ROAD TO HOMINY CREEK ROAD GREENWAY CONNECTOR PROJECT

Summary: See Consent Agenda Item "I" above.

ORDINANCE BOOK NO. 21 – PAGE 182

K. APPROVE FORM OF ORDINANCE NO. 3116 – ORDINANCE AMENDING THE CONDITIONAL USE PERMIT OF APPELDOORN CONDOMINIUMS LOCATED AT 200 BROOKLYN ROAD

Summary: The consideration of an ordinance amending the Conditional Use Permit for Appledorn Condominiums.

At its May 11, 2004, meeting, Council indicated that it wished to amend the Conditional Use permit for Appledorn Condominiums to delete the requirement for the developer to contribute $500 per unit for traffic calming, and that the City would implement whatever traffic calming measures were determined to be necessary. Council also indicated that the guidelines for affordability with respect to the units to be constructed should be clarified.

The ordinance amends the Conditional Use Permit issued on August 13, 2002, to address these two issues.

If Council approves of the amendments as set forth in the ordinance, adoption of the ordinance is recommended.

ORDINANCE BOOK NO. 21 – PAGE 154

L. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ARDEN/BILTMORE ROTARY CLUB FUNDRAISER AT THE ROYAL PINES PARK ON JULY 3, 2004

This item was pulled from the Consent Agenda for an individual vote.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA

RESOLUTION NO. 04-132 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ARDEN/BILTMORE ROTARY CLUB FUNDRAISER AT THE ROYAL PINES PARK ON JULY 3, 2004

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Arden/Biltmore Rotary Club Fundraiser at Royal Pines Park on July 3, 2004.

The Arden/Biltmore Royal Club has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their Fundraiser at the Royal Pines Park and allow for consumption at this event.

The Arden/Biltmore Royal Club Fundraiser is a fundraiser for the 100-year celebration of Rotary International. The funds raised will be used to construct a gazebo at Royal Pines Park.

City staff recommends City Council approve the resolution to authorize the possession of malt beverages and/or unfortified wine for the above-mentioned event at specific locations and times noted in the resolution.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-132. This motion was seconded by Councilman Dunn and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 279

III. PUBLIC HEARINGS:

Mayor Worley said that Mr. Bob Deutsch, attorney for the petitioners requesting rezoning of 53 and 51 Arlington Street, notified the City on June 4, 2004, that the petitioners are dropping their applications for rezoning (Public Hearings "B" and "C").

A. PUBLIC HARING TO CONSIDER THE CLOSING OF A PORTION OF REED STREET

RESOLUTION NO. 04-133 - RESOLUTION TO CLOSE A PORTION OF REED STREET

Mayor Worley opened the public hearing at 5:16 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to close a portion of Reed Street. This public hearing was advertised on May 14, 21, 28 and June 4, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been opened.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use as a public street a portion of Reed Street.

Closure of this section of right-of-way will have no impact on the ingress and egress for any of the abutting properties. There are two lots that abut this section of right-of-way. They are identified by PIN Nos. 9647.12-86-0434 and 9647.12-86-4339.

Mr. Cole said that this closing is subject to the retention of easements extending the full length and width of said portion of Reed Street by Progress Energy, PSNC Energy, BellSouth, Charter Communications, and the City of Asheville Water Department for the operation and maintenance of public utilities.

City staff recommends that City Council adopt the resolution to close a portion of Reed Street.

Dr. William Chambers spoke in support of the closing of a portion of Reed Street and responded to Councilwoman Jones' inquiry of how this closing connects with the larger community goal of better exiting onto Hendersonville Road.

Mayor Worley closed the public hearing at 5:18 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-133. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 281

B. PUBLIC HEARING TO CONSIDER THE REZONING OF 53 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Worley said that Mr. Bob Deutsch, attorney for the petitioners requesting rezoning of 53 and 51 Arlington Street, notified the City on June 4, 2004, that the petitioners are dropping their applications for rezoning (Public Hearings "B" and "C").

C. PUBLIC HEARING TO CONSIDER THE REZONING OF 51 ARLINGTON STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT

Mayor Worley said that Mr. Bob Deutsch, attorney for the petitioners requesting rezoning of 53 and 51 Arlington Street, notified the City on June 4, 2004, that the petitioners are dropping their applications for rezoning (Public Hearings "B" and "C").

D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE REZONING OF PROPERTY LOCATED AT 673 SAND HILL ROAD FROM RM-6 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO CONSTRUCT 12 ADDITIONAL APARTMENTS IN ADDITION TO THE 11 EXISTING APARTMENTS

ORDINANCE NO. 3125- ORDINANCE REZONING PROPERTY LOCATED AT 673 SAND HILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3126- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 673 SAND HILL ROAD TO CONSTRUCT 12 ADDITIONAL APARTMENTS IN ADDITION TO THE 11 EXISTING APARTMENTS

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:22 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Carter Pettibone submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a request to rezone property located at 673 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use; and the issuance of a conditional use permit to construct 12 additional apartments in addition to the 11 existing apartments.

The Asheville City Development Plan 2025 (ACDP 2025) specifically calls for an initiative to address the problem of affordable housing by increasing the supply of affordable housing units.

The property is located within the City limits on the north side of Sand Hill Road south of Smoky Park Highway. Surrounding land uses and zoning include single-family residences to the north and west, vacant property to the east, and a church to the south, all of which are zoned RM-6. The site is landlocked and is located directly behind a church property, which has frontage on Sand Hill Road. Access is from a road that crosses the church property. There are currently 11 multi-family units on the property contained in three buildings.

The applicant, Anthony Willis, wishes to obtain a conditional use rezoning in order to exceed the maximum density permitted by the RM-6 district. The property is 3.29 acres, which would yield a total of 20 units. The applicant is proposing 23 multi-family units, which would require an RM-8 designation due to size of the size of the property. The applicant also plans to rent out the units within the development at rents that fall within the City's guidelines for affordable housing.

Highlights of the proposed site plans and building elevations for the development include:

Access & Parking: The site's access is from Sand Hill Road through the church property to the south. Parking is provided in front of the proposed buildings and to the sides of the existing buildings. The proposed number of spaces falls within the limits stated in the Unified Development Ordinance (UDO).

Height and Building Dimensions: The proposed apartment buildings as well as the existing ones are two stories in height and appear to be less than the 40-foot height maximum for the RM8 District.

Open Space: The UDO requires 500 square feet of open space for every residential unit proposed. This would result in a total of 11,500 square feet required for reservation as open space for the 23 multi-family units. While the site plan mentions over 20,000 square feet of open space, the plan must clearly delineate the open space and provide a more accurate total.

Landscape & Buffering: Buffering is required on all sides with a 15-foot type "A" buffer to the south and 20-foot type "B" buffers to the east, north, and west. Landscaping is required around the off-street parking areas.

Street Trees: The UDO requires that new developments provide one large maturing tree (over 35 feet in height at maturity) for every 40 linear feet of property abutting a street. The development must have these street trees along the access road through the development.

Sidewalks: The UDO requires sidewalk installation along the frontage of all streets. The applicant has proposed installing a sidewalk along the entrance street from Sand Hill Road to the apartment buildings on the site.

The Technical Review Committee (TRC) reviewed the proposed site plan and recommended approval with conditions. The applicant has revised the site plan to address a number of the conditions, but some conditions are still outstanding. The following is a list of the outstanding conditions listed by department:

PLANNING

- Parking and vehicular use areas to be calculated for entire site and planted with corresponding parking lot landscaping per Article 11.
- Open space to be calculated for entire 23 units (23 x 500 = 11,500 square feet or 0.26 acres) and delineated on plan.

WATER RESOURCES

- The owner needs to make application for a Letter of Commitment (LOC) regarding water availability.

ENGINEERING

Stormwater/Erosion Control information:

- Provide a location map.
- Storm water and Erosion Control Plans will be required. Storm water control design must show the post development run off is equal to or less than pre development rates. The design shall be developed for a 2 and 10-year storm event and providing for a 50-year emergency overflow.
- If the entire project is being graded under the original submittal the City will provide individual grading permits for each site so that each house can obtain a certificate of occupancy upon completion without having to wait until the end of the project.
- NPDES – Non point source discharge permit is required for any land disturbance over 1 acre. DENR regulates the permit. The City of Asheville is delegated to issue the permit and will once the Erosion Control Plans are reviewed and approved for construction.

Traffic engineering information:

- Details required for roadway construction.
- Sidewalks along private road & Sand Hill Road property frontage.
- Clarify the ownership of the roadway to the site
- State driveway access application and City of Asheville driveway access application will be required for construction of the proposed entrance/exit onto Sand Hill Road.

Waterline information:

- Apply for Water Availability through the City of Asheville Water Resource Department.

MSD

- To reach the existing MSD sewer line, the developer will have to obtain an off-site easement and install an 8-inch sewer extension per MSD standards. It is noted that an appropriate easement will have to be secured for this new line.
- MSD recommends approval for this project contingent upon the MSD wastewater allocation and plan review process being properly completed by the developer.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

The project received conditional technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

The project must comply with all City standards in regards to maximum clearing and grading, erosion control, and maximum slope for streets. The applicant also proposes to preserve a significant sloping, wooded area to the rear of the property that adjoins a creek as an open space area.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

There is no evidence that the additional development will substantially injure the value of adjoining or abutting property given the existing site development and that of surrounding properties.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The applicant plans to demonstrate that the resulting development will be in harmony with the surrounding neighborhood in terms of bulk, density, and character.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The development will help satisfy the ACDP 2025 plan goal of increasing the supply of affordable housing.

That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

The project received technical approval from the Technical Review Committee, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works.

6. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The project received technical approval from the Technical Review Committee, which includes the City Traffic Engineer, who did not raise comments or concerns in regards to possible undue traffic congestion from the development.

Advantages (Pros) of the proposed development

- Provides for infill multi-family residential on a site already dedicated to that use.
- Increases the supply of affordable multi-family units as the units are proposed to be rented at rates within the City's affordability guidelines.
- The site plan calls for the portion of the site nearest to the stream to the rear to be preserved as open space

Disadvantages (Cons)

- The proposed site plan does not clearly delineate nor specify exactly how much open space will be dedicated.

In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the UDO for consideration of a conditional use rezoning from RM-6 to RM-8/Conditional Use and the issuance of a conditional use permit for 12 additional multi-family units.

Staff recommends approval of the rezoning and the issuance of a conditional use permit with the following conditions:

- All outstanding TRC conditions (outlined above by department) are addressed and detailed plans are reviewed by TRC after approval by City Council.
- The applicant works with staff to determine final amount and location of open space.
- The existing and proposed multi-family residential units are to remain affordable.

The Planning and Zoning Commission, by a vote of 6-0 at its June 2, 2004, meeting, recommends approval as well.

Mayor Worley closed the public hearing at 5:26 p.m.

Councilwoman Bellamy wanted to make sure that there was legal access to the road.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3125 to rezone property located at 673 Sand Hill Road from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Use. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 184

Councilwoman Bellamy moved for the adoption of Ordinance No. 3126 granting a conditional use permit for property located at 673 Sand Hill Road for the construction of 12 additional apartments in addition to the 11 existing apartments, subject to the following conditions: (1) All outstanding TRC conditions (outlined above by department) are addressed and detailed plans are reviewed by TRC after approval by City Council; (2) The applicant works with staff to determine final amount and location of open space; and (3) The existing and proposed multi-family residential units are to remain affordable. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 186

E. PUBLIC HEARING ON THE FISCAL YEAR 2004-05 ANNUAL OPERATING BUDGET

Mayor Worley opened the public hearing at 5:29 p.m.

Budget Director Ben Durant said that the City Council conducts a public hearing each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal Year 2004/2005 Annual Operating Budget was presented to City Council on May 3, 2004. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 28 and June 4, 2004. Adoption of the Budget Ordinance is scheduled for June 22, 2004, at the City Council meeting.

The Fiscal Year 2004/2005 Annual Operating Budget is balanced with an Ad Valorem Tax rate of $0.53 per $100 assessed value.

A copy of the Budget is available for public inspection in the City Clerk's Office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which cannot be changed once adopted.

City staff requests City Council conduct the public hearing on the City of Asheville Fiscal Year 2004/2005 Annual Operating Budget and include public input in consideration of the budget.

Mr. Mike Marshall, Captain in the Asheville Fire Department and President of the Asheville Firefighters Association, spoke in support of the City Manager's budget, in particular the employee benefits.

Mr. Fred English spoke regarding the Hard Drug Interdiction Proposal and the Safe Neighborhoods Initiative. He felt that the increase in recycling fees was in fact a tax increase. He supported the need for additional police officers. He didn't feel that giving people money will make them want to go to school, but instead suggested the education money be spent towards educating unwed mothers. In addition, he didn't think the any funds should be distributed for affordable housing in the housing projects.

Mr. Bob Smith, Executive Director of the Asheville-Buncombe Community Relations Council, voiced concern that the public is viewing the people who live in public housing as "those" people, but we need to realize that we are all the same people. Regarding the two proposals developed by Council, he felt that Council should have gone to the neighborhoods involved to ask them what the real issues are and to ask them what they think is important. He urged Council to take the time and energy to meet with the communities involved so that there is a buy-in and a good solid foundation on which to work on.

Mr. Ken Putnam, Traffic Engineer for the N.C. Dept. of Transportation, asked City Council for their support for the Yorkshire Street widening.

Ms. DeAnn Robinson, resident at Lee Walker Heights Apartments, supported the Safe Neighborhood Initiative Program. She suggested the money be used for summer programs and jobs for our youth, computers in all community centers and tutors for our children. In addition, she felt it was inappropriate for the news media to come into Lee Walker Heights and talk to the children without having parental consent (from a safety standpoint). She also felt it was not appropriate for the police officers to jump out at night, scattering playing children, running through the projects with guns drawn. That is something that should be researched further. She also felt that Council needs to sit down with the neighborhoods as well to find out what they need and want.

Ms. Althea Goode, public housing advocate, agreed with Mr. Smith in that people are always coming into their communities telling them how to live. Officials need to talk to them first because they too pay taxes.

Mr. James Sheeler, West Asheville resident, suggested the $1 Million go towards reinstating the summer job program and making it a year-round program that would employ people to work after-school.

Ms. Luella Whitmire Reeves said that through the Housing Authority, she has allowed her to reach people on the streets and the people in the projects to bring them to church. It has made a positive difference. She explained that if people have something to do, they wouldn't be doing the things they shouldn't be doing. She urged City Council to reinstate the summer jobs program.

Mr. Iver Thomas said that the drug program can be solved by tough police action; however, he is not in favor of the jump-outs by the police officers. He would prefer to see a reverse sting where the customers are arrested. He believed our residents in public housing should be treated with dignity and respect and their desires should be paramount in any action taken. He suggested we look at other cities that have been successful through their tough police action. He was also in support of the Hard Drug Interdiction proposal. He felt the Safe Neighborhood Initiative, as written, is not enough and is too late.

Mr. Alan Ditmore felt that the core services of a city is to tax the rich and meet human needs. Health care and housing are the most unmet human needs. The City insists on leaving health care to the County and augment the Police Department. He feels the City should not be using local funds to enforce state and federal drug laws.

Mr. Fisher Caudle, representing property owners on Kentucky Drive and Buttonwood Court, felt that government is not here to create jobs for people. He explained how the area around Pisgah View Apartments has been severely affected by drug traffic in and out of the area. They continue to be harassed daily by drug thugs. He urged the public housing residents to rise up and make their voices heard about how they want to restore safety to their communities. He spoke in support of the Hard Drug Interdiction program.

Ms. Minnie Jones, public housing advocate, spoke about the drug thugs who are driving expensive cars into their neighborhoods. She felt we needed to get rid of those hoods and head them off up on Haywood Road, down on I-26 or I-40, and then Pisgah View Apartments wouldn't have the drug thugs standing on the corner.

Mr. H.K. Edgerton, President of the N.C. Heritage Preservation Association, said there is a loss of African American principals and teachers. He felt that there should be tough police action towards the people who bring the drugs into our neighborhoods. He suggested African American ministers open up their churches and start home schooling the children.

Mr. Isaac Coleman, President of the Buncombe County African American Caucus of the Democratic Party, said that the first police team at Hillcrest was successful in that they stopped the expensive vehicles and people who wanted to buy drugs from coming into Hillcrest. He couldn't understand why they don't want to use that approach rather than jumping on people who live in public housing for selling the drugs. He hoped everyone realizes that the drug problem is a social and economic problem. Until we correct the social and economic problems that exist, especially among people who live in public housing, then we don't have a chance of changing the dangers that exist in our public housing developments and other communities in Asheville. He spoke in support of the Safe Neighborhoods Initiative program; however, he felt it was important to involve the community in developing the program. He also felt that whatever programs are developed, they should be sustainable

The Reverend Jim Abbott, Rector of St. Mathias Episcopal Church and Co-Chair of Christians for United Community, assured Council that they have been spending the last year talking with each other and trying to hear from the community, knowing the only way we are going to solve any of our social problems is to work together. He said that he supports the holistic approach but would also like for the Christians for United Community to be a part of that approach.

Mr. Bill Stamey, Beaverdam resident, stressed that the police need to go after the people selling the drugs. He questioned whether City government has ever researched every department to make sure that there was no overlap or unnecessary positions. He urged Council to give taxpayers some type of relief on their property taxes.

Ms. Marcia Thomas said that she has obtained several signatures on a petition which support the Hard Drug Interdiction program. She doesn't see drugs as a race problem, but a people and kid problem. Children need a safe neighborhood.

Ms. Norma Baynes, resident on Caribou Road, said that there are drugs in everybody's neighborhoods, either on the corners or in the homes. This is a problem for everyone.

Mr. Peter Dawes said that the drug problem is a cancer, which needs to be killed first and then we can institute some programs. It affects everyone all over Asheville.

Ms. Leslee Kulba found five people (California, Georgia, Florida, Utah) who were able to talk about how they got rid of the drug problem in their municipalities. They recommended 24-hour surveillance in front of crack houses. When the crack houses would move, the police would move. Adding two more police officers is not enough. If you really want to get rid of drugs, we need more police. The government needs to spend money on protection. In addition, the police have a bad reputation in Asheville and she suggested some monies go to a program to improve their image and rapport.

Mr. John Hayes, founder of the Hillcrest Enrichment Program, said drugs are not a low income-housing problem. The Hillcrest Enrichment Program has received numerous awards and the children even accompanied the City of Asheville officials when they received the All American City Award. The Hillcrest Enrichment Program can be a model for other programs. He presented Council with two books – Developmental Analysis of After-School Programs for the Governor's Crime Commission and SETCLAE Self-Esteem Through Culture Leads to Academic Excellence. The book by the State included the Hillcrest Enrichment Program. The main time children get in trouble is after school to 8:00 p.m. so we need to work on after-school programs.

Ms. Susan Preston, member of the Christians for United Community, spoke about the need for good after-school programs. She also stressed that Council needs to ask the community to make suggestions for their children and ask the people who have experience with children.

Mayor Worley closed the public hearing at 6:21 p.m.

Mayor Worley announced that on June 22, 2004, City Council will take all comments into consideration and consider the adoption of the Fiscal Year 2004-05 Annual Operating Budget.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

RESOLUTION REQUESTING THE N.C. DEPT. OF TRANSPORTATION TO RENAME "AMBOY ROAD" TO "BOB PRESSLEY MEMORIAL ROADWAY"

Councilman Dunn was pleased to introduce and read the following resolution: "WHEREAS, the City Council of the City of Asheville finds it would be fitting and proper to honor the memory of racing legend Bob Pressley; and WHEREAS, in recognition of his outstanding career in racing, starting at the Asheville Motor Speedway on Amboy Road, and for his dedicated community service, City Council requests that Amboy Road be renamed the "Bob Pressley Memorial Roadway" in his memory; and WHEREAS, the City Council finds that it would be in the best interest of the citizens of the City of Asheville and Buncombe County to memorialize Bob Pressley, a racing legend and community servant, by requesting that the N.C. Department of Transportation make this road name change; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT (1) The Asheville City Council does hereby request that the N. C. Department of Transportation designate Amboy Road as the "Bob Pressley Memorial Roadway"; and (2) That upon said designation the N. C. Department of Transportation cause to have erected appropriate signage to make the general public aware of said designation." He felt it was fitting and proper to recognize people in our community that have performed such a great service. Mr. Pressley was an icon and he was pleased Council would consider recognizing his memory.

Councilwoman Jones raised two concerns. She felt we should research the history of Amboy Road first so we don't insult someone else's memory, just in case Amboy Road was named for someone else. Secondly, she knows that there is a Pressley Road already in Asheville and she wanted to make sure that we are doing something appropriate in terms of mapping and directions.

Councilman Dunn said that growing up in Asheville, he knows that Amboy Road was always synonymous with the racetrack.

Councilman Davis spoke about the early NASCAR racing at the Asheville Speedway. He was proud that the City is doing something of this nature because he felt there was still some hard feelings about the racetrack, even though a number of people are enjoying the Park there now. He felt it was an honor to know Mr. Pressley and he wasn't opposed to asking the road be renamed, but he was concerned about how to be fair with others, e.g., the Dickey Plemmons' family or Jack Ingram. He felt it is a great thing when we name a street for a person but we also need to consider the number of other people that need some recognition as well. Personally he felt it would a great service to have a new racetrack in Asheville, perhaps on some city-owned land, which would be a great economic tool. Perhaps grandstands could be named after some of the people. There have been some very fine racers over the years and building engines used to be a fairly big industry in Asheville. He doesn't want to take anything away from Mr. Pressley's family, but he felt we have a lot of people who should be honored in such a fashion.

Mr. Mike Fryar thought years ago there were people that were named Amboy that owned the property. They built a small airport, which was named Carrier Field, and then they decided to build a racetrack.

Councilman Dunn said that Council has made some good points; however, we are considering naming a bridge over near the Airport for Col. Morgan and there were hundreds of thousands of people who died, so he didn't know how you can get around that issue.

City Manager Westbrook suggested City Council delay taking action at this time and let the City staff do some research on the historical aspect of the name.

Councilman Dunn would be amenable to some type of recognition of the racing community be made on that road.

Councilman Davis suggested that we get some feedback from the racing community as well since there are still a lot of people in the community that are very active in racing. He would be happy to work with Councilman Dunn in getting that feedback.

Mr. Rick Jenkins shared with Council a brief look into the history of racing legend Bob Pressley, not only as a racer but as a man who always found time to help people less fortunate than him and other terminally ill patients. He felt a permanent structure should be constructed in his memory.

GROVE ARCADE ALLOCATION

Mayor Worley said that a $25,000 funding request has been received from Progress Energy for an initiative to bring additional traffic and tourists to the Grove Arcade. The effort by Progress Energy is 100% for the benefit of this community, the downtown and the Grove Arcade. What the City is being asked for is to come to the table with a small portion of the overall funding that is going into that initiative. There are also a number of grants and other funding sources being sought. He said that Buncombe County has already appropriated $25,000 for the same purpose.

Vice-Mayor Mumpower said that this is about an anchor building in Asheville. He felt this is a constructive initiative to try to make the Grove Arcade successful.

Councilwoman Bellamy said that Ms. Becky Anderson, Executive Director of Handmade in America, was recognized nationally for the work she has done to bring attention to local craftsmen in the western part of North Carolina. This focuses on economic development and many of our rural counties are putting a lot of emphasis on our local craftsmen because it is a good economic tool. What Progress Energy is doing is tapping into what is already happening for our region.

Councilwoman Bellamy moved to instruct the City Manager to transfer $25,000 from the Contingency Fund for this initiative. This motion was seconded by Councilman Davis and carried unanimously.

GOOD NEWS

At the suggestion of Councilwoman Bellamy in order to counteract the negative information that is so prevalent, each Council Member said at least one positive thing about Asheville.

Vice-Mayor Mumpower thanked Ashland Paving Company for their grateful donation of 4 speed humps in one of our public housing developments. He also thanked Lonesome Mountain Paving Company for doing the work and City staff for their work associated with project in the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

CLAIMS

The following claims were received by the City of Asheville during the period of May 14-27, 2004: Thomas Neal (Fire), Devon Neimire-Pepe (Streets, Jarrod Eilers (Police), Cindy Miller (Water), Joan Maxcy (Streets), Mary Crawford (Streets), Edward Couser Jr. (Parking Services) and David Lewis (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English spoke in opposition of the passenger rail service

Mr. Mike Fryar spoke in support of the Hard Drug Interdiction Program.

Mr. Dennis Justice, Fletcher resident, thanked City Council for the turf at Memorial Stadium. He suggested that City Council extend their consideration of applications for the Civic Center Commission to adjacent counties since it is the Asheville Area Civic Center Commission. In addition, he suggested the City work with Henderson County and Buncombe County to raise the room tax to help pay for the serious upgrades needed at the Civic Center.

Mr. Bill Stamey hoped that City Council would not take into consideration any comments made by non-city residents. He felt that if the people don't pay City taxes, then they shouldn't be allowed to have input into what happens in the City.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:10 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 15, 2004 - 3:00 p.m.

Worksession

Present:	Vice-Mayor R. Carl Mumpower, Presiding; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson
Absent:	Mayor Charles R. Worley and Councilman Brownie W. Newman

CONSENT AGENDA:

Re-Roofing Reid Community Center

Summary: The consideration of a resolution authorizing the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the Reid Recreation Center on Livingston Street and an associated budget amendment from the contingency fund, in the amount of $77,377.

The current roof at the Reid Recreation Center is well over 25 years old. Over the past three years, requests have been made in the Capital Improvement budget to re-roof this facility. We are currently spending in excess of $10,000 each year on repairs to the existing roof. Bids were solicited from six roofing companies with two being certified Minority Businesses. The following bids were received and include an additional 10% contingency to cover any excess cost that may occur when the existing roof is removed.

Carolina Mountain Roofing and Construction Company	$77,377
Stroup Sheet Metal Works	$78,605
Service One Inc.	$124,043
Carolina Cornerstone Construction (MB)	Did not Bid
LCM Builders, Inc. (MB)	Non-responsive
McElrath Roofing	Not Licensed in NC

Through the generosity of the Junior League, $95,000 has been appropriated to make improvements to the interior of the Reid Recreation Center over the next three years. However, due to the extensive problems with the roof, work in the interior of the building should not occur until a new roof has been completed. As stated above, staff continues to address a number of issues at the Reid Recreation Center including the development of a master plan for the facility that will be used as the framework for additional work to occur based upon community and departmental needs. Without the necessary roof repairs none of this work can progress.

Pros:

- Current funding from the Junior League will address much-needed interior needs.
- Extensive water damage has occurred in the facility due to the deteriorated roof. A new roof will eliminate further damage.
- Support of this initiative has been given by the Reid Center Advisory Board and the Parks and Recreation Advisory Board.
- Use of contingency funds will allow this work to occur as soon as possible.

Cons:

- None

The Parks and Recreation Department recommends City Council authorize the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the

Reid Recreation Center on Livingston Street and to approve a budget amendment, in the amount of $77,377.

Request to NC DOT for Traffic Signal at the Intersection of Hendersonville Road and Yorkshire Street

Summary: The consideration of a resolution requesting the N. C. Dept. of Transportation (NC DOT) to install a traffic signal at the intersection of Hendersonville Road and Yorkshire Street.

The City of Asheville has been working with some property owners, as well as the Biltmore Methodist Church, to reduce traffic accidents and delays at the intersection of Biltmore Avenue and Yorkshire Street. Some of the property owners hired a traffic consultant to prepare a traffic impact analysis of the intersection. The traffic engineer determined that installing a traffic signal at the intersection of Hendersonville Road and Yorkshire Street would allow vehicles to make the left turn onto Hendersonville Road safely. Additionally, the consultant recommended other improvements such as widening Yorkshire Street.

The NC DOT staff has indicated that the City's support for the installation of the traffic signal may expedite the request.

Pros:

- Provide improved safety for vehicles using the intersection of Hendersonville Road and Yorkshire Road.
- Reduce congestion on Yorkshire Street during the afternoon peek travel period.
- Reduce cut-through traffic on adjacent residential streets.

Cons:

- This change will have a minor increase in congestion to traffic traveling Hendersonville Road.
- The proposed traffic signal must be coordinated with the traffic signal at I-40 and Hendersonville Road. This is initially a technically difficult task to accomplish.
- NC DOT will be responsible for the installation and maintenance cost of the traffic signal.

This request meets the City of Asheville Strategic Operating Plan focus area of Planning Goal #2 Task #1, which states:

> *"Determine opportunities for managing traffic demand through changes to community patterns and transportation modes, land use patterns, signalization improvements, etc."*

City staff requests City Council adopt a resolution supporting the installation of a traffic signal at the intersection of Hendersonville Road and Yorkshire Street and requests NC DOT to consider implementation of this recommendation as soon as is reasonable and feasible.

Upon inquiry of Councilwoman Jones, City Engineer Ball said that she would provide data regarding the intersection to City Council.

Local Law Enforcement Block Grant and Crowd Control Equipment

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount $71,211, to appropriate the block grant funding; and a budget amendment to the City's general fund, in the amount of $20,079, to provide grant matching funds and purchase crowd control equipment.

The City of Asheville has been awarded a grant in the amount of $71,201 under the 2003 Local Law Enforcement Block Grant Program. The City is required to match this grant with $7,911 of its own funds, which will result in a total block grant budget of $79,112. The Asheville Police Department will use this grant funding to purchase 20 In-Car Video Camera Systems. In addition to recording traffic stops, drug interdiction efforts and police pursuits, this equipment will improve the quality of evidence obtained by police officers while documenting their daily interaction with the public.

To provide the required grant matching funds and also to provide additional funds for equipment, staff is requesting the appropriation of $20,087 in Drug Tax Revenue that has been received from the North Carolina Department of Revenue but that is currently unbudgeted. The Department of Revenue assesses the Drug Tax on persons convicted of possessing drugs for sale. The City of Asheville Police Department has used Drug Tax Revenue over the past several years to provide matching funds for grants, as well as for other special projects. Of the $20,079 amount, $7,911 will be used as the local match for the aforementioned 2003 Local Law Enforcement Block, and the remaining $12,168 will be used to purchase crowd control equipment. These items include personal protective equipment for Police Officers as well as communications equipment needed to coordinate public safety operations during public demonstrations.

Pros: The use of drug tax money for the purchase of crucial public safety equipment improves the Police Departments ability to carry out its mission. .

Cons: When the purchased equipment requires maintenance or must be replaced, the expectation is created that the general fund will pay for it.

Strategic Operating Plan and Focus Area: The acquisition of this equipment will enhance the focus area, "Critical Services & Infrastructure" and to a large degree, goal #4, *Develop programs and policies to defeat street level drug problems and crime.*

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount $71,211, to appropriate the block grant funding; and (2) a budget amendment to the City's general fund, in the amount of $20,079, to provide grant matching funds and purchase crowd control equipment.

Stradley Mountain Booster Pump Station

Summary: The Regional Water Authority of Asheville, Buncombe and Henderson at its May 18, 2004, meeting approved the bid award to Hobson Construction Company to replace an old pump station on Stradley Mountain.

Bids were received for the Stradley Mountain Booster Pump Station project on May 6, 2004. Three bids were received with Hobson Construction Company submitting a low bid of $143,485.00. The project includes the installation of small water booster pumping station on Lower Stradley Mountain Road to replace an existing, old, non-standard pumping station. The project also includes the installation of approximately 560 linear feet of 6-inch waterline to replace old two (2) inch galvanized pipe.

Engineer's Estimate: $ 175,000

COMPANY	BID
Hobson Construction Company Arden, North Carolina	$143,485.00
Shoreline Enterprises	$163,360.00
Buckeye Construction Company Canton, North Carolina	$233,265.00

The bids were reviewed by the engineer for the project, McGill Associates, which recommended awarding the project to Hobson Construction Company. The bids were also reviewed by the Office of Minority Affairs and Brenda Mills, Director, approved the award of the contract to Hobson Construction Company.

Construction is expected to be completed within 45 – 90 days, which will increase pressure and flow in the Stradley Mountain service area.

This is for informational purposes only to keep City Council informed of construction projects within the water system and does not require any action by City Council.

Street Paving Contract

Summary: The Regional Water Authority of Asheville, Buncombe and Henderson at its May 18, 2004, meeting approved the bid award to Tarheel Paving Company, Inc. to complete street repaving for Critical Needs Phase III water line replacement projects.

Precision Contracting Company defaulted on their Critical Needs Phase 3 – Contract 3 contract. Precision Contracting completed the waterline and appurtenances installation, but did not complete the street repair component of the project. To complete this component of the project, bids were received for the Street Pavement Repairs Project on May 11, 2004. Despite having two pre-bid conferences where multiple local and out of town contractors were personally invited, only one bid was received at the bid opening. Since the amount of this bid made it informal ($300,000 or less), and because of the effort made to attract additional bidders, and the desire to complete this work which has been pending for nearly two years, the bid from Tarheel Paving Company, Inc. (Hendersonville, N.C.) was opened and read. Tarheel's low bid of $ 185,408.27 was less than the engineer's estimate of $210,651 and is within budget for fund reimbursement.

The bid has been reviewed by the engineer for the project, W K Dickson, who recommended award of the project to Tarheel Paving Company, Inc. The bid was also reviewed by the Office of Minority Affairs with recommendation of award to Tarheel by Ms. Leronica Casey, Certification Coordinator.

Funds for this project are through a State of North Carolina grant for $3,000,000.00, which was obtained in 2002.

Completion of the street repaving which includes streets in West Asheville, South Asheville and South Buncombe County should be completed with 30 – 60 days.

This is for informational purposes only to keep City Council informed of construction projects within the water system and does not require any action by City Council.

Mills River Water Treatment Plant Intake Expansion

Summary: The Regional Water Authority of Asheville, Buncombe and Henderson at its April 20, 2004, meeting approved the bid award to Turner Murphy Company for building a new water intake at the Mills River Water Treatment Plant in to the French Broad River.

This project was approved as part of the Brown and Caldwell engineering study for the Regional Water Authority of Asheville, Buncombe and Henderson and was requested to be fast tracked by the NCDENR Water Quality Division. Bids were received from three contractors with Turner Murphy Company being the low bid at $486,858.00. The project includes the installation of a new water intake on the French Broad River. This intake will only be used during drought conditions when the Mills River cannot adequately supply the required water needed by the water plant for distribution through the water system.

Engineer's Estimate: $ 550,000

COMPANY	BID
Turner Murphy Company	$486,858.00
Buckeye Construction	$519,030.66
Cooper Construction	$1,014,900.00

The bids were reviewed by the engineer for the project, Brown and Caldwell, which recommended awarding the project to Turner Murphy Company. The bids were also reviewed by the Office of Minority Affairs and Brenda Mills, Director, approved the award of the contract to Turner Murphy Company.

Construction is expected to be completed within 90 – 120 days.

This is for informational purposes only to keep City Council informed of construction projects within the water system and does not require any action by City Council.

Interim Water Resources Director David Hanks responded to various questions from Councilwoman Bellamy.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

AMENDMENT ONE, SELF-FINANCING BONDS REFERENDUM

Mr. Mac Williams, Co-Chair of the North Carolinians for Jobs and Progress, said that this is the consideration of a resolution of support for Amendment One – Self-Financing Bonds Referendum which will appear on the ballot November.

North Carolina communities need every available tool at their disposal to help develop new jobs and tax base. Self-financing bonds are a proven mechanism whereby local governments may finance public infrastructure improvements in support of related private sector development within their communities. As this approach represents another way local governments can approve bonds, a statewide referendum is required.

Mr. Williams said self-financing bonds is a mechanism for financing local public infrastructure associated with private investment, to revitalize communities, attract new development opportunities and to create new jobs. He then said the bonds are repaid from the revenues off the incremental increase in property values generated by private development supported by the infrastructure paid for by the bonds. Thus, the bonds are self-financing. A private, taxpaying project is required. Only revenue from the increment is dedicated to pay off the bonds. Once bonds are paid, all revenue goes to the general fund. Allows local governments to be more timely in responding to development opportunities. There is a stringent project approval process. He then explained how self-financing bonds can be used. He said that self-financing bonds are fiscally conservative: (1) There is a limit on the types and amount of projects the bonds can support; (2) The bonds must be accompanied by a commitment of private investment; (3) Those who benefit most directly from use of the bonds pay them off; (4) The public is at less risk with these bonds than with general obligation bonds; and (5) Requires approval from the N.C. Local Government Commission.

He explained that more than 95% of self-financing bonds have succeeded across the country. In over 50 years of approving bond issues, no issue approved by the N.C. Local Government Commission has failed.

Support statements:

- NC has lost over 180,000 jobs in recent years – more than most other states. Every tool must be used to make our state and communities more competitive for development opportunities and the jobs they can create. Self-financing bonds are currently used in **48** other states.
- NO NEW TAXES or INCREASED TAXES are required to pay off bonds – they are self-financed from the incremental increase in revenue generated from the increased value resulting from the new private development.
- The tool allows local governments to be a more responsive and nimble partner with the private sector in undertaking catalytic projects resulting in higher quality communities.
- North Carolina's application of the mechanism has some of the strongest accountability safeguards in the country. Public input, local government approval, and Local Government Commission approval are all part of the project/district approval process.

Challenge statements:

- While statewide voter approval is needed to have the tool available as a local option, local voter approval is not required for each specific local application.
- Other means already exist for financing public infrastructure.

City staff and the Sustainable Economic Development Strategic Plan Implementation Task Force recommends Council approval of the resolution of support for Amendment One – Self-Financing Bonds Referendum to be on the ballot in November.

Upon inquiry of Councilman Davis, City Manager Westbrook said that he would check with the City Attorney whether the City could participate financially.

Mr. Williams responded to various questions from Council.

Councilwoman Bellamy felt this is an excellent tool for Asheville.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

FOREST MANAGEMENT PLAN

Due to the absence of Mayor Worley and Councilman Newman and because of the importance of this issue, Councilwoman Bellamy moved to postpone this matter to the July 20, 2004, worksession. This motion was seconded by Councilwoman Jones and carried unanimously.

When Councilman Dunn asked what would happen if a Council Member was not present at the July 20 worksession, Vice-Mayor Mumpower said it would be Council's intent to press forward.

INTENT TO CLOSE BLANKENSHIP AVENUE

Assistant Public Works Director David Cole said that this is the consideration of a resolution of intent to close Blankenship Avenue between Smoky Park Highway and Brookside Circle and setting a public hearing for July 27, 2004.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been accepted as city maintained streets.

Pursuant to this statute, the adjoining property owners have requested the City close Blankenship Avenue, extending north from its intersection with Smoky Park Highway to its intersection with Brookside Circle.

Public Works Department staff has researched and established that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by three lots, identified by PIN Nos. 9617.14-44-5768; 9617.14-44-3873; and 9617.14-44-3740.

However, the City's Traffic Engineer has determined that Blankenship Avenue provides an important connection between Brookside Circle and Smoky Park Highway. Though not a City maintained right-of-way, Blankenship Avenue is signed, has a gravel surface and is used by pedestrian and vehicular traffic. Consequently, City staff advises that closing Blankenship Avenue without any alternate provisions for a transportation connection would be contrary to the public interest.

On Thursday, May 27, 2004, the Traffic Engineer and Assistant Director of Public Works met with Patsy Meldrum, counsel for petitioner Teresa Cathey, to discuss staff concerns about closing Blankenship Avenue. Ms. Meldrum was vague about the needs underlying her client's request to close the street. Consequently, it was difficult to generate alternatives that might satisfy both Ms. Cathey's interests and the City's interests in preserving connectivity.

Assuming that setbacks from Blankenship Avenue's right-of-way could be a concern, staff offered two potential alternative solutions: 1) to relax setback requirements from Blankenship Avenue or 2) to support closure of the right-of-way under an agreement that the petitioners provide a 20-foot public access easement in its place. Either alternative would have the same effect on setback requirements as closing the street, but would preserve the public's right to use the right-of-way for travel. However, Ms. Meldrum has indicated that her client is not amenable to either of these alternatives and wishes to pursue the petition to close Blankenship Avenue over staff objections.

Though intent to close Blankenship Avenue has not yet been advertised or posted, the Public Works office has received three telephone calls from local residents objecting to the closure. The primary concern voiced was that the street is used as a pedestrian access for people walking to and from Brookside Circle and The Lunch Box, a restaurant on Smoky Park Highway. Closing this right-of-way would require that these people walk along Brookside Circle and Smoky Park Highway, neither of which have sidewalks.

Progress Energy, BellSouth Telephone, and Charter Communications (cable television) all have aerial lines on Blankenship Avenue. Additionally, BellSouth has underground conduit (approximately 4-feet wide) along the eastern margin of right-of-way. Easements must be provided or arrangements made by the petitioners to relocate these utilities in order to close Blankenship Avenue.

Based on its importance as a connection between Brookside Circle and Smoky Park Highway, it is the opinion of City staff that closing Blankenship Avenue is contrary to the public interest. Therefore staff recommends against adoption of a resolution to permanently close Blankenship Avenue.

City staff recommends that Blankenship Avenue not be closed. However, consistent with the petitioner's request, staff request that City Council adopt the resolution of intent to close Blankenship Avenue between Smoky Park Highway and Brookside Circle and set the public hearing for July 27, 2004.

Upon inquiry of Councilman Davis, Ms. Patsy Brison Meldrum, representing petitioners, said the alley is not maintained by the City of Asheville.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE ON CHANGES TO THE MINIMUM HOUSING CODE

Director of Building Safety Terry Summey said that this is a review of the status of the implementation of the Minimum Housing Code.

Mr. Summey reviewed the Housing Division Report, which has been operating since its adoption by Council on October 14, 2003. He explained the publicity and education surrounding the changes: (1) distribution of 850 copies of the easy to use reference guide along with informational brochures; (2) 48,000 water bill inserts distributed during January and February, 2004; (3) 3,000 door hangers printed and being distributed to multi-family companies; (4) Housing Code Coordinator has been a guest on call-in program; (5) there have been presentations to 15 realty organizations with over 800 realtors in attendance; and (6) Housing Code website has been established.

Mr. Summey then reviewed in detail the complaint and inspection activities, staffing and recordkeeping.

Mr. Summey explained that City staff will work on more consistency and training for independent inspectors. He also said that there may be possible Code changes presented to City Council in the fall of 2004.

Mr. Summey and Housing Code Coordinator Jeff Baker responded to various questions/comments from Council, some being, but are not limited to: why is there a big increase with third-party inspector inconsistencies; what was the number of annual complaints prior to adoption of the new Minimum Housing Code changes; are complaint originations about the same; is the number of life safety letters higher than anticipated; what are the percentages of owner-occupied homes and rentals being inspected; are the overall units in our City safer; how many eviction-retribution cases are there now compared to the prior Code; how many rental units are there in Asheville; do we have any tools we can implement if there is a clear sense of retribution-related cases; can the City increase the accountability of the inspectors by some policy that says dramatic failures to perform can result in reimbursement to the homeowner or something similar; and does the same inspector perform the repeat inspection.

Councilwoman Jones asked that Mr. Summey track inconsistencies of third-party inspectors and institute a process, if there is not one already, to take them off the list.

When Councilman Dunn asked what the policy was regarding complaints, Mr. Baker said that when the complaint is received, City staff asks the tenant if they have talked to the owner and given them a reasonable period of time to make the repair. They also suggest that the tenant put the complaint in writing. He said that they do have a complaint form on the new Housing Code website for tenants to use. Councilman Dunn felt it would be a good practice to obtain a copy of the complaint letter the tenant gave to the landlord.

Vice-Mayor Mumpower hoped that City staff will bring to the attention of Council any patterns of problems that affect either the tenants or the property owners for Council policy recommendations.

No action on the report required.

At 4:55 p.m., Vice-Mayor Mumpower announced a short break.

DOWNTOWN DEVELOPMENT AGREEMENT WITH THE GROVE PARK INN FOR DEVELOPMENT OF SITE #2 ON THE SOUTH SIDE OF THE CITY HALL BUILDING

City Attorney Bob Oast said that this is the consideration of an amendment to the Downtown Development Agreement with Grove Park Inn (GPI) for Site #2.

Last year, the City entered into a Downtown Development Agreement with the Grove Park Inn for the potential development of public-private projects on two sites in downtown near City Hall. Site #1 was at the intersection of College Street, Spruce Street, Market Street and Patton Avenue extension. Site #2 was on the south side of the City Building, on property that is used by the City as a parking lot.

Pursuant to the Agreement, Council authorized the City to enter into an option of GPI for Site #1. After analyzing financial information and projections, however, GPI decided not to proceed with Site #1, and officially withdrew from consideration of Site #1 in December of 2003.

Since then, staff and representatives of GPI have continued to discuss possibilities for Site #2. Progress on this site was delayed while the City completed its acquisition of the "old jail site" from Buncombe County, which gave us ownership of the entire upper level. As noted below, some of the property in Site #2 is still in private hands.

The Amended Downtown Development Agreement under consideration is characterized as an amended agreement to recognize that it involves the same parties and one of the same properties, and that the delay in proceeding with it was due to property acquisition issues. But it is really a new agreement dealing only with Site #2. In fact, the Agreement recites that Site #1 is no longer under consideration.

Proposed Uses; Design. As proposed, the building on Site #2 will include a mixture of commercial, office, and residential units (15% in the affordable range) in the private part of the development, and incorporating a substantial City employee/public parking facility as the public element, with the possibility of some City office or meeting space as well. The physical design of the building has not progressed beyond the conceptual stage at this point, but discussions with GPI have indicated that it will be multi-story, with a pedestrian-scaled and oriented street level appearance. It may be designed to be built in phases. The Agreement contains some height restrictions (no higher than the cornice of the City Building), and some other required considerations, but more details will depend on the actual design of the building, which must undergo an extensive public review process, and extensive review by the City

Design review. The Agreement provides for an extensive review process, including at least two public meetings coordinated by GPI. In addition, there are required reviews by the Downtown Commission, the Technical Review Committee, and the Pack Square Conservancy. The final design of the building is subject to approval by the City, which could take the form of a Conditional Use Permit, but in any case will involve a public hearing.

Process. Following the parties' entering into this Agreement, and subject to obtaining an appraisal, the parties would enter into an option (which requires a public hearing), that would secure the property while GPI goes through the design approval process, and investigates financing feasibility. During this time, the City would also be exploring the financial feasibility for its part of the project. Provided the design is approved, and financing secured, the property would be conveyed and construction would begin.

Time line. The tentative dates for these events are:

1. Enter Downtown Development Agreement – June 2004
2. Obtain appraisal – July 2004
3. Consideration of Option Agreement – August 2004
4. Option period – 1 year (with extension possible)
5. Completion of design review – prior to expiration of option
6. Conveyance of property (no date yet)
7. Construction (no date yet).

Amendment. It is anticipated that, once the decision is made to proceed with an approved project, further amendments to the Downtown Development Agreement, or additional agreements, will be needed to clarify the public / private roles in this project.

Other issues.

- The Agreement requires that the design be sensitive to the Eagle/Market Street Area and Pack Square / City-County Plaza, and that area stakeholders are involved in the design review process.
- The City will have to acquire a piece of Site #2 that remains in private hands. GPI may have to acquire the Hayes & Hopson Building, also in private hands.

Considerations.

- The projected value of the structure will exceed $40 million
- The project will help tie the South Pack Square area into the rest of downtown, economically and physically
- The project will provide a commercial / residential anchor for this end of town
- The Downtown Development Agreement enables the City to work with one developer, and does not require the City to use a competitive process to sell the land. This encourages the private sector to invest the time and resources necessary to design these complex projects, without fear that they might lose the property to another purchaser.

- Despite this part of the project having been heavily publicized in connection with the public debate about Site #1, there has been no other interest expressed in Site #2.
- Entering into the Downtown Development Agreement does not commit the City to anything but the process; no building is approved and no property is sold without further action by Council.
- This Agreement is heavy on process and public participation.

If the Council desires to pursue the development of Site #2, adoption of the resolution is recommended.

Discussion occurred, which was initiated by Councilwoman Bellamy, to request the Grove Park Inn include the South Pack Square Business Association in the required reviews at least for courtesy sake, since the design will be sensitive to the Eagle/Market Street Area. City Attorney Oast said that he would review the South Pack Square Redevelopment Plan to see if this Site #2 is in the area of that Plan. He said that there are a lot of stakeholders and interests in that area, e.g., Mt. Zion Church, YMI Cultural Center, Eagle/Market Streets Development Corporation, and he would be hesitant to list them for review in fear of leaving others out. It was his expectation that the Grove Park Inn would be well-advised to invite and seek input to all area stakeholders, without having to name any particular organization. However, he would be happy to amend the agreement in any fashion Council wished – to either give the South Pack Square Development Association the same ability to comment as the Pack Square Conservancy, or take out the Pack Square Conservancy.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that Site 2 is the City of Asheville's property and Council can place whatever restrictions they wish in the agreement.

Councilman Dunn felt that the City should give the Grove Park Inn more flexibility in the number of affordable units since it is so early in the project. City Attorney Oast said that 15% was based on what staff felt City Council would want in terms of the location of the project in the downtown area and Council's efforts to include affordable housing.

Mr. W. Louis Bissette, Jr., attorney representing the Grove Park Inn, said that they want affordable housing in this project and he felt that 15% of those units can be set aside for affordable housing.

Mr. Bissette said that the Grove Park Inn is very concerned about all the entities in this area and want them to be involved as much as possible. They will make an effort to bring them all into the process, however, they don't want every group to have veto over the project design.

A brief discussion occurred about the number of parking spaces is on Site 2 now and what will be planned for in the project. Mr. Bissette said at this time they can commit to 200 new parking spaces.

Upon inquiry of Councilwoman Bellamy, City Attorney Oast assured her that no park space was in this Site, only parking.

City Attorney Oast suggested language in the agreement that requires the Grove Park Inn, in connection with public presentations, target solicitations to as many groups as he can think of and if Council wants to add more, they can.

Vice-Mayor Mumpower asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

ORDINANCE NO. 3127 - ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO EDUCATIONAL RESEARCH CONSORTIUM OF THE WESTERN CAROLINAS LLC FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ASHEVILLE

City Attorney Bob Oast said that this is the consideration of an ordinance granting a franchise to the Educational Research Consortium of the Western Carolinas (ERC), pursuant to the City's Telecommunications Ordinance.

In September the City considered and adopted Ordinance No. 3056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Last year, the City had begun discussions with ERC for a fiber optic installation that lead to a limited area installation that was also limited as to time.

Since then, staff has studied ways to accommodate this emerging technology, and has developed a fee structure and installation guidelines that are now part of our analysis of these proposals and are incorporated into the franchise ordinances.

The franchise ordinance is essentially identical to the DukeNet franchise in its terms and conditions. The most important difference is that ERC will be installing some facilities for use in connection with the City's institutional network, and the cost of this installation and maintenance will be an offset from the franchise fee.

The main lines of the proposed installation are shown on Exhibit A[1]. Some of this proposed installation is within the "high density" areas, where the fees are highest, and some of it is not. The City has requested that some fiber optic lines be installed for its use along these routes, in connection with the existing Institutional Network installed pursuant to the cable TV franchise, and has proposed some connection points as well. The route and connection points are subject to change as conditions dictate, but these would be minor changes and would not need to come back to Council.

The proposed initial term of this franchise is 10 years, renewable for two 10-year terms, unless either party terminates. The franchise fee begins to escalate according to the Consumer Price Index after 5 years.

Considerations:

(1) This is the City's second telecommunications franchise, and following closely on the heels of the first. We really have no local experience with such efforts, other than cable television, which is not directly relevant.

(2) The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for that use. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another, so the compensation paid or in-kind services rendered by ERC will be a benchmark for future installations.

(3) There is a significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

City Attorney Oast passed out some insignificant changes to the franchise ordinance.

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[1] Exhibits are not available in electronic form, but will be available at work session.

If Council wishes to grant a franchise to ERC, adoption of the ordinance, with revisions, is recommended. Council may suggest alternatives to the proposed fee schedule and the term, but most other substantive issues are already dealt with in the Telecommunications Ordinance adopted in September. Because this is a franchise ordinance, a second reading of it will be required. It is recommended that Council waive its rules and vote on this matter on first reading at the work session.

Councilwoman Bellamy moved to waive the rules and proceed to the first reading of Ordinance No. 3127. This motion was seconded by Councilwoman Jones and carried unanimously.

Vice-Mayor Mumpower said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3127, on its first reading with the revisions distributed by City Attorney Oast. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 191

Vice-Mayor Mumpower said that the second and final reading of Ordinance No. 3127 would be held at the next formal City Council agenda.

BOARDS/COMMISSIONS

It was the consensus of City Council to instruct the City Clerk to arrange interviews of Lawrence Haas, Loyd Kirk and George Peery for a vacancy on the WNC Regional Air Quality Agency.

It was the consensus of City Council to have a City Council Member on the Airport Authority.

Councilwoman Jones felt that in the future Council needs to be consistent in that if a member of Council serves on a board and is no longer on Council, that either that person automatically resigns or there be a resignation request by Council. At Council's consensus, City Attorney Oast said that City Council can remove the person for cause and that cause could be if the person is no longer a Council Member. He said that he would structure future resolutions accordingly.

Councilwoman Bellamy said that a member on the Airport Authority asked her to request Council's support for an increase in their stipend.

It was the consensus of City Council to instruct the City Clerk to readvertise vacancies on the Civic Center Commission.

It was the consensus of City Council to instruct the City Clerk to arrange interviews of Leesa Young and Leslie Yancey to the Downtown Commission. Pamela Myers will be a candidate, however, she did not need to be interviewed.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Keith Hargrove and readvertise for a vacancy on the Historic Resources Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the property paperwork to appoint Laura Williams to the Recreation Board.

ADJOURNMENT:

Vice-Mayor Mumpower adjourned the meeting at 6:15 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Hurley
MAYOR

Tuesday – June 22, 2004 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson
Absent:	None

PLEDGE OF ALLEGIANCE

Mr. Larry Rice, veteran from the U.S. Marine Corp, led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JUNE 22, 2004, AS "161ST AREA SUPPORT MEDICAL BATTALION DAY"

Mayor Worley read the proclamation proclaiming June 22, 2004, as "161st Area Support Medical Battalion Day" in the City of Asheville. He presented the proclamation to Mr. B. A. Silver, employee with the Asheville Fire Department, who has just returned home from Iraq. Mayor Worley also recognized the other City employees who are actively serving in the military.

B. RECOGNITION OF CITY OF ASHEVILLE RESERVIST B.A. SILVER

On behalf of City Council, Mayor Worley recognized B.A. Silver from the 161st Area Support Medical Battalion, employee with the Asheville Fire Department

C. PROCLAMATION PROCLAIMING ELLEN RICKMAN AS THE RECIPIENT OF THE BILL FULP AWARD AND VOLUNTEER OF THE YEAR 2004

Mayor Worley read the proclamation proclaiming Ellen Rickman as the recipient of the Bill Fulp Award and Volunteer of the Year 2004 in the City of Asheville. He presented the proclamation to Ms. Rickman.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 8, 2004, AND THE WORKSESSION HELD ON JUNE 15, 2004

Councilwoman Bellamy asked that the June 8, 2004, minutes be corrected regarding the nature of the speaking members involvement regarding public housing.

B. RESOLUTION NO. 04-134 - RESOLUTION OF INTENT TO SET A PUBLIC HEARING ON JULY 27, 2004, TO CLOSE BLANKENSHIP AVENUE

City Attorney Oast said that the first Whereas in the resolution should state that the petition has been filed by all of the property owners adjoining Blankenship Avenue.

RESOLUTION BOOK NO. 28 – PAGE 283

C. RESOLUTION NO. 04-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CAROLINA MOUNTAIN ROOFING AND CONSTRUCTION COMPANY TO RE-ROOF THE REID RECREATION CENTER ON LIVINGSTON STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the Reid Recreation Center on Livingston Street and an associated budget amendment from the contingency fund, in the amount of $77,377.

The current roof at the Reid Recreation Center is well over 25 years old. Over the past three years, requests have been made in the Capital Improvement budget to re-roof this facility. We are currently spending in excess of $10,000 each year on repairs to the existing roof. Bids were solicited from six roofing companies with two being certified Minority Businesses. The following bids were received and include an additional 10% contingency to cover any excess cost that may occur when the existing roof is removed.

Carolina Mountain Roofing and Construction Company	$77,377
Stroup Sheet Metal Works	$78,605
Service One Inc.	$124,043
Carolina Cornerstone Construction (MB)	Did not Bid
LCM Builders, Inc. (MB)	Non-responsive
McElrath Roofing	Not Licensed in NC

Through the generosity of the Junior League, $95,000 has been appropriated to make improvements to the interior of the Reid Recreation Center over the next three years. However, due to the extensive problems with the roof, work in the interior of the building should not occur until a new roof has been completed. As stated above, staff continues to address a number of issues at the Reid Recreation Center including the development of a master plan for the facility that will be used as the framework for additional work to occur based upon community and departmental needs. Without the necessary roof repairs none of this work can progress.

Pros:

- Current funding from the Junior League will address much-needed interior needs.
- Extensive water damage has occurred in the facility due to the deteriorated roof. A new roof will eliminate further damage.
- Support of this initiative has been given by the Reid Center Advisory Board and the Parks and Recreation Advisory Board.
- Use of contingency funds will allow this work to occur as soon as possible.

Cons:

- None

The Parks and Recreation Department recommends City Council authorize the City Manager to enter into a contact with Carolina Mountain Roofing and Construction Company to re-roof the Reid Recreation Center on Livingston Street and to approve a budget amendment, in the amount of $77,377.

RESOLUTION BOOK NO. 28 – PAGE 284

D. ORDINANCE NO. 3128 - BUDGET AMENDMENT TO RE-ROOF THE REID RECREATION CENTER ON LIVINGSTON STREET

Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 21 – PAGE 209

E. RESOLUTION NO. 04-136 - RESOLUTION REQUESTING THE N.C. DEPT. OF TRANSPORTATION TO INSTALL A TRAFFIC SIGNAL AT THE INTERSECTION OF HENDERSONVILLE ROAD AND YORKSHIRE STREET

Summary: The con[illegible] resolution requesting the N. C. Dept. of Transportation (NC DOT) to install a traffic si[illegible]section of Hendersonville Road and Yorkshire Street.

The City of Asheville has been working with some property owners, as well as the Biltmore Methodist Church, to reduce traffic accidents and delays at the intersection of Biltmore Avenue and Yorkshire Street. Some of the property owners hired a traffic consultant to prepare a traffic impact analysis of the intersection. The traffic engineer determined that installing a traffic signal at the intersection of Hendersonville Road and Yorkshire Street would allow vehicles to make the left turn onto Hendersonville Road safely. Additionally, the consultant recommended other improvements such as widening Yorkshire Street.

The NC DOT staff has indicated that the City's support for the installation of the traffic signal may expedite the request.

Pros:

- Provide improved safety for vehicles using the intersection of Hendersonville Road and Yorkshire Road.
- Reduce congestion on Yorkshire Street during the afternoon peek travel period.
- Reduce cut-through traffic on adjacent residential streets.

Cons:

- This change will have a minor increase in congestion to traffic traveling Hendersonville Road.
- The proposed traffic signal must be coordinated with the traffic signal at I-40 and Hendersonville Road. This is initially a technically difficult task to accomplish.
- NC DOT will be responsible for the installation and maintenance cost of the traffic signal.

This request meets the City of Asheville Strategic Operating Plan focus area of Planning Goal #2 Task #1, which states:

> *"Determine opportunities for managing traffic demand through changes to community patterns and transportation modes, land use patterns, signalization improvements, etc."*

City staff requests City Council adopt a resolution supporting the installation of a traffic signal at the intersection of Hendersonville Road and Yorkshire Street and requests NC DOT to consider implementation of this recommendation as soon as is reasonable and feasible.

RESOLUTION BOOK NO. 28 – PAGE 285

F. RESOLUTION NO. 04-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF JUSTICE FOR A LOCAL LAW ENFORCEMENT BLOCK GRANT TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount $71,211, to appropriate the block grant funding, and a budget amendment to the City's general fund, in the amount of $20,079, to provide grant matching funds and purchase crowd control equipment.

The City of Asheville has been awarded a grant in the amount of $71,201 under the 2003 Local Law Enforcement Block Grant Program. The City is required to match this grant with $7,911 of its own funds, which will result in a total block grant budget of $79,112. The Asheville Police Department will use this grant funding to purchase 20 In-Car Video Camera Systems. In addition to recording traffic stops, drug interdiction efforts and police pursuits, this equipment will improve the quality of evidence obtained by police officers while documenting their daily interaction with the public.

To provide the required grant matching funds and also to provide additional funds for equipment, staff is requesting the appropriation of $20,087 in Drug Tax Revenue that has been received from the North Carolina Department of Revenue but that is currently unbudgeted. The Department of Revenue assesses the Drug Tax on persons convicted of possessing drugs for sale. The City of Asheville Police Department has used Drug Tax Revenue over the past several years to provide matching funds for grants, as well as for other special projects. Of the $20,079 amount, $7,911 will be used as the local match for the aforementioned 2003 Local Law Enforcement Block, and the remaining $12,168 will be used to purchase crowd control equipment. These items include personal protective equipment for Police Officers as well as communications equipment needed to coordinate public safety operations during public demonstrations.

Pros: The use of drug tax money for the purchase of crucial public safety equipment improves the Police Departments ability to carry out its mission.

Cons: When the purchased equipment requires maintenance or must be replaced, the expectation is created that the general fund will pay for it.

Strategic Operating Plan and Focus Area: The acquisition of this equipment will enhance the focus area, "Critical Services & Infrastructure" and to a large degree, goal #4, *Develop programs and policies to defeat street level drug problems and crime.*

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to enter into an agreement with the U.S. Dept. of Justice, Office of Justice Assistance for a Local Law Enforcement Block Grant and an associated budget amendment to the City's grant fund, in the amount $71,211, to appropriate the block grant funding; and (2) a budget amendment to the City's general fund, in the amount of $20,079, to provide grant matching funds and purchase crowd control equipment.

RESOLUTION BOOK NO. 28 – PAGE 286

G. ORDINANCE NO. 3129 - ORDINANCE TO RECEIVE A LOCAL LAW ENFORCEMENT BLOCK GRANT

Summary: See Consent Agenda "F" above.

ORDINANCE BOOK NO. 21 – PAGE 211

H. ORDINANCE NO. 3130 - ORDINANCE TO APPROPRIATE DRUG TAX REVENUE TO PROVIDE GRANT MATCHING FUNDS AND PURCHASE CROWD CONTROL EQUIPMENT

Summary: See Consent Agenda "F" above.

ORDINANCE BOOK NO. 21 - PAGE 213

I. RESOLUTION NO. 04-138 - RESOLUTION SUPPORTING AMENDMENT ONE: SELF-FINANCING BONDS, A LOCAL ECONOMIC DEVELOPMENT TOOL TO CREATE QUALITY JOBS, REVITALIZE COMMUNITIES AND ATTRACT NEW ECONOMIC OPPORTUNITIES IN NORTH CAROLINA

Summary: The consideration of a resolution of support for Amendment One – Self-Financing Bonds Referendum which will appear on the ballot November.

North Carolina communities need every available tool at their disposal to help develop new jobs and tax base. Self-financing bonds are a proven mechanism whereby local governments may finance public infrastructure improvements in support of related private sector development within their communities. As this approach represents another way local governments can approve bonds, a statewide referendum is required.

Support statements:

- NC has lost over 180,000 jobs in recent years – more than most other states. Every tool must be used to make our state and communities more competitive for development opportunities and the jobs they can create. Self-financing bonds are currently used in 48 other states.
- NO NEW TAXES or INCREASED TAXES are required to pay off bonds – they are self-financed from the incremental increase in revenue generated from the increased value resulting from the new private development.
- The tool allows local governments to be a more responsive and nimble partner with the private sector in undertaking catalytic projects resulting in higher quality communities.
- North Carolina's application of the mechanism has some of the strongest accountability safeguards in the country. Public input, local government approval, and Local Government Commission approval are all part of the project/district approval process.

Challenge statements:

- While statewide voter approval is needed to have the tool available as a local option, local voter approval is not required for each specific local application.
- Other means already exist for financing public infrastructure.

Staff recommends approval of the resolution of support for Amendment One – Self-Financing Bonds Referendum to be on the ballot in November.

RESOLUTION BOOK NO. 28 – PAGE 287

J. SECOND READING OF ORDINANCE NO. 3127 - ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO EDUCATIONAL RESEARCH CONSORTIUM OF THE WESTERN CAROLINAS INC LLC FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ASHEVILLE

Summary: Second reading of an ordinance granting a franchise to the Educational Research Consortium of the Western Carolinas (ERC), pursuant to the City's Telecommunications Ordinance.

In September the City considered and adopted Ordinance No. 3056 to provide for the granting of non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Last year, the City had begun discussions with ERC for a fiber optic installation that lead to a limited area installation that was also limited as to time.

Since then, staff has studied ways to accommodate this emerging technology, and has developed a fee structure and installation guidelines that are now part of our analysis of these proposals and are incorporated into the franchise ordinances.

The franchise ordinance is essentially identical to the DukeNet franchise in its terms and conditions. The most important difference is that ERC will be installing some facilities for use in connection with the City's institutional network, and the cost of this installation and maintenance will be an offset from the franchise fee.

The main lines of the proposed installation are shown on Exhibit A. Some of this proposed installation is within the "high density" areas, where the fees are highest, and some of it is not. The City has requested that some fiber optic lines be installed for its use along these routes, in connection with the existing Institutional Network installed pursuant to the cable TV franchise, and has proposed some connection points as well. The route and connection points are subject to change as conditions dictate, but these would be minor changes and would not need to come back to Council.

The proposed initial term of this franchise is 10 years, renewable for two 10-year terms, unless either party terminates. The franchise fee begins to escalate according to the Consumer Price Index after 5 years.

Considerations:

(1) This is the City's second telecommunications franchise, and following closely on the heels of the first. We really have no local experience with such efforts, other than cable television, which is not directly relevant.

(2) The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for that use. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another, so the compensation paid or in-kind services rendered by ERC will be a benchmark for future installations.

(3) There is a significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

The agreement contains the revisions discussed at the work session on June 15, 2004, together with a list of exhibits.

If Council wishes to grant a franchise to ERC, adoption of the second reading of the ordinance is recommended.

K. RESOLUTION NO. 04-139 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Summary: The consideration of appointing a member to the Recreation Board.

Ms. Susan Sparboe has resigned as a member of the Recreation Board, thus leaving an unexpired term until June 30, 2006.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to prepare the proper paperwork to appoint Laura Williams to the Recreation Board to fill the unexpired term of Ms. Sparboe, term to expire July 30, 2006, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 289

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF PROPERTY LOCATED AT 407-411 LIBERTY ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A PART OF THE EXISTING RESIDENTIAL STRUCTURE TO BE CONVERTED TO OFFICE USE

ORDINANCE NO. 3131- ORDINANCE REZONING PROPERTY LOCATED AT 407-411 LIBERTY ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3132 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 407-411 LIBERTY ROAD TO ALLOW FOR A PART OF THE EXISTING RESIDENTIAL STRUCTURE TO BE CONVERTED TO OFFICE USE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:17 p.m.

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All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of a request to rezone property located at 407-411 Liberty Road from RM-8 Residential Multi-Family Medium Density District to Office District/Conditional Use; and the issuance of a conditional use permit to allow for a part of the existing residential structure to be converted to office use.

The project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project utilizes the existing structures on the lot to house a low impact office while maintaining its residential component by providing several affordable rental units to the area. Subsequent phases of the project would support infill development by utilizing the undeveloped portions of the property for additional multi-family development. This project also incorporates smart growth goals by using new zoning tools in order to promote compatible lands uses through the conditional use process.

The applicant, James Edmonds, is requesting a conditional use rezoning of a parcel located at 407-411 Liberty Road in Candler (City Exhibit 3 – Location Map). The property, consisting of 1.69 acres, is in the City's Extraterritorial Jurisdiction area and is zoned RM-8. Currently, two structures exist on the lot that includes a garage apartment and a 2-story residential structure. The applicant is pursuing a rezoning of the lot to Office/Conditional Use in order to convert the lower story of the residential structure to a law office. This structure has been used as a single-family dwelling and also a 2-unit apartment building in the past. It is the applicant's intent to continue renting the second floor apartment in this structure. No change is intended for the garage apartment. Future development of the site may include additional multi-family units that would be reviewed by staff in accordance with the RM-8 zoning requirements.

The conditional use master plan shows the location of the existing structures and the proposed parking areas for the development of the site (City Exhibit 3 – Site Plan). The plan also shows the location of existing trees and other vegetation around the developed portions of the lot. In addition to the existing vegetation, a 20-foot, Type "B" buffer will be required around the North and West sides of the property adjacent to low-density, single-family uses. Street trees will be required on both Liberty Road and Ridge Street. The applicant will also be required to provide parking lot landscaping, if the parking lot exceeds 6 spaces.

The purpose of the RM-8 zoning district is to establish a diverse medium density multifamily and single-family district in areas where public infrastructure is sufficient to support such densities. The purpose of the Office District is to provide small-scale office uses (or a mixture of office and residential use) adjacent to residential uses and to serve as a transition as residential areas convert to other uses or between residential and commercial areas. Due to the location of the Office District near residential areas, uses in this district shall conduct most of their activities during daylight hours.

At their May 19, 2004, meeting, the City of Asheville Technical Review Committee (TRC) reviewed the Conditional Use Rezoning request and made a positive recommendation that the project be forwarded to the Planning and Zoning Commission subject to the TRC conditions outlined in their report.

The plan submitted with the staff report has been revised to address several TRC comments that resulted in minor changes to the initial design. This plan addresses the first five "Planning" comments on the TRC staff report in regards to the number and location of permitted parking spaces and the location of buffer plantings and other required landscaping. Additionally, Engineering has determined that sidewalks will not be required for this phase of the development. The remaining conditions outlined in the TRC report are items that would be addressed at the final submittal to the TRC, should the project be approved.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The project site is relatively flat. The property will be developed with minimal disturbance to the site and existing vegetation. The only land disturbing activity occurring on site will be the construction of the proposed parking area and the installation of required landscaping. Renovations required for the conversion to office space will be confined to the interior of the structure. Any future development of the site will be in accordance with the requirements of the RM-8 zoning district.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed use is considered to be low impact. Only one floor of the existing main structure on the lot will be converted to office space. The second floor apartment and the garage apartment will continue in its current use. No exterior change to the existing structures is proposed. Additionally, landscape buffers in accordance with the UDO standards will be required in areas directly adjacent to residential uses to mitigate any potential negative impacts. Any future development of the site will be reviewed in accordance with the requirements of the RM-8 zoning district.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

As stated above, the proposed use is considered to be low impact. The exterior of the existing structure(s) will not be altered and will continue to be in scale, bulk, coverage, density and character with the neighborhood. The property will be developed with minimal disturbance to the site and existing vegetation. Additionally, any future development of the site will be reviewed in accordance with the requirements of the RM-8 zoning district.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The project is supported by several goals and strategies in the plan relating to adaptive reuse, infill development, and smart growth policies. The project utilizes the existing structures on the lot to house a low impact office while maintaining its residential component by providing several affordable rental units to the area. Subsequent phases of the project would support infill development by utilizing the undeveloped portions of the property for additional multi-family development. This project also incorporates smart growth goals by using new zoning tools in order to promote compatible land uses through the conditional use process.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

Transit service is currently unavailable in this area of the City. The project is, however located near major road facilities, interstate connections and other service centers. Additionally, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Public Works Department.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed office use is not expected to generate any noticeable amounts of traffic. The site will be developed with an off-street parking area that will adequately serve the proposed use and the existing multi-family component.

Pros:

1. Allows for the adaptive reuse of an existing building while maintaining its residential component with its multi-family use.
2. Provides for office use in an area that is accessible to residential and commercial services.
3. The character and integrity of the existing structures are preserved through the conditional use zoning process.
4. Additional land on this site is available for future infill development that could make a contribution towards meeting the need for multi-family housing.

Cons:

1. Paving of the proposed parking area will somewhat alter the residential character of the lot.

The site plan submitted as part of this conditional use zoning application allows for an adaptive reuse of property for a low impact office. It preserves the existing residential structures while maintaining its residential component; it limits land disturbance and tree removal on the site and ensures compatibility with the surrounding neighborhood. Additionally, landscape buffers required by the UDO would mitigate any negative impacts to the adjoining properties.

Based on the proposed development and the seven findings staff recommends approval of the project subject to the following conditions: (1) All conditions by the Technical Review Committee be met; (2) In addition to the mixed adaptive reuse of the existing structures permitted herein, other uses of the remaining portions of the site that may be permitted without a modification to this permit shall be limited to multifamily development in accordance with the density and dimensional limitations of the RM-8 zoning district; and (3) Signage shall be limited to 8 feet in height, 32 square feet in size, and cannot be internally illuminated.

Mr. Jim Edmonds, applicant, spoke in support of the rezoning and conditional use permit. He felt it would be good for the community.

After rebuttal, Mayor Worley closed the public hearing at 5:25 p.m.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3131, to rezone property located at 407-411 Liberty Road from RM-8 Residential Multi-Family Medium Density District to Office District/Conditional Use. This motion was seconded by Councilwoman Bellamy and carried unanimously.

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Councilman Dunn moved for the adoption of Ordinance No. 3132, granting a conditional use permit for property located at 407-411 Liberty Road to allow for a part of the existing residential structure to be converted to office use, subject to the following conditions: (1) All conditions by the Technical Review Committee be met; (2) In addition to the mixed adaptive reuse of the existing structures permitted herein, other uses of the remaining portions of the site that may be permitted without a modification to this permit shall be limited to multifamily development in accordance with the density and dimensional limitations of the RM-8 zoning district; and (3) Signage shall be limited to 8 feet in height, 32 square feet in size, and cannot be internally illuminated. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER THE REZONING OF THREE LOTS AT 70 ALLEN AVENUE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3133 - ORDINANCE REZONING THREE LOTS AT 70 ALLEN AVENUE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:26 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a rezoning of three lots at 70 Allen Avenue from RS-2 Residential Single-Family Low Density District to RM-16 Residential Multi-Family High Density District. This public hearing was advertised on June 11 and 18, 2004.

The property is located within the City limits at the western end of Allen Avenue north of Long Shoals Road. Surrounding land uses and zoning include school and recreational uses to the north zoned Institutional, multi-family residential to the east zoned RM16, and vacant property and a manufactured housing community zoned RS2 and INST respectively.

The property owners, Albert and Hilda Sorrells, wish to rezone the properties in order to utilize them for uses permitted in the RM16 District.

According to Buncombe County Tax information, the largest of the three properties is used for single-family residential use and the others are vacant. The properties are accessed via Allen Avenue by a private street named Lance Lane, which contains the driveway to the home.

The purpose of the RS2 District is to establish a low density for single-family dwellings and other compatible uses. The purpose of the RM16 District is to permit a full range of high-density multi-family housing types along with limited institutional, public, and commercial uses appropriate within high-density residential areas.

Rezoning the properties would allow the owner the opportunity to develop the property for uses permitted in the RM16 District. The three properties could also be combined to form a larger development parcel if rezoned.

Advantages (Pros)
- RM16 zoning would mirror the RM16 to the east across Lance Lane.
- Increase in the amount of zoning dedicated to multi-family residential.
- RM16 zoning could yield around 58 multi-family residential units on the property.
- Allen Avenue already provides access to multi-family residential as well as office and commercial uses along the street.

Disadvantages (Cons)
- Increase vehicular traffic resulting from development of the properties.
- Allen Avenue may need to be improved to handle the vehicular traffic resulting from potential development of the properties.

In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval to rezone 70 Allen Avenue from RS-2 to RM-16.

The Planning and Zoning Commission, by unanimous vote at its June 2, 2004 meeting, recommends approval as well.

Mr. Albert Sorrells, property owner, spoke in support of the rezoning request.

Mayor Worley closed the public hearing at 5:30 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3133. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 222

C. PUBLIC HEARING TO CONSIDER THE REZONING OF 18 BALDWIN STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3134 - ORDINANCE REZONING OF 18 BALDWIN STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 5:31 p.m.

Urban Planner Carter Pettibone said that this is the consideration of a rezoning of 18 Baldwin Street from Neighborhood Business District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on June 11 and 18, 2004.

The *Asheville City Development Plan 2025 (ACDP 2025)* specifically calls for an initiative to strengthen and enhance neighborhood viability through the encouragement of compatible development that preserves architectural diversity and protects neighborhoods from inappropriate non-residential encroachment.

The Future Land Use and Transportation Plan of the ACDP 2025 also identifies this area as being located near a future Regional Development Node at the intersection of Interstates 40 and 240.

The property is located within the City limits on the west side of Baldwin Street north of Fairview Road. Surrounding land uses and zoning include single family residential to the north zoned RS 8, residential to the east zoned NB, commercial to south zoned NB and a place of worship to the west zoned RS 8.

The property owner, Floyd Bailey, wishes to rezone the property in order to utilize it for uses permitted in the RS-8 Residential Single-Family High Density District. Specifically, he would like to construct a single-family home on the property but the NB Neighborhood Business District does not permit a detached single-family home as a permitted use.

According to Buncombe County Tax information and field observation, a cellular communications tower and its associated equipment are located to the rear of the property. The cell tower was constructed on the property prior to it being rezoned NB in 1997 and its use would be a non-conformity whether the property was zoned NB or RS 8. The property also contained a single-family home until it was demolished recently. The property would be mainly accessed from Baldwin Street, but the cell tower equipment is accessed from the rear of the property, which abuts a church property to the west.

The purpose of the NB District is to reserve areas for low-intensity business centers which are accessible to pedestrians from the surrounding neighborhood. The purpose of the RS 8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development.

Rezoning the property to RS 8 would allow the owner the opportunity to build another single-family home on the property.

Advantages (Pros)
- Continues the zoning pattern of properties directly north and west and a portion of the property to the east which are zoned RS 8.
- Properties to the east across Baldwin Street that front on Fairview Road that are not yet developed for commercial use will remain zoned NB.
- Lessens the possibility of further encroachment of commercial uses into single-family residential neighborhood to the north.
- The property owner has a clear intention of building a single-family house on the property.

Disadvantages (Cons)
- Loss of zoning devoted to small-scale commercial zoning near a well-traveled intersection.
- The cell tower on the property would continue as a non-conforming use.

In consideration of the above and the adjoining zoning and land uses, the proposed zoning change appears to be consistent with the intent and purpose of the UDO.

Staff recommends approval of the rezoning request to rezone 18 Baldwin Street from Neighborhood Business District to RS-8 Residential Single-Family High Density District.

The Planning and Zoning Commission, by unanimous vote at its June 2, 2004, meeting, recommends approval as well.

Mr. Alan Ditmore said this is an expansion of single-family zoning, which he opposed as exclusionary barrier to affordable housing.

Mayor Worley closed the public hearing at 5:32 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3134. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 224

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3135 - ORDINANCE ADOPTING THE FISCAL YEAR 2004-05 ANNUAL OPERATING BUDGET

City Manager Westbrook said that this represents the Fiscal Year 2004/2005 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal 2004/2005 Annual Operating Budget was presented to City Council on May 3, 2004. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 28 and June 4, 2004. The City Council conducted a public hearing on the Budget on June 8, 2004.

The Fiscal Year 2004/2005 Annual Operating Budget is balanced with a tax rate of $0.53 per $100 of assessed valuation, which reflects no increase over the current property tax rate. All essential City programs and services are maintained.

The net operating budget as currently presented to City Council is set at $98,560,570, which includes a General Fund appropriation of $71,737,276. This budget includes several changes that were made during Council budget deliberations that took place in May and June. Those changes are reviewed below:

- An appropriation of $600,000 is included in the budget for a Safe Neighborhoods Initiative program aimed at improving safety in neighborhoods and addressing the root causes of crime. This program includes 5 additional police officer positions and equipment at a cost of $250,000; $50,000 to expand community policing efforts; $50,000 for a summer youth program; $50,000 for an educational tutoring program; and $200,000 to support affordable housing infrastructure.
- An additional 5-person construction crew was added to the budget during the deliberation process in order to expand the City's resources directed toward the construction of new sidewalks. The budget for salaries and materials associated with this crew is $298,539. This

budget is supported by $202,000 in additional grant revenue and fee-in-lieu of sidewalk funds. Based on the expenditures and revenues associated with this crew, the net cost of this program is $96,500.

- Council funded the Safe Neighborhoods Initiative program and the net cost of the additional sidewalk crew by reinstating the full recycling fee, which generated an additional $366,000 in revenue; reducing the merit-pay budget from an average award of 3% to 2.5%, which saved approximately $112,000; reducing $129,000 from the vehicle replacement budget; cutting $55,000 from the Civic Center budget; and making other minor changes and revisions.

- The City and the Water Authority proposed a new capital maintenance fee as a part of the Water Resources Department's operating budget. This fee provided approximately $5.2 million in revenue that was earmarked for various water capital improvement projects. On Tuesday, June 15, however, Buncombe County voted not to approve the Water Resources Proposed Budget, which included the new capital maintenance fee. As you know, the Water Resources Budget requires approval from the City, the Water Authority, as well as Buncombe County, before it can be officially adopted.

  In light of the County's action, the Water Budget that is currently presented for adoption has been revised to exclude the new capital maintenance fee. The exclusion of this fee reduces the Water Resources Budget from $27,940,616 to $22,646,720. Staff made cuts to various capital, operating and rolling stock line items to offset the loss of revenue. The Water Authority and Buncombe County must still approve this revised budget in conjunction with the City. If either of these two entities do not approve the revised budget, the Water Budget will revert back to the Fiscal Year 2003-04 approved budget and it will be necessary for Council to amend the current budget ordinance accordingly.

- Exclusion of the Capital Maintenance Fee from the Water Resources Budget also had an impact on the City's General Fund. Per the Water Agreement, the City currently receives 5% of the Water Fund's gross revenues as a payment in lieu of taxes. By excluding the capital maintenance fee, the general fund's revenues are reduced by $264,000. In the proposed budget, the revenue to the general fund associated with the capital maintenance fee was earmarked for additional street improvement and paving projects. In light of the reduced revenue, expenses for those projects have been removed from the budget.

- Outside agency funding is presented in accordance with the Outside Agency Committee recommendations to allow most agencies that currently receive funding to receive the same appropriation in Fiscal Year 2004-05 as originally appropriated in Fiscal Year 2003-04. Funding for the Asheville Buncombe VISION, Inc. has been eliminated, and funding for the Asheville Area Arts Council has been reduced from $25,000 to $20,000. Below are the recommendations:

  Asheville Area Arts Council - $20,000
  A-B Community Relations Council - $60,000
  Asheville Sister Cities Inc. - $2,000
  Clean Air Community Trust - $5,000
  Economic Development Commission - $40,000 (annual payment for Board participation)
  The Health Adventure - $5,000
  Hospitality House of Asheville Inc. - $20,000
  Kids Voting - $1,000
  One Youth at a Time Inc. - $9,500
  Project STEAM - $7,500
  Visitor's Center - $100,000 (part of a 5-year capital campaign)
  YWCA - $10,000

- Various changes or increases to fees & charges are presented in accordance with the Fees & Charges Committee recommendations. Specific fees & charges recommendations are provided as a part of the annual budget ordinance. Changes to building safety fees are not included as part of the currently presented annual budget ordinance, but will be reviewed during the coming fiscal year for possible adoption in October, 2004.

Staff requests that Council review the Fiscal Year 2004-05 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Upon inquiry of Councilman Newman, Mayor Worley said that that budget, as presented to us, has a water budget in it that does not reflect the Water Authority's proposed maintenance and refurbishment fee. That is based upon the recent decision by the County that puts some conditions on their approval. His thought would be to adopt our budget ordinance, including the water budget without the maintenance fee, but to then consider a motion approving the Water Authority's proposed budget with the understanding that if the County approves the Water Authority's proposed budget with a maintenance fee increase, then we would amend our budget accordingly. If it doesn't happen, then we will have dealt with it appropriately.

Councilman Dunn, member of the Water Authority, said that the Water Authority has scheduled a meeting this Friday to re-visit the budget that the Water Authority first presented and the County did not approve. He personally believed that we should not raise water rates that high until we can get a better handle on the Water Agreement. He has talked to two County Commissioners who said they would like to approve a capital budget, but they would like for it to be a lesser amount.

Councilman Newman moved to approve the 2004-05 Annual Operating Budget as presented by the City Manager. This motion was seconded by Councilwoman Bellamy.

Councilman Newman said that the appreciated the way the City Manager structured the budget process this year. He said we've had a positive growth in our fund balance from last year and that represents the responsible thing we should be doing for the economic strength and financial health of the City. We are not facing pressures for tax increases this year either. He said the 2004-05 budget includes a strategic investment in improving maintenance and construction of sidewalks. This will allow us to take better care of the sidewalks we have in our neighborhoods and help make Asheville a safer place for people to walk and to lead a healthier lifestyle. While there have been some disagreements about specific funding for neighborhood safety and law enforcement, he was very glad our Council had a focus on those discussions, even though we don't all agree on how much funding we should put into the different parts of the plan to be effective in making neighborhoods safer. Even if Council does have some differences of opinion about exactly what we should do, he looked forward to Council working together as we move forward to make this effective. We all know that we are going to need more funding for all parts of what we need to do to have an effective approach and he was glad that the Council has agreed to work together to find other sources of funding for that. He felt that the dialog with the ABC Board was a good step in finding the additional resources that we can use for more law enforcement. He supports the safe neighborhood initiatives. While it will not solve all of the communities problems in a single year, it lays the foundation we need to have a comprehensive approach to addressing neighborhood safety and vitality issues in our community. About 50% of the funds in this initiative will go towards increasing law enforcement and organizing stronger community policing in the neighborhoods where we have documented crime. The other 50% of those funds will go to create job opportunities for young people from those neighborhoods. We also have funds to invest in infrastructure to disburse attractive affordable housing throughout Asheville and improve the quality of life in neighborhoods with concentrated poverty. He feels that this is the type of effective foundation we need for long term success.

Councilwoman Jones moved to amend the budget to allocate $5,500 to Asheville-Buncombe VISION. That amount reflects a 50% decrease in what was allocated to them last fiscal year. She said that they did request the amount they received last year ($11,500), however, they felt that $5,500 would help. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilman Dunn voting "no."

Councilman Dunn was concerned with a budget increasing from $86 Million to $103,000 Million in two years. He understands that the City has good staff, but some of the work they do is self-inflicted by too many regulations and too much oversight in many ways. He thinks he could support this budget if he knew we were doing everything we could to work with the County to eliminate the duplication of services, e.g., two school systems, two police forces, two recreation departments, etc. Using a current telephone book, he showed Council the numerous number of listings for drug problem agencies pointing out the extensive drug problem in Asheville. He is willing to work with Council, but this budget does not reflect the real needs in this community regarding drugs. He felt that both plans (the Safe Neighborhood Initiative and the Hard Drug Interdiction Program) had some mistakes, however, he hoped that Council would wait to spend the $600,000 until they receive the Police Chief's recommendations since he is more experienced in these matters. He would be voting against the budget in its present form.

Upon inquiry of Vice-Mayor Mumpower, City Manager Westbrook said that 5 additional police officers from the Safe Neighborhood Initiative will be added to the 3 new officers for a total of 8 new police officers in Fiscal Year 2004-05.

Vice-Mayor Mumpower said there has been a lot of misinformation shared in the community about the issue of hard drugs. One of which is that some of us have been portrayed as having an interest in seeing more people arrested. That is not what the proposal is about at all. It has been about decreasing traffic. Arresting more people has not and will not be the answer, but there are things you can do to stop people from selling and buying drugs in Asheville. He spoke very strongly against the Safe Neighborhood Initiative proposal in the budget. He thinks we are being terribly deceptive to ourselves and others to suggest that social programs and housing are going to solve, in any meaningful way, our hard drug problem in Asheville. If houses, jobs and other things would solve our drug problems, we wouldn't have doctors, lawyers or rich people with those problems. Council has been told that it's a parade of Mercedes and Lexus'. It escapes him to think how $200,000 spent on affordable housing is going to have any meaningful impact on our hard drug problem. Five more police officers is great, but will not stop our problem. The three Council members who supported the Hard Drug Interdiction program didn't come up with 12 additional officers without any research. They asked the Interim Police Chief what it would take to go after the people who deal and sell drugs in Asheville at the street level, with persistency, 24 hours a day. The best answer they could get was 12 additional police officers. Drugs are like a cancer in our city and you can't make it go away with watered down chemotherapy. Five additional officers, when we need 12, won't do it either. Asheville is a regional resource for drugs in our region and that is not okay. There is no evidence that money and social programs have significant impact on hard drug use. Once you start saying "no" to people and once you take away their drug resources and their opportunity to sell drugs, then you need programs to help these people. He asked the majority number of Council members who voted against a strong street level drug interdiction program if they will reconsider. He will not resist the social program and other initiatives, but he would ask that we do not do "watered-down chemotherapy." Let's fund enough officers to get this right this year. There is a way to do that without assaulting our budget. If we make a decision to do that this year and allow our new Police Chief as much time as he needs, that can get the budget dollars down to where it is more acceptable to Council. The people who use and sell hard drugs in Asheville are not going to stop and one day this Council will have to take steps. The problem will get worse and worse. One day we will have to find the courage and political will to take some steps that are costly and are difficult and that conflict with some of our personal values to try to address this problem.

Councilwoman Jones said that in terms of diagnosing a cancer, chemotherapy can be a very effective treatment, but sometimes you operate, do radiation, change your diet, and pray. That is the holistic approach and a skilled doctor determines what that holistic approach is. It's not necessarily a one-shot thing. She believes this is a strong approach. Part of its strength is because it will be received by not the dealers, but the people that live in peril everyday. If we want our tax dollars to yield fruit, there has to be receptivity in the community. The Safe Neighborhood Initiative will be received well. Again, she feels this is a strong effort. She was glad that we are building more police officers to our force. She was also excited the budget has a lot of capital investments and that the neighborhoods are going to see more sidewalks. She was pleased that we have come up with a way to help the private sector developers who have been courageous to step into affordable housing development. The Safe Neighborhood Initiative is not 100% perfect but it is a start. She will be willing to work with all Council and the Police Chief in moving forward.

Councilman Davis agreed that the Safe Neighborhood Initiative is a strong effort. However, he would not be supportive of the budget as proposed. He felt that somewhere between the Safe Neighborhood Initiative and the Hard Drug Interdiction Program there is a good plan. The Initiative is a good show of good faith, a desire to do good in the community and we have heard people say they would like some help in their neighborhoods. It shows we have their interests in our heart. He personally feels the police presence is very important initially so we can provide protection to those neighborhoods. He didn't think we are adequately doing that with the addition of 5 police officers. The $200,000 for affordable housing is a good thing, but let's call it what it is – affordable housing, not a Safe Neighborhood Initiative. This Council is supportive of affordable housing. He felt it was important to have summer job programs and mentoring, but he doesn't think that competes well with people that are giving kids big dollars to stand lookout or run drugs. It does give them a positive alternative and he does think we should be spending money in that direction. He would personally like to see us utilize our assets with our new Police Chief coming up with a plan. He wouldn't mind funding the Initiative with the knowledge that we would create a better plan. Another problem he has with the Initiative is that we are funding it with .5% merit increase from City employees when we give ourselves a raise, which he does feel is appropriate. Also, the Civic Center Director has made good progress with the Civic Center and we are going to cut his $30-40,000 needed for tables and chairs. Also, we are cutting out $120,000 for needed replacement vehicles. He knows that we need to fund this Initiative if we put it in there, but he's just not sure he feels good about funding it in this method for what we are going to get out of this. This is a good movement, but not the right one. He will not support the budget as proposed.

Councilman Dunn said that aggressive problems need aggressive treatment. Wherever our Police Chief thinks the City should go, with more police officers or affordable housing, we should go. We can't remove thugs if we don't have the manpower. We lost the drug war because we didn't have enough of a commitment in the first place. And, there is a fear of retaliation for those people in the neighborhoods. We need to take aggressive action.

Councilman Newman said that he looks forward to working with Police Chief Hogan and appreciates how he is getting out into our communities to listen to people. In addition to listening to Chief Hogan's recommendations, we also need to listen to people in the neighborhoods that are being affected. Council has heard that some of the things in the Initiative will make a real difference in the life in those communities. The Initiative contains $250,000 for law enforcement and $50,000 for organizing stronger community policing. The only part of the Initiative that can be described as a social program is the $100,000 for creating job opportunities for young people in neighborhoods where crime has been identified as a problem We do need support of this part of the Initiative. Generally he doesn't think it's the government's job to go out and create jobs for people, but the reality is that in some parts of our community we need to take the jobs to the young people because a lot of these kids don't have a way to get to the jobs. Investing in job opportunities for kids in those neighborhoods will make a real difference in their life. He didn't think that frankly for the vast majority of young people in our community we don't have to compete dollar for dollar with folks who sell drugs in their neighborhoods – most young people don't want to sell drugs. They don't want to get involved in drug activities. But if the only people they see in their neighborhood who are making money are people who are involved in drug activities, that is wrong. He felt that the first job offer that a young person gets should not be from someone who is enticing them to sell drugs. We have a responsibility to create those opportunities. The affordable housing part of the initiative talked about least is also fundamental to a long term effective vision for our community. It's not just about safety, it's about community and the vitality of our neighborhoods. Through local and federal governmental policies we have created situations in our community where we have neighborhoods with heavily concentrated poverty. Studies have shown that the creation of high concentrations of poverty creates higher levels of drug activity. He agreed that $200,000 is not going to make a dent in that, but if we are going to identify creating safer neighborhoods long-term as a goal for our City, then we have to have the dispersal of affordable housing within our community as a key part of that. The allocation of funding as part of the Initiative will lay the foundation that we can build on.

Councilwoman Jones explained the very generous compensation for City employees, noting that Council is not cutting employee benefits to fund the Initiative. There is a 1% cost of living increase, 2.5% merit increase, and a 1% increase for the 401-K program. Regarding the tables and chairs for the Civic Center, she asked the City Manager that as we close year-end, if there are some additional dollars that we prioritize those needs to the top.

Vice-Mayor Mumpower said that at the very least we are ignoring drug dealers and users with this budget proposal. At the worst we are protecting them. That's wrong. This budget also provides excessive support for the non-profit community and that's a community that employs 3 of the 7 members on Council. He likes to be gentle, fair and even-handed, but he's not the man who people are shooting at, the mother trying to raise kids around drug dealers, the person who gets his house broken into all the time, or the person who gets solicited for drugs every time he drives to his home. He lives somewhere safe where he doesn't have to deal with this so he can afford to be humble, but this is not the time for us to be demonstrating humility. This is the time for us to be bold, to say it's not okay, or to turn our head aside and let people consistently and persistently break the laws, specifically with reference to hard drugs. He feels anger and is ashamed and at some point we will have to deal with this and he looks forward to the time when we find the courage to do it.

Councilwoman Jones said that in such a volatile arena that we are in, she thinks it is even more important that the leadership has boldness, but rationality around the issue. It is really important that we keep our cool and that not tread lightly into some dangerous areas. She felt it is imperative for city-elected officials to be wise, safe, and cautious in this arena. She was thrilled there was a misinterpretation about the one of the plans presented entitled "Operation Hard Time." She could see where people were confused, because the whole plan sounded like it was being packaged with the end being prison. She was glad that misunderstanding was cleared up because it will make it easier to go forward as we try to work together.

Vice-Mayor Mumpower said there have been five compromise plans put on the table by three Council members. The first one was called "Operation Hard Time" and it meant giving drug dealers and users a hard time – making it difficult to buy and sell drugs in Asheville. None of the subsequent plans ever reflected on that topic because Councilwoman Jones brought it to their attention early on and he felt that was a good point.

Mayor Worley said that from the discussions, you can see that all Council members are concerned about drugs in Asheville. It's too easy to lose site of the fact that that is the case. It is also obvious that we have passion about our feelings and how we want to approach that issue.

It's clear that we differ in our approach but that's good too because when we differ we come up with a lot of different ideas and good solutions. The reality is that none of Council really knows what the best solution is and the key is to pull it all together. No program is perfect – we are not the experts on this issue. Unfortunately now is the time we adopt our budget each year so we have to do something and we have to do what we think is best, given what we have and our knowledge at the present time. We are forced to decide now and implement later. The good news is we can implement a lot of this later. We now have a new Police Chief and have had no chance for his input. While we are prepared to move forward with a 600,000 budget appropriation, he was pretty certain that all of Council is willing to wait, to listen and to consider recommendations that will come from Police Chief Hogan after he becomes familiar with Asheville and is able to see what the problem is and present us with recommendations as to how to best approach it and then perhaps then Council can reconsider how some of this $600,000 is allocated.

Councilman Dunn suggested that we allocate $250,000 that we expect from the Alcoholic Beverage Control Board to be earmarked for the drug program. They have to spend 5% on drug and alcohol education, so he felt it was appropriate they allocate the money to the City for their drug program. He also suggested that Council agree to wait until the Police Chief comes to Council with his recommendations and then Council make a decision on the best approach to the problem.

Mayor Worley said that the Council can't include the $250,000 in the budget because it is not a revenue source locked in, however, he thinks that asking the ABC Board is entirely appropriate. If the City receives the money, then Council can make a decision at that time in terms of how to allocate it, but that would be given very serious consideration.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

The amended motion carried on a 4-3 vote, with Mayor Worley, Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Mayor Worley moved to approve the Water Authority budget as presented to City Council by the Water Authority with the understanding that if the other required approvals are obtained, we will conform our adopted budget to be consistent with the Water Authority budget. This motion was seconded by Councilman Dunn and carried unanimously.

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At 6:33 p.m., Mayor Worley announced a short break.

V. NEW BUSINESS:

A. RESOLUTION NO. 04-140 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A DOWNTOWN DEVELOPMENT AGREEMENT WITH THE GROVE PARK INN

City Attorney Oast said that this is the consideration of an amendment to the Downtown Development Agreement with Grove Park Inn (GPI) for Site #2.

Last year, the City entered into a Downtown Development Agreement with the Grove Park Inn for the potential development of public-private projects on two sites in downtown near City Hall. Site #1 was at the intersection of College Street, Spruce Street, Market Street and

Patton Avenue extension. Site #2 was on the south side of the City Building, on property that is used by the City as a parking lot.

Pursuant to the Agreement, Council authorized the City to enter into an option of GPI for Site #1. After analyzing financial information and projections, however, GPI decided not to proceed with Site #1, and officially withdrew from consideration of Site #1 in December of 2003.

Since then, staff and representatives of GPI have continued to discuss possibilities for Site #2. Progress on this site was delayed while the City completed its acquisition of the "old jail site" from Buncombe County, which gave us ownership of the entire upper level. As noted below, some of the property in Site #2 is still in private hands.

The Amended Downtown Development Agreement under consideration is characterized as an amended agreement to recognize that it involves the same parties and one of the same properties, and that the delay in proceeding with it was due to property acquisition issues. But it is really a new agreement dealing only with Site #2. In fact, the Agreement recites that Site #1 is no longer under consideration.

Proposed Uses; Design. As proposed, the building on Site #2 will include a mixture of commercial, office, and residential units (15% in the affordable range) in the private part of the development, and incorporating a substantial City employee/public parking facility as the public element, with the possibility of some City office or meeting space as well. The physical design of the building has not progressed beyond the conceptual stage at this point, but discussions with GPI have indicated that it will be multi-story, with a pedestrian-scaled and oriented street level appearance. It may be designed to be built in phases. The Agreement contains some height restrictions (no higher than the cornice of the City Building), and some other required considerations, but more details will depend on the actual design of the building, which must undergo an extensive public review process, and extensive review by the City

Design review. The Agreement provides for an extensive review process, including at least two public meetings coordinated by GPI. In addition, there are required reviews by the Downtown Commission, the Technical Review Committee, and the Pack Square Conservancy. The final design of the building is subject to approval by the City, which could take the form of a Conditional Use Permit, but in any case will involve a public hearing.

Process. Following the parties' entering into this Agreement, and subject to obtaining an appraisal, the parties would enter into an option (which requires a public hearing), that would secure the property while GPI goes through the design approval process, and investigates financing feasibility. During this time, the City would also be exploring the financial feasibility for its part of the project. Provided the design is approved, and financing secured, the property would be conveyed and construction would begin.

Time line. The tentative dates for these events are:

1. Enter Downtown Development Agreement – June 2004
2. Obtain appraisal – July 2004
3. Consideration of Option Agreement – August 2004
4. Option period – 1 year (with extension possible)
5. Completion of design review – prior to expiration of option
6. Conveyance of property (no date yet
7. Construction (no date yet).

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Amendment. It is anticipated that, once the decision is made to proceed with an approved project, further amendments to the Downtown Development Agreement, or additional agreements, will be needed to clarify the public / private roles in this project.

Other issues.

- The Agreement requires that the design be sensitive to the Eagle/Market Street Area and Pack Square / City-County Plaza, and that area stakeholders are involved in the design review process.
- The City will have to acquire a piece of Site #2 that remains in private hands. GPI may have to acquire the Hayes & Hopson Building, also in private hands.

Considerations.

- The projected value of the structure will exceed $40 million
- The project will help tie the South Pack Square area into the rest of downtown, economically and physically
- The project will provide a commercial / residential anchor for this end of town
- The Downtown Development Agreement enables the City to work with one developer, and does not require the City to use a competitive process to sell the land. This encourages the private sector to invest the time and resources necessary to design these complex projects, without fear that they might lose the property to another purchaser.
- Despite this part of the project having been heavily publicized in connection with the public debate about Site #1, there has been no other interest expressed in Site #2.
- Entering into the Downtown Development Agreement does not commit the City to anything but the process; no building is approved and no property is sold without further action by Council.
- This Agreement is heavy on process and public participation.

If the Council desires to pursue the development of Site #2, adoption of the resolution is recommended.

Mr. Oast then reviewed the issues raised by Council at the June 15 work session regarding the Amended Downtown Development Agreement with the Grove Park Inn.

1. Parking spaces. There was some disagreement over the number of parking spaces that would be included for preliminary design purposes. The lot currently has approximately 220 spaces, with roughly 125 of these spaces being for employee parking. Other spaces are for storage of City vehicles or County employee parking. When the County detention center is expanded onto the lot on the east side of the City building, the City will lose approximately 90 spaces. The lower parking lot that we acquired from the County (southwest corner of Marjorie and Davidson Streets) contains about 35 spaces that will be available for the City's use, and some surface parking spaces may remain on Site #2. Although designs for the GPI Site #2 project are still in the conceptual stage, the project will almost certainly include a parking facility for use by the tenants and residents of the building. In order for the City not to experience a net loss of parking spaces for employees as a result of this project, we would need approximately 200 spaces in whatever facility is constructed. This is probably a more appropriate figure to use for preliminary design purposes as it establishes an absolute floor, with the potential for adding employee or public spaces as the design evolves. There is also some potential for shared parking, depending on the uses of the GPI building.

2. Relationship to South Pack Square Redevelopment Plan. The property comprising Site #2, which is the property that is the subject of this agreement, is not part of the area covered by

the South Pack Square Redevelopment Plan. The SPS Plan area involves property on the south side of Eagle Street, but does not include the property on the north side of Eagle Street, where Site #2 is located.

3. Inclusion of South Pack Square stakeholders in design review process. The agreement as drafted provides that the preliminary design will reflect a sensitivity to the Eagle/Market Street area. There are several organizations operating in the South Pack Square area, and all of them potentially have an interest in the design of GPI's project for Site #2; some as owners of nearby property, some as operators of nearby businesses, and some just because of their interest in the area.

Paragraph 3.b. of the agreement, regarding public participation, strongly encourages GPI to involve stakeholders from the South Pack Square area in the public presentations required as part of the preliminary design process. This paragraph has been revised to require GPI to send targeted invitations to these presentations to the following organizations, or to meet with them separately:

a. South Park Square Business Association
b. Eagle Market Street Development Corporation
c. YMI Cultural Center and YMI Development Corporation
d. Mt. Zion Development Corporation
e. Any other organization identified by the City.

As with the Downtown Commission and Pack Square Conservancy, any design presentations involving these organizations will be of a "mandatory review / voluntary compliance" nature.

4. Pack Square Conservancy. The inclusion of the Park Square Conservancy as a reviewing agency is because the Pack Square Design Guidelines adopted by Council last year specifically identified portions of Site #2 as a site where the design of a proposed development would have a potentially significant effect on the Conservancy's plans and programs. Site #2 is not within the area subject to the City's agreement with the Conservancy, so the Conservancy's role in this Agreement as to Site #2 is one of mandatory review, voluntary compliance.

5. Affordable Housing Component. The provision in the agreement for some of the residential units to be within the affordable range was included in an effort to be consistent with Council's continuing desire to increase the supply of affordable housing in the area. This has recently been incorporated into the Strategic Operating Plan as Goal #4. Though no specific percentages are mentioned in the Plan, the 15% figure approximates the percentage that has been used in connection with other projects, such as the Eagle/Market Street project, and is in the same range (10% - 20%) as other such projects nationally. This also approximates the percentage where other provisions of the City Code (e.g. Planned Unit Development) trigger density bonuses.

6. Other. A provision has been added to para. 6.b.(2). that it is not a breach of a material term of the Agreement, and thus not grounds for termination of the Agreement, if City Council does not approve the design for the project as submitted by GPI.

In its approval of the final design of the project, the City Council may adopt some or all of the recommendations resulting from any of the design review processes set out in the Agreement.

Mr. W. Louis Bissette Jr., attorney representing the GPI, said that this agreement will see if the City's and the GPI's needs can join together and produce a project which will be good for the City of Asheville and the GPI. The GPI would like to develop the property for a number of reasons and they would like to build something on Site 2 that will serve everyone's needs. Because the GPI is a for-profit entity, it has to meet their economic feasibility studies. That is what this agreement will begin. With this process, the GPI can begin to identify what the City wants to see there and the GPI can begin to educate the City on what it would like the City to see there. We do agree to the new conditions outlined above by the City Attorney.

Ms. Julie Brandt felt that downtown property is very valuable especially when it borders the park on our historic square. Therefore, she asked that the City get the highest possible price and not the lowest price allowable on Site 2. She asked that because this is a complicated project and the City and the GPI are partnering, that when details are worked out on what part the City will own and the part the GPI will own, that the GPI is taxed appropriately for their proportion of the land and the building, etc. She asked that the architecture be in keeping with the historic nature of the square and the adjacent Courthouse and City Hall Building and not block the viewshed of the Courthouse or City Hall. She asked that the Downtown Review Guidelines be mandatory compliance. She also asked that since the area is in the historic downtown district, that the A-B Historic Resources Commission play a role in the review of the design process. Finally she asked where the City will be getting the money from for their portion of the project.

Mr. Fred English felt the property should be sold to the highest bidder.

Councilman Newman asked if it would be possible to sent out a Request for Proposals with specific criteria. City Attorney Oast said that it is possible that Council can have a design competition with a Request for Proposals, but it was his opinion that when you do that you lose some front-end control on the ultimate project. You can specify certain things but he felt that working with a developer from the very beginning, you wind up with the ability to have a lot more input into the process and the ultimate project. He doesn't want to suggest that a design competition wouldn't yield a good product, but in this case we are able to get some assurances that a design competition wouldn't give us, in addition to getting the appraised value of the property. This project has been in the public for almost a year now and no one with means has expressed any interest in developing the property. He was not was not sure that we would get much response if we were to do a Request for Proposals and he was not sure that we have the in-house ability to design the kind of project we would like to see there.

Upon inquiry of Councilman Newman, City Attorney Oast said the 15% affordable component applies only to the residential space, not the commercial space.

Upon inquiry of Councilman Newman, Mr. Craig Madison, President of the Grove Park Inn, said they are currently looking at a mix of condominium, rental, affordable housing, and also some townhome components, but it is a floating target at this time.

When Councilman Newman asked about the parking component, Mr. Madison said 200 spaces is a requirement for the City, so there will be no net loss to parking on that site. Additional parking will be required for the office, retail and living. Parking is an expensive commodity at $1,500-$1,800 a space.

Councilman Dunn was concerned how 15% for affordable housing can be negotiated when the GPI doesn't have final numbers. Mr. Madison explained how they do have some working numbers.

Vice-Mayor Mumpower was pleased that the GPI will be trying to create something good on that property. However, he said that last time when the GPI was trying to development Site 1, we used up a lot of community good will and wear and tear on Council coming to a point of good decision and then we found it was not doable, probably from the very beginning. So, this time, are you are saying you will do all the studies and have the plan in place before this Council ever makes a final decision on this? Will you be able to make a decision on whether it will work or not? Mr. Madison responded by saying yes. When the Site 1 process began, the restrictions (particularly the height) placed mid-way was the factor which dramatically changed the viability of the project to work. It was also a tremendous stress to his company and to him personally but he is still committed to Site 2. He has already spent $250,000 to get to this stage and the next stage will be another $250,000. So, as far as his commitment to not waste public good will and stress to Council, they are committed to take it to that stage or end it as soon as possible.

Vice-Mayor Mumpower pointed out that regarding Site 1, Mr. Madison was specifically asked at that hearing when those changes were made if he could make the project work and Mr. Madison replied that to the best of his knowledge they can, with these changes. Mr. Madison responded that that it was their intent to try to make it work but they failed. Vice-Mayor Mumpower said that his point is we need to get to a better place this time and we are grateful they are here and we will help you get there.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 04-140. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 290

B. RESOLUTION NO. 04-141 - RESOLUTION APPOINTING A MEMBER TO THE WNC REGIONAL AIR QUALITY AGENCY

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the WNC Regional Air Quality Agency.

The term of Ms. Nelda Holder, as a member on the WNC Regional Air Quality Agency, expires on July 1, 2004.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to arrange interviews for Lawrence Haas, Loyd Kirk and George Peery.

Lawrence Haas received 3 votes, Loyd Kirk received 4 votes and George Peery received no votes. Therefore, Loyd Kirk was appointed to the WNC Regional Air Quality Agency to serve a six-year term. His term will begin July 2, 2004, and expire July 1, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 291

C. RESOLUTION NO. 04-142 - RESOLUTION APPOINTING A MEMBER TO THE AIRPORT AUTHORITY

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Asheville Regional Airport Authority.

The term of Mr. Robert Turner, as a member on the Asheville Regional Airport Authority, expires on June 30, 2004.

At City Council's worksession on June 15, 2004, it was the consensus of City Council to appoint a member of City Council to the Airport Authority. Vice-Mayor Mumpower and Councilman Dunn both expressed an interest in serving on the Authority.

Regarding Council's discussion at the June 15, 2004, worksession, City Attorney Oast said that he would include a paragraph in the resolution that City Council wishes to appoint a member of the City Council to the Airport Authority to ensure that the City's interests, as expressed through the Council, are represented on the Authority. He said that he feels that with the language in the resolution, Council has grounds for a for-cause removal if the appointee refuses to resign at the end of the term.

Vice-Mayor Mumpower said that by consensus City Council has agreed to appoint Councilman Dunn to the Airport Authority as the City Council representative to serve a four-year term, term to begin July 1, 2004, and expire June 30, 2008.

RESOLUTION BOOK NO. 28 – PAGE 292

D. RESOLUTION NO. 04-143 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing a member to the Asheville Downtown Commission.

Mr. Bill Byrne has resigned as a member of the Asheville Downtown Commission, thus leaving an unexpired term until December 31, 2005.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to arrange interviews for Leslie Yancey and Leesa Young. Pamela Myers will be considered as an applicant, however, an interview is not necessary.

Leslie Yancey received 6 votes, Leesa Young received 1 vote and Pamela Myers received 0 votes. Therefore, Leslie Yancey was appointed as a member of the Downtown Commission to serve the unexpired term of Mr. Byrne, term to expire December 31, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 293

VI. OTHER BUSINESS:

Vice-Mayor Mumpower thanked several people for the work in the Hillcrest Community Clean-Up Day, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

The following claims were received by the City of Asheville during the period of May 28-June 10, 2004: Boyd Stevens (Fire), Loretta Woolley (Water), Beverly Williams (Streets), Matt Ballard (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Fred English, Haw Creek resident, spoke about the 229th anniversary for the U.S. Army and hoped that in the future the City of Asheville tries to publicize this wonderful event.

Mr. Mike Fryar supported City Council's decision to wait until they hear from the Police Chief before implementation of the drug program.

Closed Session

At 7:21 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Morris Communications d/b/a Fairway Outdoor Advertising; Lamar Outdoor Advertising; and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3); and (2) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat. 143-318.11(a)(5). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:45 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – June 29, 2004
North Asheville Community Center
37 East Larchmont Road
Asheville, N.C.

7:00 p.m. – Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and Deputy City Clerk Phyllis Corns

Absent: Councilwoman Terry M. Bellamy

The following topics/concerns were raised by residents and addressed by City Council and City staff: concerns about ongoing drug activity in the vicinity of Claxton Elementary School were raised by representatives of the Claxton Neighborhood Association; the need to close suspected drug houses, particularly on Annandale Avenue, Broad Street and Hillside Street was discussed; an increased Police presence was requested for the Claxton area, as well as assistance from MHO which owns some of properties associated with drug activity; more covert drug enforcement efforts in the area was suggested; a sidewalk was requested along Merrimon Avenue from Burger King to Swannanoa Cleaners for increased pedestrian safety, especially for elderly residents; reasons for the delay in installing a sidewalk at the location were discussed; questions about future plans for reducing traffic congestion on Merrimon Avenue were asked; safety issues at the intersection of Merrimon Avenue and Edgewood Road were brought up, in particular southbound motorists making left-hand turns at the Atlanta Bread Company; questions about the future of the Regional Water Authority were raised, as well as the need for regionalism; questions about the Asset Management Plan and funding for water line replacement and refurbishment ("R&R") were asked; the status of the water agreement renegotiations was discussed.

Mayor Worley adjourned the meeting at 8:08 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 13, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Theodore Hunter Sr., Retired Master Sergeant of the U.S. Army led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF MARO SLAUGHTER, WINNER OF THE "N.C. BUILDING INSPECTOR OF THE YEAR AWARD"

Mayor Worley read the recognized Maro Slaughter with the Building Safety Department as winning the N. C. Building Inspector of the Year Award. She also became the first female to win the award in the 48 years since the Inspector's Association was created.

B. RECOGNITION OF JOHN MIALL BEING NAMED THE 2004 PUBLIC RISK MANAGER OF THE YEAR BY THE PUBLIC RISK MANAGEMENT ASSOCIATION

Mayor Worley read the recognized John Miall, Director of Risk Management, as being named the 2004 Public Risk Manager of the Year by the Public Risk Management Association.

C. RECOGNITION OF CITY OF ASHEVILLE EMPLOYEES IN 13th ANNUAL EXCELLENCE IN PUBLIC SERVICE AWARDS PROGRAM

Mayor Worley read a proclamation recognizing several City of Asheville employees who were winners in their respective categories in the 14th Annual Excellence in Public Service Awards Program. Employees recognized were Tim E. Haynes, Scott T. Burnette, Deborah Bryant, Cheyenne Youell, Jamie Sullivan and Douglas (Mike) Quinones. He thanked each employee for their faithful and loyal dedication in their career of public service.

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda Item F be removed from the Consent Agenda for discussion.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 22, 2004, AND THE COMMUNITY MEETING HELD ON JUNE 29, 2004

B. RESOLUTION NO. 04-144 - RESOLUTION OF INTENT TO CLOSE ROBERTS ROAD EXTENSION AND SETTING A PUBLIC HEARING ON AUGUST 10, 2004

Summary: The consideration of a resolution of intent to close Roberts Road Extension and set a public hearing on August 10, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use as a public street Roberts Road Extension.

Closure of this section of right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are two lots that abut this section of right-of-way. They are identified by PIN Nos. 9657.10-35-4414 and 9657.10-35-6577. All abutting property owners have joined in the petition to close.

City staff recommends that City Council adopt the resolution setting a public hearing for August 10, 2004, to close Roberts Road Extension.

RESOLUTION BOOK NO. 28 – PAGE 294

C. RESOLUTION NO. 04-145- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS RESPONSE FOR REGION 6

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region 6.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response. The region six area covers from Rutherford County west to the Tennessee Border. Twenty counties comprise the response region.

The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-95. The State of North Carolina provides funding that fully supports the operational costs of the program.

Pros: The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

Cons: During the ten years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. Losing this program and the associated benefits would be a negative for the citizens of Asheville.

This program is consistent with the City's Strategic Plan in forming partnerships with other governmental units to provide services.

City staff recommends City Council authorize the City Manager to renew the Regional Hazardous Materials Contract with the N. C. Dept. of Crime Control and Public Safety and Crime Control for Region 6.

RESOLUTION BOOK NO. 28 – PAGE 295

D. RESOLUTION NO. 04-146 - RESOLUTION ESTABLISHING MINIMUM PRICE AND DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS FOR TWO LOTS ON MCDOWELL STREET FROM LIVINGSTON STREET, LLC

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids Disposal Parcels 75A and 75B located on McDowell Street.

Disposal Parcels 75A and 75B are zoned Institutional and comprise 0.21 acres total. Both lots are located on the west side of McDowell Street (PIN Nos. 9648.14-34-7353 and 6494). The two parcels were appraised by Joseph Moore on March 7, 2004, at total value of $33,000. According to the appraisal, the highest and best use is for assemblage. The proposed land use for the subject property in the East Riverside Redevelopment Plan is for assemblage with adjoining property.

Livingston Street, LLC (LS) has submitted a bid to purchase both parcels for the sum of $33,000. LS owns adjoining property improved with medical offices and parking and desires to assemble the subject parcels with the property it owns to provide access and parking for its employees.

Approval of the resolution will establish a minimum price of $33,000 and initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Planning & Community Development staff recommend City Council adopt a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids Disposal Parcels 75A and 75B located on McDowell Street.

RESOLUTION BOOK NO. 28 – PAGE 296

E. RESOLUTION NO. 04-147 - RESOLUTION ACCEPTING AN EXTENSION OF LANGWELL AVENUE IN WEST ASHEVILLE AS A CITY MAINTAINED STREET

Summary: The consideration of a resolution to accept an extension of Langwell Avenue in West Asheville as a City maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

The City currently maintains Langwell Avenue in West Asheville. A developer has extended this street to provide affordable housing. The extension to Langwell Avenue is approximately 0.02 miles with an average paved width of 18 feet. The City will only maintain to the end of the curb. The remainder of the paved roadway will be a private driveway. Engineering Department staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, the extension to Langwell Avenue will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

City staff recommends City Council accept the extension of Langwell Avenue in West Asheville as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 297

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES

This item was removed from the Consent Agenda for discussion.

G. RESOLUTION NO. 04-148 - RESOLUTION SETTING A PUBLIC HEARING FOR THE ADOPTION OF AN ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

Summary: The consideration of a resolution setting a public hearing on July 27, 2004, for the adoption of an ordinance to close and vacate the dwelling located at 1086 Hendersonville Road.

The dwelling at 1086 Hendersonville Road (PIN 9656.05-08-6459) is a wooden structure containing nine dwelling units. Since December of 1998, following the first complaint, City staff has repeatedly worked with the property owners to bring the dwelling into compliance with the Housing Code, to no avail. To date, the dwelling remains in non-compliance with the Housing Code.

A hearing was held on November 19, 2003, and an Order issued to the owner to render all nine dwelling units compliant with the Housing Code by February 2, 2004. The owner failed to comply with the Order and to date has not completed the required electrical repairs. In addition, with clear notice that they were renting the dwelling units in violation of the Housing Code, the owners exacerbated their non-compliance by renting the unfinished and un-permitted basement.

Prior to the Housing Code Coordinator proceeding to enforce the Housing Code by causing the dwelling to become vacated and closed, an Ordinance must be adopted by City Council ordering such.

Staff recommends adoption of a resolution setting a public hearing on July 27, 2004, to consider an ordinance ordering the dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

Housing Code Enforcement Officer Jeff Baker responded to questions from Councilwoman Bellamy about the process to date and if every effort has been made to work with the owners of the property.

RESOLUTION BOOK NO. 28 – PAGE 299

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

ITEM ON THE CONSENT AGENDA PULLED FOR DISCUSSION

RESOLUTION NO. 04-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the animal shelter. On June 29, 2004, the City approved the budget for Fiscal Year 2004-2005 and in that budget approved $121,000.00 to pay for shelter services. The City and the Humane Society need to enter into an agreement for shelter services for the term of July 1, 2004, through June 30, 2005.

Advantages to the contract: The City of Asheville will continue to partner with Buncombe County, taking the opportunity to continue utilization and support of one consolidated animal shelter serving all citizens of Buncombe County. In addition, the City is not forced to own and operate its own animal shelter facility due to this arrangement.

Disadvantages to the contract: The City is continuing to subsidize Buncombe County's Animal Shelter program, by paying for animals taken to the shelter facility by Asheville City residents. Buncombe County government currently pays for this service for citizens in unincorporated areas of the county, which to some, may be viewed as an inequitable level of service.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2004 through June 30, 2005.

Assistant City Attorney Curt Euler responded to various questions from Councilwoman Bellamy, some being, but are not limited to what are the service hours on the weekends for the shelter, how long have we had an agreement with the Humane Society and how is the City's relationship with the Humane Society.

Discussion surrounded the City of Asheville residents (who are also County residents) paying a fee to take animals to the shelter, while Buncombe County government pays for this service for Buncombe County residents.

Vice-Mayor Mumpower and Councilwoman Bellamy felt that the City should only enter into the agreement for a 30-day period in order to give the "political powers" to meet and discuss this inequitable issue with the County. They felt that if we enter into a year contract, there would be no incentive or negotiation tool for Buncombe County to discuss this issue.

City Attorney Oast explained that the agreement does have a 30-day termination notice.

Mayor Worley explained that our disagreement over the fee is with Buncombe County and the agreement is with the Asheville Humane Society. Therefore, he felt it would be appropriate to enter into the contract with the Humane Society and discuss the fee with Buncombe County

City Manager Westbrook said that he would get Council information on how many animals the City of Asheville takes to the shelter.

Councilman Davis moved to adopt Resolution No. 04-149, with the understanding that the Mayor will discuss this issue (and other issues already pending) with Buncombe County. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Vice-Mayor Mumpower and Councilwoman Bellamy voting "no."

RESOLUTION BOOK NO. 28 – PAGE 301

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE DIRECTING THE DWELLING LOCATED AT 86 CRAYTON ROAD BE DEMOLISHED

Mayor Worley announced that 86 Crayton Road has been demolished and the public hearing will not be held.

B. PUBLIC HEARING TO CONSIDER THE CLOSING OF NELSON STREET

RESOLUTION NO. 04-150 - RESOLUTION PERMANENTLY CLOSING NELSON STREET

Mayor Worley opened the public hearing at 5:46 p.m.

Assistant Public Works Director David Cole said that this is the consideration of permanently closing Nelson Street. The public hearing was advertised on June 18, 25, July 2 and 9, 2004.

N. C. Gen. Stat. sec. 160A-299, grants cities the authority to permanently close streets and alleys without regard to whether they are public, private or have actually been opened.

Pursuant to said statute, the property owners adjoining Nelson Street have requested the City to permanently close Nelson Street to public use. The property owner would like the street closed for better access to his building.

Closure of Nelson Street will have no impact on the ingress and egress for any of the abutting properties. There are six lots that abut this section of right-of-way. There is an easement reservation for BellSouth. They are identified as PIN Nos. 9648.09-05-4512; 9648.09-05-3847; 9648.09-06-3004; 9648.09-06-3216; 9648.09-06-4488 and 9648.09-05-7718.

City staff recommends City Council adopt a resolution permanently closing Nelson Street.

Mayor Worley closed the public hearing at 5:48 p.m.

Upon inquiry of Councilman Newman, Mr. Cole said he didn't feel there would be any access problems to the adjoining City of Asheville property if they decided to develop it.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-150. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Newman voting "no."

RESOLUTION BOOK NO. 28 – PAGE 302

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 27 CATAWBA STREET FOR THE CONSTRUCTION OF A QUADRAPLEX RESIDENTIAL BUILDING IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3136 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 27 CATAWBA STREET FOR THE CONSTRUCTION OF A QUADRAPLEX RESIDENTIAL BUILDING IN AN RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Councilman Davis moved to excuse Mayor Worley from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Mayor Worley relinquished the meeting to Vice-Mayor Mumpower.

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Mumpower opened the public hearing at 5:55 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Heard said that this is the consideration of the issuance of a conditional use permit for property located at 27 Catawba Street for the construction of a quadraplex residential building in an RS-8 Residential Single-Family High Density District.

The property owner (W-G Ventures, LLC) has requested a conditional use permit for property at 27 Catawba Street. The property is located within the City limits on the south side of Catawba Street west of Broadway Street (City Exhibit 3 – Location Map). Surrounding land uses and zoning include the City's mulch pile to the north and vacant property to the east zoned RS 8, residential and vacant property zoned RS 8 and RM 6 respectively to the south, and residential property zoned RS 8 to the west. Access to the property is from Catawba Street near its intersection with Broadway Street (City Exhibit 3 – Aerial Photo).

There is currently one single-family residence located on the western edge of the property (City Exhibit 4 – Site Plan; and City Exhibit 3 – Elevation Drawing).

The Technical Review Committee (TRC) reviewed the proposed site plan and recommended approval with conditions. The applicant has revised the site plan to address a number of the conditions, but some conditions are still outstanding.

The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

The project received conditional technical approval from the Water Resources Department, the Fire Department, MSD, Engineering, and other City Departments. The project must meet the technical standards set forth in the Unified Development Ordinance (UDO), the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

The project must comply with all City standards in regards to maximum clearing and grading and erosion control.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

The UDO requirements and the physical design of the structure help to assure that the building fits within the single-family neighborhood surrounding it. Staff has also determined that the additional traffic generated will not adversely impact the existing road conditions or capacity.

4. That the proposed use or development of the land will [illegible] in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

Within the surrounding neighborhood there is a range of different building footprint sizes. The footprint of the proposed building falls within this range. The proposed building is two stories in height as are some of the homes in the area. The building also contains only one entrance on its front elevation, as required by the UDO and parking for the building is also located to the rear and will be screened by a mix of trees, shrubs, and fencing. These components help mask the multi-family nature of the structure.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City;

The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The project will also help meet one of the City's Smart Growth policies, providing higher density residential infill development.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities:

The project received technical approval from the TRC, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The project was reviewed by the Engineering Department during the TRC process and it was determined that the existing roadway conditions and capacity were sufficient to handle any sort of increase generated by the proposed use.

Advantages (Pros) of the proposed development:

- The proposed quadraplex provides a higher density residential use in close proximity to the Reed Creek Greenway and Broadway Corridor.
- The building is designed to resemble a large, single-family residence, rather than a quadraplex.

Disadvantages (Cons):

- Due to the location of the stream on the property, parking for the proposed quadraplex must be located closer to the road and is more visible to passers-by.

In consideration of the above and the adjoining zoning and land uses, the proposed conditional use permit appears to be consistent with the intent and purpose of the UDO.

Staff recommends approval and issuance of a conditional use permit with the following conditions (1) All outstanding TRC conditions are addressed and detailed plans are reviewed by TRC after approval by City Council; and (2) Parking areas do not encroach into setbacks.

Mr. Gerald Green, representing the developer, spoke in support of the project and that they have tried to design the unit to fit in Montford Historic District even though it is outside the district. They are not sure at this time what the rental rate will be; however, they do hope to keep them in an affordable range.

Ms. Katia Seminole, area resident, spoke in opposition of the quadraplex. She felt the property was too small for a quadraplex. She pointed out that Catawba is a narrow street, with no sidewalks. She said Catawba Street is used frequently by residents in the north part of Montford to get to Merrimon Avenue. She felt that there will be probably 12 people in the entire unit and there are only 7 parking spaces on the property with no room for on-street parking. She also felt the sign posted on the property advertising this meeting was too small and that she had to get out of her car to read the notice.

Ms. Susan Jones, resident on Catawba Street, said that she was not notified by the City of Asheville of this meeting. She agreed there is a lot of traffic on Catawba and no place for on-street parking.

After rebuttal, Vice-Mayor Mumpower closed the public hearing at 6:10 p.m.

Upon inquiry of Councilman Dunn, Mr. Green said that there is no room for on-street parking, however, he was willing to add another parking space on the property, however, it will require some landscaping to be deleted. He pointed out that they wanted to preserve some green space at the beginning of Montford and not have a parking lot as an introduction into historic Montford.

When Councilwoman Jones asked if the developer might be willing to reduce the number of units from 4 to 3 to accommodate parking, Mr. Green said that given the choice, from a financial standpoint, they would prefer to add additional parking on the property. He felt that some of the residents will chose to use alternative uses of transportation, like bikes and walking to their destinations, due to the location of the property.

Councilwoman Jones asked what the traffic plan will be on Catawba once the Health Adventure is built across the street from this property. Mr. Heard said that since they have had no formal submittal from the Health Adventure it would be premature to make any assumptions and that the City's Traffic Engineer will have to review the project.

Regarding parking, Councilwoman Bellamy questioned the topography of the area across the street where the City's mulch pile is located.

Mr. Heard clarified the parking space allowance by saying that 8 parking spaces would be the maximum allowed under the UDO on the site. The developer could go above that if the parking provided was of a pervious material.

Councilwoman Jones supported this project and hoped that in the future there would be more research done regarding traffic and parking. She also challenged developers to build well-built multi-family units in all neighborhoods throughout the City.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3136, granting a conditional use permit for property located at 27 Catawba Street for the construction of a quadraplex residential building in an RS-8 Residential Single-Family High Density District, subject to the following conditions: (1) All outstanding TRC conditions are addressed and detailed plans are reviewed by TRC after approval by City Council; (2) Parking areas do not encroach into setbacks; and (3) There be at least 7 off-street parking spaces, with allowance of an additional one without further Council approval. This motion was seconded by Councilman Davis and carried unanimously.

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At 6:30 p.m., Mayor Worley formally took over the meeting from Vice-Mayor Mumpower.

D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF TWO LOTS LOCATED ON FORSYTHE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR THE CONVERSION OF AN EXISTING CHURCH TO A FOUR UNIT APARTMENT BUILDING

ORDINANCE NO. 3137 - ORDINANCE REZONING TWO LOTS LOCATED ON FORSYTHE STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL USE

ORDINANCE NO. 3138 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR TWO LOTS LOCATED ON FORSYTHE STREET TO ALLOW FOR THE CONVERSION OF AN EXISTING CHURCH TO A FOUR UNIT APARTMENT BUILDING

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:31 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Designer Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a request from the owners of the property (Jason Eller and Vanessa Cram) to rezone two lots located on Forsythe Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use; and the issuance of a conditional use permit to allow for the conversion of an existing church to a four unit apartment building (City Exhibit 3 -- Location Map and Aerial Photo).

The 2025 Asheville City Development Plan recommends for the Broadway area north of the Central Business District to become a mixed-use higher density neighborhood corridor. In addition within walking distance to the project site along the Merrimon Avenue corridor, is noted as a likely site for an urban village type of development. Little change is noted for the neighborhoods off of these primary corridors except that the 2025 Plan notes the need to provide a mixture of housing types to serve varied residential needs of the community. Finally, the 2025 Plan recommends the adaptive re-use of older structures as a tool for preservation and renewal in neighborhoods.

In 2002, properties along Broadway Street one block from this project were zoned to the newly created Neighborhood Corridor District. The property is located within the City limits in the central area of the City. The site is the former site of the Johnson Memorial Church, which has replaced this structure with a new one across the street from the subject properties.

The area surrounding the subject properties in all directions are zoned RS-8, residential single-family high density. This area includes single-family uses save the church use on Forsythe Street.

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The project proposes the conversion of the former church sanctuary and classrooms to four residential units. The plans do not illustrate the expansion of the existing buildings (City Exhibit 3 – Site Plan). In addition the plans portray retaining the existing steps and ramp into the building for access. As proposed under RM-16 zoning, the size of the lot would only need to be .25 acre. At .33 acre, the 2 parcels provide additional space on the plan for open space. The plan as proposed includes 7 parking spaces but a handicapped accessible space may be required so the parking area could be rearranged. The planting plan illustrates some parking area landscaping, some street trees and required bufferyards. Staff is proposing to work with the developers to come up with a landscaping proposal while acknowledging the somewhat restricted space for the project. Outstanding issues identified during the Technical Review Committee (TRC) review are also proposed to be conditions of the approval. No other environmental or safety concerns were noted for the project (City Exhibit 3 – Elevation Photos).

RS-8 Zoning District is developed to provide areas for high density single-family residential uses where the infrastructure is in place to support this type of development. A limited number of other non-residential uses are allowed to support a residential neighborhood.

RM-16 Zoning District is developed to set aside areas for high density multi-family uses with a broad range of housing types. RM-16 also allows other non-residential uses including limited institutional, public and commercial uses appropriate within high density residential areas.

Because this is a conditional use rezoning, if approved, the only use of the site that would be allowed would be the four residential uses as proposed in this plan. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

City Council must take formal action as set forth in section 7-9-9(c) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

1) **That the proposed use or development of the land will not materially endanger the public health or safety.** The project has been reviewed by the Technical Review Committee (TRC). The project will have to meet State Building Code requirements before the building can be occupied for apartment use. No other safety concerns were noted.

2) **That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** Since the project is using an existing site there will be minimum changes to the natural or topographic features of the site.

3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is not expected to injure the value of adjoining or abutting properties. In fact, the conversion of the existing, vacant church building to apartments would likely improve the appearance and maintenance of the site, which should have a positive impact on the surrounding neighborhood

4) **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The project is proposing to adaptively re-use existing structures with no building expansion. The project is in harmony with the scale, bulk, coverage, density and character of the area or neighborhood.

5) **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project will provide housing that is needed in the community and matches goals from the City Plan 2025 to provide a variety of housing types at a variety of prices in neighborhoods throughout the City. In addition adaptive re-use of existing structures is also encouraged in the plan.

6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Requirements of utility providers will be met for this project. An Asheville Transit route travels within a block of this site.

7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project was considered at the TRC and it was felt that traffic would not be negatively impacted by this small project.

PROS:

- Provides a mixture of housing types in the community.
- Provides for the adaptive re-use of an existing structure to a use that complements the neighborhood.
- The proposed project requires a minimal visual change in the neighborhood.

CONS:

- Adds a multifamily project to a single family neighborhood (a potential plus)

Staff recommends approval of the rezoning request. The Planning and Zoning Commission, at its June 2, 2004, meeting voted to recommend approval of the request with outstanding TRC being addressed.

Mr. Gerald Green, representing the developer, spoke in support of the project. He said the developers want the property to retain the character of the church that was built in the 1920's. He explained the parking and that they are talking with the church across the street for shared parking.

Ms. Jan Howard, Kenilworth resident, spoke in support of the project in that the developers have done an excellent renovation on her street.

Mr. Fred English, East Asheville resident, questioned if the units will be affordable housing.

After rebuttal, Mayor Worley closed the public hearing at 6:48 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Green explained what they have done to address the concern of a neighbor regarding car lights exiting the off-parking parking.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3137, to rezone two lots located on Forsythe Street from RS-8 Residential Single-Family High Density District to RM-16 Residential Multi-Family High Density District/Conditional Use. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 244

Councilman Newman moved for the adoption of Ordinance No. 3138, granting a conditional use permit on two lots located on Forsythe Street in order to allow for the conversion of an existing church to a four unit apartment building, subject to the following conditions: (1) All outstanding TRC conditions being met. This motion was seconded by Councilman Dunn and carried unanimously.

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At 6:55 p.m., Mayor Worley announced a short break.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 04-151 - RESOLUTION AUTHORIZING AMENDMENTS TO THE ARENA LICENSE AGREEMENT WITH THE NATIONAL BASKETBALL DEVELOPMENTAL LEAGUE

Civic Center Director David Pisha said that this is the consideration of a resolution authorizing the City Manager to enter into an agreement with the National Basketball Developmental League (NBDL). The previous NBDL contract provided that the NBDL could extend the agreement for an additional seven years. They chose not to exercise that option but instead requested some revisions to the agreement.

As the City entered into contract renegotiations with the NBDL, the overriding philosophy employed was that any changes made would not detrimentally affect the City regarding the financial bottom line of the contract.

The NBDL requested that the rental of the arena be lowered from $5,260 per game to $4,500, representing a reduction of $760 per game. All other NBDL cities were requested to lower per game rent. The rent for the upcoming season has been set at $4,500 per game versus last season's per game rent of $5,260, resulting in an annual revenue loss of $17,480.

In order for the City to capture this loss revenue in per game rent, the following changes were negotiated, so that when added back cumulatively, more than make up for the reduction in per game rent.

In the previous agreement, the City collected certain ancillary revenues. These included concession profits, facility fees and suite and signage commissions. However, a provision in that prior agreement allowed the NBDL to receive any of the City's ancillary revenues until the City's share of those revenues exceeded $75,000. That provision no longer applies in the new agreement. As result, based on last season's numbers, projections suggest approximately $13,500 in additional revenue to the Civic Center from concessions, facility fees and suite and signage commissions.

Finally, in the new agreement, the NBDL also agreed to begin paying for certain concession labor charges, saving the City at least $2,000 per year. They have also agreed to pay for any equipment charges that may result in a cash payment by the City to a third party supplier, thus saving the City further monies that when added cumulatively, should insure the City retains equivalent revenue earnings as reflected in the prior contract.

Advantages to approving NBDL contract:

- The City is now able to share in the first dollar of any ancillary revenues, thus, when combined with other minor revisions noted above, will make up the differential in per game rent reduction, thus ensuring revenues equal to those in the previous contract.

- If the NBDL sees any improvement in either attendance or ancillary revenues in the upcoming season, the City stands to benefit more financially than under the previous contract.

- The City now has the ability to severe the contact on a yearly basis, just as the NBDL. Under the previous contract, only the NBDL could severe the contact during the three (3) year period.

Disadvantages: None noted.

City staff recommends City Council authorize the City Manager to sign the new NBDL agreement.

Vice-Mayor Mumpower asked if the Civic Center Commission had reviewed the contract. Mr. Pisha replied that they had not reviewed the final agreement, however, they were apprised that negotiations were on-going with the NBDL and there was a timing problem. Vice-Mayor Mumpower said that he would vote in favor of this good agreement, however, in the future he will not vote in favor of any action if the Civic Center Commission did not participate in the decision-making process. He felt that we have this advisory Commission and we need to use them, along with their liaison Councilman Davis.

Councilwoman Bellamy publicly thanked Alfred White, Altitude Team President, for his outstanding service to the Asheville community and the tremendous commitment to the community and the NBDL.

On behalf of City Council, Mayor Worley also thanked Mr. White and welcomed Mr. Rudy Bourg who will be replacing Mr. White.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-151. This motion was seconded by Councilman Dunn and carried unanimously.

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VI. OTHER BUSINESS:

A. I-26 CONNECTOR

Councilman Newman asked Council to allow a short presentation by Mr. Michael Moule and Dr. Joseph Passonneau, technical experts, regarding the I-26 Connector. He said that in 2002, the Metropolitan Planning Organization (MPO) Transportation Advisory Committee (TAC), who had Council representation by former-Councilman Brian Peterson and Councilwoman Jones (now Vice-Mayor Mumpower and Councilwoman Jones), made a decision to approve the traffic predictions available at that time, which predicted traffic volumes on the Connector of around 140,000 a day, but the N.C. Dept. of Transportation (NC DOT) was working on a new traffic model which was completed in 2003 which predicted significantly lower traffic volumes. The TIA made a recommendation in 2002 to support an 8-lane alignment based on the information they had at the time. But the staff's recommendation, which was approved by the TAC, was to re-visit the issue if the new traffic model showed significantly different numbers. Since the number have come back at a much lower level than original predictions, the NC DOT will be holding a public hearing on July 14, 2004, to get community input and give the community an opportunity to ask questions about the project. On July 15, 2004, the MPO will be holding their monthly meeting, but their agenda does not include any action on this issue at this time. He felt this presentation may have some information that could be helpful to City Council in understanding what the new traffic model means for the future of the Connector and what may be the best way to move the project forward.

It was Mayor Worley's understanding that Mr. Moule, who works in Tampa, Florida, will not be in town next week, so Council wouldn't have the opportunity to hear his presentation.

Vice-Mayor Mumpower objected to the presentations on the basis of timing. He said Council is being placed under tremendous political and personal preference pressures to address what is a technical decision. He would have a hard time hearing presentations from one side during a televised meeting over an issue that is not on our agenda. He felt to have these presentations at Council's next worksession, like we normally would and should do, would be great. But to adapt our agenda to hear from one side, he would argue procedurally is not appropriate.

Councilwoman Jones supported Councilman Newman because valiant efforts were made to have to the NC DOT representatives at this meeting and she was truly disappointed they were not here to respond to Council. City Council is working hard to obtain data and to not hear from the intelligence we have is not doing a service to Asheville.

Mayor Worley did say that the City did not ask the NC DOT representatives to attend this meeting until the middle of last week and since they have several people involved in their presentation that are essential to their public presentation tomorrow, they could not be here due to scheduling conflicts. He did say that the NC DOT was prepared to have someone at this meeting to answer questions but not to give the presentation. After talking with them yesterday, it was decided that that really wasn't in the best interest to not be able to receive the presentation and yet give the appearance of getting information from them.

Vice-Mayor Mumpower did say all of Council wants to make the most informed decision we can. The idea of learning from as many people as we can makes sense. He just has concern with the procedure by which we are doing that. There is a danger of further politicizing this decision, which just clouds the issue further. He did state that some of the pressures to get to this tonight have changed, in that the TAC is not likely to vote on this matter for another month, so we have plenty of time to learn and deliberate and try to find the best way to move forward.

Mr. Michael Moule, Principal Transportation Engineer from Tampa, Florida, and former City of Asheville Traffic Engineer, gave a brief presentation based on traffic analysis to City Council supporting why he fells that 6 lanes is adequate for the I-26 Connector. He reviewed different charts containing information about level of service A-F and 6 vs. 8 lane capacities. He then showed Council samples of large cities with no freeways greater than 6 lanes, including Portland, Oregon, and Santa Barbara, California. In addition, he stated five cities that have or are removing majority highways.

Dr. Joseph Passonneau, professional in highway engineering, briefed Council on his achievements to date stating that he designs roads and the important point is that automobile traffic damages the corridors it goes through. Secondly, if citizens are not involved from the beginning to the end, projects will not be successful.

Mr. Moule and Dr. Passonneau then responded to various questions from Council, some being, but are not limited to: what is the loss of travel time between a 6 lane vs. an 8 lane; how much land will be needed for 6 lanes vs. 8 lanes; has the NC DOT prepared an analysis of the impact of the residential properties which would have to be displaced; are bike lanes factored into Mr. Moule's analysis; and is the character and beauty of an area factors to consider when transportation planners design projects.

Upon inquiry of Vice-Mayor Mumpower, Mr. Moule said that he would be happy to make his presentation to the TAC if allowed.

At Councilman Newman's request and City Council's consensus, the Mayor asked the City Manager to place this item on the next Council worksession agenda.

B. RECOGNITION

Vice-Mayor Mumpower thanked several people for their work with the Hillcrest community midnight basketball activity, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

C. CLAIMS

The following claims were received by the City of Asheville during the period of June 11-24, 2004: Sammy Smith (Water), Guillermo M. Ortiz (Streets), Marc Micek (Streets), Casey Holfolter (Fire) and Terry Roegge (Civic Center).

The following claims were received during the period of June 25-July 8, 2004: Gregg Matia (Sanitation), Malvern Hills Park (Parks & Recreation), Robert W. Oast (Sanitation), Marie McDonald (Streets), Civic Center (Civic Center) and Dicie L. Hart (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

The following residents encouraged City Council to take a strong role in representing their concerns about the proposed 8 lanes and not to underestimate what the I-26 Connector would mean for the City and the region: Brian Peterson, Andy Euston, Louis Langford (President of the West Asheville Business Association), Bill Boeheim, Lula Heetderks (President of the West End/Clingman Avenue Neighborhood), and Ms. Kathleen Riddle.

Ms. Sharon Tabor and another resident of the St. Dunstan's neighborhood, shared with Council pictures and asked City Council to reverse their decision to not perform a zoning study the St. Dunstan's Road area in May 2004. and to authorize the Planning Department to proceed with the study to reduce the current zoning of St. Dunstan's Circle, St. Dunstan's Road and Grindstaff Road from the current zoning of RS-8 to RS-4. This request is based on several reasons, including the safety of neighborhood children which has increased +500 in three years; traffic and safety hazard for residents; mentally handicapped residents in group homes who wander away; current lot sizes; and the topography of the area. She said that 68% of the residents are in favor of the RS-4 designation.

Mr. Mike Fryar said that all businesses have to have a permit to do business in Asheville, all except for drug-dealers.

Ms. Leslie Kulba thanked City Council for paving and replacing sidewalks.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:31 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 20, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Next Community Meeting – August 31, 2004, East Asheville Community Center

Approved Purchase of Property on Pinner Road for the Asheville Regional Airport Authority

Summary: The consideration of a resolution accepting an Offer of Sale of Land from Grace Henninger for land off Pinner Road for $111,321 for the Asheville Regional Airport Authority.

The property off Pinner Road is located adjacent to and west of the Asheville Regional Airport in a neighborhood with a mix of site built and manufactured homes and somewhat rural character. It is generally rectangular in shape and contains 5.859 acres. It is level to moderately rolling and wooded. Pines are the predominate trees typical of farm land left fallow for a number of years. Its highest and best use per the appraisal is low density residential as permitted by the zoning (Limestone, R-LD). It is proposed to be acquired for future expansion of the Airport. The property will be paid for by the Airport and will be included in the Airport master lease.

The property was appraised by Richard Smith, SRA, and reviewed by Joseph Moore, appraiser at $108,500. An offer in that amount was conveyed to the owner, Grace Henninger and Mrs. Henninger responded with an offer to sell the property at $111,321. Ed Vess, Real Estate Manager, reviewed the appraisals and recommended that the offer be accepted and fair market value be established at $111,321 based on the offer to sell being within 3% of the appraisal and review and the efficiency of a prompt agreement.

The positive aspects of the proposed acquisition are:

1. Offers the opportunity to acquire land within the projected Airport expansion area while it is undeveloped.
2. The savings realized in not having to pay for potential improvements and relocation of occupants later on will offset the cost of the property.
3. It is a voluntary sale at fair market value.
4. It gives the Airport control of the property to ensure that no incompatible use occurs.
5. Will expedite the process when expansion of the Airport occurs in that one less property will have to be acquired.

The negative aspects are:

1. Removes property from the tax base.
2. Removes residential land from the market.

Approval of the resolution will establish $111,321 as the just compensation for the property and accept the Offer of Sale of Land from Grace Henninger for that amount.

City staff and the Airport Authority recommend adoption of the resolution accepting an Offer of Sale of Land from Grace Henninger for land off Pinner Road for $111,321 for the Asheville Regional Airport Authority.

Set Public Hearing on August 24, 2004, to Close Unnamed Alley off South French Broad Avenue

Summary: The consideration of a resolution of intent to close an unnamed alley off South French Broad Avenue and set a public hearing on August 24, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use as a public street an unnamed alley off South French Broad Avenue.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress. There are six lots that abut this section of right-of-way. They are identified by PIN Nos. 9648.05-29-1708, 9648.05-29-0747, 9648.05-29-0716, 9648.05-29-0668, 9648.05-19-9786 and 9648.05-19-9645. All abutting property owners except Bost Bakery (9648.05-19-9645) have joined in the petition to close.

City staff recommends that City Council adopt the resolution setting a public hearing for August 24, 2004, to close an unnamed alley off South French Broad Avenue.

Offer to Purchase Property at the Corner of Wyoming Road and Keebler Road

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Wyoming Road and Keebler Road in the Kenilworth community.

A bid has been received from Innova Homes LLC in the amount of $4,400 for the purchase of land at the corner of Wyoming Road and Keebler Road in the Kenilworth Community.

The land at the corner of Wyoming Road and Keebler Road is an irregular triangle shaped residential zoned lot comprising 0.07 acre±. From street grade it slopes up substantially to the rear property line and is covered with non-significant trees, vines and brush. The size, shape and topography render the lot unsuitable as a home site. The subject parcel is a remnant of property acquired at the time Wyoming Road was improved several years ago and is situated diagonally across from the park. The tax value is $4,400. The bid from Innova Homes LLC, owner of an adjacent parcel is in the amount of $4,400. Innova proposes to construct a house on the adjacent property for sale. The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern

5. The sale of this lot to Innova, while not essential to the proposed infill development, will enhance the development by improving the access.

Planning & Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

Solicitation of All Formal Bids by Electronic Means

Summary: The consideration of a resolution authorizing City staff to solicit invitations for all formal bids by electronic means.

The City of Asheville has invited the solicitation of bids by advertising same in the Asheville Citizen Times for a number of years. Such legal advertisements are expensive and lately have only generated low interest. A few years ago, the N. C. General Assembly amended N.C.G.S. §143-129, to allow cities to use electronic means to advertise for bids without also having to advertise same in a newspaper of general circulation. A number of cities currently advertise their formal contracts exclusively by electronic means and Asheville desires to join those cities.

The positive aspect of advertising by electronic means is that it reaches the same intended audience as newspaper advertisement at a substantial reduction in cost.

The negative aspect of advertising by electronic means is that it only reaches those who are electronically connected.

City staff recommends approval of the resolution authorizing City staff to solicit invitations for all formal bids by electronic means.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place these items on the next formal City Council agenda.

FOREST MANAGEMENT PLAN

Mr. David Hanks, Interim Water Resources Director, said that the forestry management study was the result of an airplane crash in the watershed area in 2002. Due to the overgrowth within the watershed and inaccessibility of roads it was extremely difficult for fire and rescue workers to reach the downed airplane. This prompted the City of Asheville and Town of Black Mountain fire chiefs to request accessibility and maintenance of the watersheds to be looked at. This included looking at the potential for fire and fire fighting ability within the watershed based upon its current status. It also included concerns of accessing large areas of the watershed where trees were down and overgrowth did not allow for vehicles and/or equipment to be brought in. The forester was given direction that proper management of the forest was the primary concern of the study and to take a comprehensive look at all aspects of the forest and give professional guidance on how the watershed should best be managed. The primary objectives were to maintain the functions of the forest contributing to water quality and to reduce the risk of catastrophic loss by fire, insects or disease to preserve the ability of the forest to function as a watershed.

The Forest Management Plan lists specific items that need to be addressed within the watershed. Many of the recommendations within the plan require additional staff or outsourcing the propose work. This is just the first step in a several step process.

Mr. Hanks said that the forestry management consultant firm of Wildwood Consulting, LLC was hired to take a comprehensive look at all aspects of the North Fork and Bee Tree watersheds, including current state of the forests, including trees, shrubs, underbrush, grassy areas, roads, streams, wildlife in the watersheds and maintenance of the watershed to ensure high quality water is allowed to flow in to the two reservoirs.

Mr. Edward B. Hicks, Forester with Wildwood Consulting, LLC, gave Council a brief summary of the plan for North Fork and Bee Tree Watersheds. He said the primary objectives to the plan is to (1) maintain the functions of the forest contributing to water quality; (2) reduce the risk of catastrophic loss by fire, insects or disease to preserve the ability of the forest to function as a watershed; and (3) provide other such services as may be desirable that are not in conflict with the primary purpose of the watershed. Within the board objectives, more specific objectives included (1) maintain the water quality functions of interception, filtration and retention of rainfall; (2) protect and improve forest health; (3) improve and maintain existing interior access for fire control and emergency services; (4) promote and increase native biodiversity; (5) provide and improve critical habitat for wildlife species such as black bear, ruffed grouse, wild turkey and neo-tropical migratory songbirds; (6) provide sites for re-establishment of the American chestnut; (7) maintain a scenic view from the Blue Ridge Parkway; and (8) generate periodic income from small selective timber harvests.

Mr. Hicks then explained in detail his general recommendations as follows:

WATER QUALITY:

1. ROADS AND TRAILS

First priority is primary roads. Secondary roads are also very important for fire control access, but will require more work. Many are located near streams and frequently cross streams.

- Identify secondary roads important to be maintained as access for fire control, including those not currently utilized, mapped or named and marked on the ground. Identify those roads and trails that should be closed due to poor design or location.
- Upgrade primary and secondary roads where needed with gravel and water control structures. (ditches, broad based dips, crown the road where necessary, locate turnouts well away from stream crossings, gravel approaches to stream crossings, dig sediment traps at existing located turnouts near streams)
- Repair existing bridge structures (replace rotten boards) on primary and secondary roads.
- First priority on secondary road repair is to gravel approaches to stream crossings, repair existing bridges and divert water off of the roads and into the woods away from streams and crossings, where possible. Utilize sediment traps where turnouts are necessary in proximity to streams.
- Seed cut banks and bare soil surfaces with creeping red fescue (CRF) to stabilize soils and slow water on road surfaces. Creeping red fescue is shade tolerant with a low growth habit. Strips of CRF planted on the downhill side of roads at broad based dips will slow water diverted into the woods.
- Bands of creeping red fescue established in the road, angled downhill at 30° toward the outside edge of the road will slow water flow on steep grades and divert water off of the road. An outfall must be provided on the outside edge of the planting to prevent water from re-entering the road.
- In locations where the road is enclosed by steep banks on both sides, heavily seed the entire surface to slow water flow and create an outlet at the first possible location. Steep cut banks should be graded back to a 3/1 slope where possible to allow establishment of a CRF cover. Cut banks are a continual source of erosion and stream sedimentation.

- Close and rehabilitate old roads and trails that are not serviceable due to poor design or location. Grade cut banks back to 3/1 slopes, construct water bars and turnouts and seed road beds and cut banks with CRF.
- Reduce the number of ford type stream crossing crossings where possible. Replace with bridges where possible, or consider closing roads that ford streams but are not necessary for access.

2. STREAMSIDE MANAGEMENT ZONES

Maintain a system of streamside management zones (SMZs) around the reservoirs and along tributary streams. SMZ width should be determined primarily by the slope of the surface adjacent to the water body, and the relative size (category) of the water body. There is a chart in the Plan that indicates suggested SMZ widths based on slope and category. In application, widths may vary, based on factors affecting erosion hazard, such as soil type and area drained.

Management activities allowed within the Primary SMZ are restricted to those necessary to maintain or improve roads, fire pre-suppression or control, and control of invasive exotic species.

Management activities allowed in the Secondary SMZ area include road maintenance, fire pre-suppression or control, invasive exotic species control, single tree selection timber harvest, crop tree release and understory manipulation for regeneration purposes. The primary consideration is to maintain a nearly contiguous canopy. Exceptions may be allowed on a case by case basis as long as water quality is ensured and the variance furthers objectives set forth in the plan.

Outside of the SMZ zones, all of the aforementioned activities may take place, as well as small group selection or such other forest practices as may be deemed appropriate for the watershed.

FIRE CONTROL AND EMERGENCY SERVICES:

Fire pre-suppression efforts should be focused on two issues. The first is ensuring that fire control crews and other emergency service personnel have rapid access to as much of the watershed as is practical and good maps and road signs to find their way around. Current conditions do not meet that need. Secondary roads have bridges with rotting or missing boards and trees are continually falling across roads. Roads exist that are not shown on current maps and bears keep tearing down wooden road signs that identify roads and streams.

The second issue is controlling the spread of invasive exotic species that will, if left unchecked, change the nature of the fire hazard in the watershed. At this point, the hazard is evident, but control is possible. Failure to act soon will have the same effect as failure to attack a wildfire as soon as it is detected. Delay will allow the situation to progress to the point that control is not an option. The consequences may be permanent.

- Place signage at road intersections and named stream crossings identifying road numbers and streams crossed for ease of navigation by fire crews. Consider aluminum or vinyl flat signs, stenciled letters on trees or signs placed on fence posts. Experiment with sign types and placement to find a system that the bears will not tear down.
- Repair existing bridges and add sufficient cover (at least 12 inches) over existing culverts to ensure the culverts will not be crushed.
- Cut trees from the slopes above roads for a distance of approximately 50 feet and any trees below the roads that are leaning toward the road to reduce treefall across the

access roads. Where the ground is level on both sides of a road, only the trees leaning towards the road need to be cut.

- Chinese silvergrass and Nepalese browntop infestations should be treated to control their spread. Both of these invasive exotics have the capability of growing in shaded conditions. They add a flashy fuel component to the forest that will increase the incidence and severity of wildfires if not controlled.

Fire suppression should be closely coordinated with the NC Division of Forest Resources. In the event of a wildfire within the watershed, one employee should be designated to man the gate until all suppression crews have left the watershed.

- A tube of maps should be kept in a location where they are available 24 hours a day for watershed personnel. The person designated for gate duty should take the tube with him and hand out maps to any fire control personnel entering the property. If time permits, the location of the fire should be marked on the maps.
- Helipads should be kept mown and accessible by service trucks. Roads leading to helipads are a high priority to upgrade and maintain.
- Radio frequencies should be compatible between Forest Service radios and watershed radios to facilitate communications

FOREST REGENERATION

A forest regeneration system is important to meet several management objectives. Manipulation of the forest to ensure that northern red oak and white oak are regenerated over time, as opposed to red maple, will preserve and improve habitat for all hard mast dependent species. Creation of small early successional areas will benefit species dependent on soft mast for part of their diet and species dependent on ground cover for nesting sites, browse, forage or cover. These species include black bear, wild turkeys, ruffed grouse and a wide variety of birds. Ruffed grouse will continue to utilize the areas long after they cease providing early successional conditions.

Several forest regeneration systems may be employed to meet the objectives. One system is small group selection. Under the small group selection system, small pockets of timber are harvested to create a number of small openings (.5 to 2 acres, depending on shape and species composition) within a stand. These will comprise 10-15% of the stand. Approximately 10-15 years later, the stand will be revisited and another 10- 15% of the stand will be harvested in small pockets. This process is repeated continually. All of the stand will have been included in a small group by the time 75 to 100 years have passed, but the first areas treated will have 75 to 100 year old trees in pockets throughout the stand. At no time is the canopy removed from more than about 15% of the area in a stand, and that area is scattered all over the entire stand. Different stands are treated each year to provide areas of early successional areas for wildlife and to encourage oak regeneration.

Small group selection will allow oak regeneration to develop within the edges of the stand adjoining the small openings, where light is sufficient for oaks, but inadequate for yellow-poplar. Yellow poplar will probably dominate the center of the small openings on the better sites. The mix of yellow-poplar and oak may help deter gypsy moths if an infestation were to occur. Solid stands of oak are highly susceptible.

Shelterwood cuts offer the opportunity to create two-aged stands. These are beneficial to grouse, bear, white-tail deer and a variety of birds. The trees selected for shelter and the density of the shelterwood can be used to manipulate species composition of future stands.

Regeneration using small clearcuts will also be appropriate under certain conditions. Where advance oak regeneration is present, small clearcuts would allow the regeneration of a site to oak species, while providing important early successional areas for wildlife. Clearcut sizes would be determined by conditions, but anticipated clearcut sizes would be between 5 and 10 acres.

Single tree selection has not been shown to be an effective system for regeneration of shade intolerant species, such as oak, ash, hickory and yellow-poplar, however, individual trees may be harvested to meet other objectives other than regeneration. They may be selected for harvest to manipulate species composition in the overstory and to enhance conditions for mast production, particularly in the secondary buffer zones. It may be useful in crop tree management, where crop trees are selected for masting ability and are favored by removing individual crown competitors to increase the available light to the crop tree.

It is important to maintain as many "tools of management" for use as possible to deal with variable conditions and objectives. No single system is appropriate for all areas.

WILDLIFE MANAGEMENT:

Wildlife management recommendations are based on several objectives and considerations. The Asheville Watersheds have one of the highest densities of black bears in western NC. They act as a reservoir for the species, providing a safe haven for rearing young and vital natural food supplies. Improving the variety, timing and quantity of the food supply will help support the bear population. According to Wildlife officials, bears benefit from a diversity of habitat types, each providing food during different times of the year.

Ruffed grouse populations are in decline in western NC, but they are present in the watershed in small numbers. Improving habitat for ruffed grouse will help ensure their continued presence in the area. Grouse will take advantage of small group cuts, but they are not the beset system for their habitat. The areas are too small to contain home ranges. Clearcuts or shelterwood/two age cuts are far better for grouse.

Neo-tropical songbirds utilize the watershed annually. Some species require early successional habitat for nesting and forage; others prefer the mature closed canopy conditions that are prevalent on the watersheds. Creating a diversity of habitats will benefit a number of species that are not well served by existing conditions. Partial harvests, such as thinnings and shelterwood cuts, help develop mid-stories and under-stories that are beneficial for many songbirds.

Creating some limited areas of early successional vegetation will meet several of these objectives. Grouse will benefit from both early successional vegetation and from the young seedling/sapling stands that will grow out of these areas. The bears and some neo-tropical bird species will benefit primarily from the early successional areas. To maintain the benefit, a few early successional areas should be created every few years.

- The clearing of 50 feet of trees above the access roads will create significant areas of early successional plants. Soft mast production should be high in these areas for several years. The areas should be cleared on about every 10 years
- Mowing the helipads will maintain additional areas. The edges of the helipads already produce sassafras berries, blackberries, wineberries and sumac. The woody species nay need to be cut back every 3 years to prevent tree development in species such as sassafras.
- Small group selection cutting, small shelterwood cuts and small clearcuts will create small openings throughout the lower elevations of the watershed. These systems offer

the opportunity to periodically create new successional areas, replacing those that grow up and close crown. (See Timber Management section)

FOREST HEALTH:

It is worth pursuing asking the US Forest Service or the Park Service to release *Pseudoscymnus tsugae* into the watershed area in an attempt to control the hemlock woolly adelgid populations and preserve the eastern and Carolina hemlocks.

It is highly recommended that existing stands and clumps of Chinese silvergrass and Nepalese browntop be treated for control while that option is still viable. This may be a narrow window of opportunity. The Chinese silvergrass is found in small patches scattered throughout the watershed, as well as extensively in one 10-acre stand in the main valley. The source of infestation is the dam of North Fork Reservoir, which was planted with Chinese silvergrass. Chinese silvergrass is very shade tolerant and highly flammable. Dead stems are retained as new stems emerge, creating a flashy contiguous fuel capable of carrying a hot fire very rapidly through a hardwood forest. On steep slopes, a fire in heavy silvergrass ground cover would be very difficult to stop. The sprinkling of silvergrass throughout the watershed now will become large stands of silvergrass in the future. It is a prolific seed producer.

Monitoring for gypsy moths should be an ongoing effort. This is accomplished using small cardboard traps with pheromone attractant baits.

A plan of action should be in place to deal with a new gypsy moth infestation found within the watersheds. My recommendation is to treat any infestation aggressively with *Bacillus thuringiensis kurstaki* (B.t.k.), a naturally occurring organism found in soils. This organism is utilized by organic growers for control of caterpillar pests in food crops. It has no effect on bees, fish, birds, mammals or water supplies. It is broken down by sunlight and other organisms within 3-7 days after application and does not reproduce or accumulate in the environment. It is only effective on caterpillars that are in their 1st, 2nd or 3rd instar stage (have not molted more than twice). These caterpillars will be less than 5/8 inch long. Timing of treatment is important. Generally, the month of May is the time to treat with B.t.k., preferably early May. The earlier an infestation is treated, the smaller the area will be that requires treatment. This is not a "wait and see" type insect.

There is no action to be taken regarding sudden oak death at this time. Any landscaping planting done around the facilities should be confined native species grown locally. Plants grown outside of the region and sold locally may carry the fungus on the plants or in the soil. Rhododendrons and camelias are potential carriers, but are not the only ones.

The American Chestnut Foundation is very close to producing chestnut trees that have the good characteristics of American chestnut, but with blight resistance. The field along the main road in North Fork Watershed would be an ideal place for out-planting a test plot of the latest progeny. As proven resistant seedlings become available, the watersheds would be excellent places to re-introduce the American chestnut. Members of the Foundation who have contributed to the development of the resistant species will be given a priority in obtaining the resistant seedlings. He recommended that the City join the Foundation and participate in the final phases of research and development. This would involve very little expense, time or intrusion, but would allow the watershed to participate in the early phases of American chestnut restoration. Membership in the American Chestnut Foundation is only $40.00 per year, although a larger contribution would be appreciated.

America chestnuts were once the largest mast producer for wildlife. Their re-introduction would be in line with the goals for both wildlife and forest health.

SCENIC VIEW:

The view from the Blue Ridge Parkway is a consideration in management of the watersheds. The activities recommended in this plan will have a minimal impact on views from the Parkway. Openings created for improved fire control access, for wildlife habitat improvement or tree regeneration will be small enough to be largely screened from view by surrounding trees. Any visible impact that may be discernable will be more than offset by the multiple benefits from the activity.

Mr. Hicks said the specific recommendations will be incorporated into a 10-year schedule of activities. Included in the activities will be an annual schedule for inventory of compartments. Information collected will include species composition, basal areas, volume by product, understory and ground cover conditions, site productivity, fire hazard, road and trail conditions, exotic invasive species and insect and disease assessment.

Mr. Hicks and Mr. Hanks answered several questions/comments from Council, some being but are not limited to: how many of the 22,000 acres would have to be damaged for it to be considered a catastrophic loss; explain the different phases of the plan and what the phases would include; do we have an inventory of bridges; how many miles of roads could adversely impact water quality; is it accurate to say that a watershed entirely forested may produce less overall water quantity but the quantities of water are more consistent; if we proceed with "daylighting," will that create the potential for more problems with exotic species; what is the realistic prospect for a fire in the watershed that has the level of intensity and scale to be a risk of water quality; if there was a large fire, what would that mean for water quality; is our watershed at risk for a fire; explain the difference of small group selection and small clearcutting; if the City wants to promote wildlife, how much clearcutting is envisioned; what kind of vehicles would be used for s fairly small logging operation; is the primary problem of water quality sedimentation more associated with road construction and landing pads for the forestry operations than the forestry operation itself; are we limiting forest activities on the watershed to activities that can be done in the immediate proximity of the roads since we aren't going to build more roads; what would the increase in sedimentation from forest activities mean to the water quality; are fire towers still used for fire prevention; what is the likely herbicide that would be used to treat the Chinese silvergrass and how long would the treatment take; is there a model that duplicates the recommendations made in the Plan; can fire lines be used for small group selection; is there any chance the City can obtain some predator beetles from the U.S. Forest Service; are any recreational activities being contemplated in the plan; has there been any recent biological study or inventory done on the property; what are the long-term prospects to repopulate chestnut in Western North Carolina; can the City carry out the objectives in the Plan under the current conservation easement; and who determines the view of the Blue Ridge Parkway.

Councilwoman Bellamy felt it would be helpful to color-code the primary roads vs. the secondary roads. Mr. Hicks responded that that type of information will have to be coordinated with the fire chiefs because they will be the ones traveling the roads. Mr. Hanks also said that he anticipated maybe 3-4 main roads and then cross-connections.

Upon inquiry of Councilman Newman, Mr. Hick said that the kinds of things in this Plan will not affect water flow or water quality in any way.

Councilman Newman agreed that the City did need to control the Chinese silvergrass and Nepalese browntop while that option is still viable. Mr. Hicks explained that to have an effective management of the problem, a herbicide should be used, but in the sensitive areas along the watershed, hand-pulling would probably be the best solution.

Councilman Newman requested scientific information on what the implications and risks are for fires in our part of the country. He also requested additional information on oak forests being converted into maple forests. He felt it would be useful to have scientific information from an inventory on the biological and ecological resources on the property for long-term management of the property.

Upon inquiry of Councilwoman Jones, Mr. Hicks said the removal of the Chinese silvergrass and Nepalese browntop would be about $300-400 per acre and there is approximately 15 acres total (but scattered throughout the watershed). He noted that didn't include the cost of the hand-pulling that will be required.

Vice-Mayor Mumpower felt it was a good suggestion for the City to join the American Chestnut Foundation in order to participate in the final phases of research and development.

Vice-Mayor Mumpower felt further research might be warranted of other model watershed management plans with recommendations such as the ones proposed before Council.

Councilman Davis said that the Tree Commission supports the proposed plan with the following recommendations: (1) management of the watershed forests is essential; (2) the forest management process should be transparent and accountable; (3) it is unlikely that clear cuts will be necessary to meet the stated objectives of the plan; (4) "daylighting" roads as a method of preserving access should be used sparingly; and (5) revenues generated from harvested timber should be used to offset the cost of the forest management plan.

Councilman Newman explained how the loss of hemlocks is bad for our ecosystem. He suggested adding this as a legislative priority to request our legislators seek more funding to help preserve hemlocks.

Mayor Worley explained that this is not a plan to log the watershed for revenue, but to improve wildlife habitat and access for fire control. This is not a revenue-generated plan. We anticipate taking the small revenue generated and put it into the road system. If the plan is approved, it will still be up to City Council to determine how much, if any, of the selective cutting we will do. City Council will have the opportunity to review each year what they intend to do.

Mr. Rusty Painter, representing the Conservation Trust of North Carolina, reviewed with Council what the conservation easement will allow the City to do with the property. Councilman Newman wondered if there was any need for the City to modify their easement with the Conservation Trust since Asheville was one of the first cities to have this type of easement and now other cities have gone through a similar process. Mr. Painter said that the Trust would like to work closely with the City on management of the watershed. He did state that most of what Mr. Hicks recommended do not conflict with the easement's two primary objections, which are to not impair the view of the Blue Ridge Parkway and to maintain the water quality functions.

City Manager Westbrook asked for Council's approval of the plan to give staff general policy guidance which will allow staff, on an annual basis, to work on parts of the plan, pursuant to the overall policy. If staff gets into a particular area and it needs a specialized study, they would bring that back to City Council for approval before moving forward. Again, the City wants to actively manage the watershed and will come back to Council for interim approvals to do that. He anticipated coming back to Council before the next budget with the first proposal.

Councilwoman Jones said that as we move forward, it is very important for the City to listen to the watershed advocates as well.

Councilman Newman said there have been significant questions what this plan is about. Other than the question of recreation, he questioned if the City really wants to engage in forestry activities on the watershed and if so, at what scale. If there is not going to be any recreation activity on the property, he felt we should just state that there will be no public access. Again, he advocated a biological inventory of the property. He felt there are three different scenarios on how we can look at the management of the property: (1) preservation-type approach; (2) forest activity but in a very limited nature, like keeping roads open, etc.; and (3) open-ended kind of forestry operation. All alternatives are legitimate to consider, but he felt the draft plan is very general and not clear what type of scenario we will be approving.

Mayor Worley said he didn't think we needed any more studies to determine whether recreation should be on the property. We've had a security assessment report and in the present world climate, recreation is precluded in the short-term, but there may be some considerations to change in the long-term. If recreation activities are ultimately allowed, he didn't think it would be inconsistent with the plan. He felt the biological survey is a good idea, but he didn't think that should hold up adoption of the plan. Regarding the extent to which we would engage in forestry activities, he understands that as we would move forward with the plan, and then there would be further study and further approvals before any of those practices are engaged in, if they are engaged in at all.

City Manager Westbrook agreed with Mayor Worley regarding moving forward with the plan. He said that if Council wants a biological survey performed, it should be done prior to Phase I. He said staff will find out the cost and length of time necessary, so we can have that in hand prior to actually getting into whatever Phase I would be.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

At 5:20 p.m., Mayor Worley announced a short break.

DOWNTOWN SOCIAL ISSUES TASK FORCE FINAL REPORT

Ms. Sasha Vrtunski, City Development Director, said that the Downtown Social Issues Task Force has prepared its final report on graffiti and that they will present its final findings on public drunkenness and panhandling in August.

She said the Task Force broke their work up by topics: Graffiti, Panhandling, Public Drunkenness and Homelessness. City Council has already heard the report regarding the 10-year Plan to End Homelessness and taken action.

Plan advantages include: (1) Removal of graffiti within 48 hours has been proven to be a deterrent to graffiti artists and vandals; and (2) These recommendations provide both "carrots and sticks" to combat the problem of graffiti in downtown.

Plan disadvantages include (1) The Volunteer program is quite ambitious and may have to be adjusted over time; and (2) There are some property owners that feel that 48 hours is too short of a time for them to remove graffiti, while at the same time supporting the concept in general.

A letter has been received from the Downtown Commission, which stated that they unanimously voted to support the recommendations of the Task Force. During their discussion, they discussed the 48 hours given to property owners to clean up graffiti. There were some initial concerns, but members were satisfied that the intent is to get graffiti off of buildings as soon as possible, and not to punish property owners. The presence and availability of the volunteer group to remove graffiti right away seems to be a fair alternative for property owners. There was some discussion as to whether or not the 48-hour period should be considered as business hours. There was also discussion of the two-week period for replacing glass when it has been acid etched by vandals. The Task Force felt that as long as property owners were making an effort to have their glass replaced, there shouldn't be any penalties.

Ms. Kim MacQueen and Ms. Kitty Brown, members of the Downtown Social Issues Task Force, said that the Task Force took the approach of recommending stiffer penalties for vandals while reducing the incentive for doing graffiti by asking property owners to remove graffiti within forty-eight (48) hours. This has been a proven approach in other cities; when graffiti is removed within the first 48 hours, the incentive for future vandalism is greatly reduced. In other cities building owners are required to remove the graffiti within the 48-hour period, or be faced with large fines. The Task Force recognized that this could be a large burden on property owners and worked to make the program as easy as possible. In conjunction with recommending such an ordinance, a companion volunteer clean-up group would be set up through Quality Forward to be able to respond to instances of graffiti, where the property owner has signed up to allow them to clean his or her property. This approach has the potential to get graffiti off of downtown buildings quickly with no penalties to building owners.

The Task Force is also recommending that the City install additional kiosks around downtown to provide spaces for flyers; create a website about the graffiti abatement program; support the Asheville mural project; and provide additional street police officers as a deterrent. Finally, the Task Force is also asking that City Council ask the District Attorney's office prosecute offenders to the greatest extent possible and seek full restitution for property owners.

Ms. MacQueen and Ms. Brown then briefly described the following recommendations, along with action steps for each one:

1. We recommend that the City of Asheville, in cooperation with Quality Forward, the Asheville Downtown Association, organizations like Project STEAM and Buncombe Alternatives, private property owners, business owners, and community volunteers, commits to removing *graffiti* within 48 hours after its appearance has been reported.
    - We propose a pilot removal program on a smaller section of downtown to be followed by its implementation throughout the central business district.
    - The program would involve the implementation of a graffiti reporting hotline at Quality Forward which would dispatch a volunteer force of "graffiti busters" to remove reported graffiti within 48 hours.

2. We recommend that the City pass a local ordinance which requires building owners to either remove all graffiti themselves within 48 hours of its being reported or to grant permission for their property to be cleaned by graffiti volunteers.
    - Violations of this ordinance would be enforced with a penalty of $25 a day for each day the graffiti remains after notice to the building owner.
    - In the case of acid etching, the release will allow the volunteers to cover the graffiti etching with a larger geometric etching or allow the owner to opt out of volunteer repair and agree to replace the window glass within 2 weeks.
    - It is also recommended that the City create a low interest loan fund to aid building owners victimized by acid etching who choose to replace their glass.

3. We recommend that the City create a web page describing Asheville's graffiti abatement program with a hot link to Quality Forward's website which would describe their role in the graffiti abatement program.

4. We recommend support of the Asheville Mural Project, a program of public art murals, as a viable deterrent to graffiti vandalism creating opportunities to develop neighborhood ownership and pride.

5. We recommend that the City add five additional round legal posting sites (similar to the library poster kiosk but much smaller) appropriately spaced around downtown in an effort to reduce and concentrate sticker/flyer graffiti

6. We recommend that the City Council issue a resolution to the District Attorney's office requesting:
   - The DA prosecute graffiti offenders, and in particular repeat offenders and acid etchers, to the fullest extent of the law;
   - The DA seek awards of full restitution to property owners for damage;
   - First-time offenders be sentenced to 100 hours of participation in graffiti cleanup and repair under the auspices of an organization like Buncombe Alternatives; and
   - Repeat offenders and acid etchers be required to perform 500 hours of service in cleanup efforts.

7. We support a greater police presence on the street as a deterrent to graffiti and similar forms of vandalism.

8. Upon hearing the interest for a legal graffiti wall during public input sessions, the Task Force suggests the following:

   - The graffiti subcommittee will entertain proposals from individuals who are interested in coordinating such a legal wall. Proposals should include location, monitoring the site (loitering, letter, profanity), maintenance, etc. It is our intention that a legal wall be on private property and be privately monitored and maintained.

   After reviewing proposals, the subcommittee will make further recommendations to City Council regarding legal graffiti walls.

Ms. Brown said the Task Force believes the recommendations submitted constitute a plan of action which can involve all sectors of our community. They support the development of a response to graffiti by which the Asheville community takes an active role, with local government, in discouraging this aggravating and destructive form of vandalism.

Ms. MacQueen explained how the recommendations relate to the entire social issues "program." She said the Social Issues Task Force has made recommendations aimed at discouraging graffiti. It is their hope and intention that the recommended approach also serves as a positive model of community cooperation aimed at solving pressing social issues. They expect the message sent by discouraging graffiti and encouraging community responsibility and cooperation will have a positive impact on all of the conditions and behaviors the Task Force has been asked to address.

Communities can change through the application of negative energy, such as fear, intimidation, repression, destruction, and punishment. Or they can change through exhibitions of mutual respect, responsibility, and consideration for others. Our recommendations require that a sense of collective responsibility to be shared by the citizens of downtown and city government. We believe that in exercising this collective responsibility we should honor the diversity of downtown Asheville. We should also distinguish between positive contributions to that diversity and acts of thoughtless self-indulgence. Acts like graffiti vandalism serve only to divide the community.

Ms. Brown said that graffiti contributes to a perception of uncaring neglect that some take as permission to further damage our community. This abuse can take the form of everything from littering to blocking elderly pedestrians on city sidewalks to public drunkenness. If we as a community set higher standards, we create an environment wherein people recognize their best behavior is expected and appreciated.

The Asheville Mural Project, as part of our graffiti abatement program, can help communicate values of respect and affection for place, creativity, tolerance, and beauty. It was included as part of our recommendations because we believe that a project such as this can foster the community spirit, pride and involvement that brings a community together. We do not want to alienate our young people. Channeling their expression into public art projects is an opportunity for inclusion, cooperation, and civic responsibility to grow.

Social conditions are more complicated than behaviors and may require extended cooperation of multiple and varied interests. Just as we wish to enhance our collective sense of ownership and responsibility for this "place" by our cooperation on solutions to problem behaviors, we wish to create a commitment to and appreciation of our people--all of our people. By encouraging the community as a whole to take a stand against graffiti, we will begin setting the kind of standard for mutual respect and mutual effort that can extend to the rest of the social issues addressed by the task force.

City staff recommends City Council adopt the Downtown Social Issues Task Force's Graffiti recommendations. City Council may want to consider the 48-hour period to be business hours. City staff will evaluate each of the recommendations for legal sufficiency, and if any recommendation is unable to be carried out for legal reasons, staff will notify Council. Upon Council direction, staff will work on a draft ordinance for graffiti removal.

Council members thanked the Task Force for working so diligently on this problem and spending the enough amount of time and effort to come to Council with these recommendations.

Councilwoman Bellamy hoped that the N.C. Dept. of Transportation will respond quicker than they have in the past.

Ms. MacQueen and Ms. Brown responded to various questions/comments from Council; some being, but are not limited to: can funds be earmarked for clean-up; how much time does the volunteers spend cleaning up on a Saturday; are the property owners fined if the volunteers don't clean the graffiti off in 48 hours; and has voluntary compliance been a problem.

Councilman Dunn questioned whether it's appropriate to fine a property owner for an illegal act on their own property that they did not do. He felt it wasn't fair to fine the property owner after 48 hours if the owner wants to clean it off on his own timetable. Some owners may want it repainted with a certain paint to maintain the type of finish they have on their walls.

Councilman Mumpower explained how he personally felt this basically punishes the victims who have been vandalized. He felt this effort is initially founded on a strong volunteer initiative, but it will probably wind up on the property owner.

Councilman Davis, business owner downtown, said that he has had six occasions of graffiti on his business and it is expensive and inconvenient to the property owner. He felt that perhaps the Task Force missed the opportunity to get the broader segment of the community involved in the Task Force, even though he understood you can't make people participate in meetings. He felt that 48 business hours is an appropriate amount of time to have the graffiti removed because it will hopefully discourage the people from coming back. However, there are a lot of absentee landlords which may not be able to work within the 48 hour time period. His problem is this is placing the burden on the property owners and he was hesitant to proceed with the penalty phase. He questioned who would be liable if a volunteer injured himself while removing the graffiti, i.e., falling off a ladder. He supported the additional kiosks, the Asheville Mural Project, and looked forward to the one-month pilot program to see how well Quality Forward will handle this on-going maintenance task. He felt we should encourage property owners to remove the graffiti within the 48 hours and make sure they know there is a resource that can remove the graffiti if they want to use it.

Councilwoman Jones felt the one-month pilot program is a good start. She said that if any organization can handle volunteers, it's Quality Forward and the City of Asheville is fortunate to have that organization. She felt that as far as maintaining the removal program in the future, if it becomes a problem, then at that time we can begin to discuss possible solutions. The Task Force has brought to Council creative ways with innovative ideas to combat this problem with the use of volunteers and the only other alternative is to use tax dollars.

Vice-Mayor Mumpower wondered if we have exhausted our options in terms of creative and enforcement policies. Police Chief Hogan said that the police take graffiti very seriously and he will discuss this issue with his personnel and with the District Attorney's office.

Vice-Mayor Mumpower didn't think we have exhausted our options. He said that there are other variables to be considered, like private property rights, etc., before Council can make an informed decision. Based on those variables, he felt there should be additional research, which might include asking our Police Chief to find creative enforcement opportunities with the District Attorney's assistance, possible funding in support for the volunteer and educational initiatives, and maybe a reward program as an incentive to tell people this is not okay.

On behalf of City Council, Mayor Worley thanked Ms. MacQueen and Ms. Brown and the entire Task Force for working diligently on this very difficult problem.

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this item on the next formal City Council agenda.

THE RIVERLINK URBAN RIVERFRONT MASTER PLAN

Ms. Karen Cragnolin, RiverLink Executive Director, said that this is the consideration of a resolution adopting the Wilma Dykeman Riverway Master Plan as part of the Comprehensive Plan for the City of Asheville.

Several years ago, the City contracted with RiverLink for the preparation of a master plan for the urban areas of the French Broad and Swannanoa rivers. Later, the scope for this plan was broadened to include what is now called the Wilma Dykeman Riverway concept.

Mr. Joe Minicozzi, planner with RiverLink, reviewed the plan with Council stating that working with a large, broad-based group of citizens and with City staff, RiverLink and its consultants have completed an Urban Riverfront Master Plan that envisions nodes of relatively dense urban development in a scenic riverfront setting. The plan capably marries land use, transportation, water quality, and economic development goals in a manner that implements City Sustainable Economic Development Task Force and Smart Growth objectives. Under the plan, the main road linking the two rivers will become a unified transportation corridor; economic development opportunities and strategies are identified and mapped out; and a land use pattern consistent with traditional development design throughout the City is encouraged. Additionally, environmentally sensitive restoration of the rivers to promote public access, recreation, and commerce is to be accomplished through plan implementation.

He explained the considerable public involvement in the development of this plan. Additionally, RiverLink received preliminary feedback from City Council concerning the direction of the plan in January of this year. Cost estimates are $2 Million for 17 miles for a total of $34 Million project.

Key future actions for the City called for in the plan include:

- Continued support for moving the Riverway project forward.
- Continued involvement in the recreational improvements called for in the plan.
- Consideration of changes to zoning requirements to implement key plan components.
- General support for private sector redevelopment of properties as proposed in the plan.

Pro's

- Major new transportation initiative has the potential to relieve traffic congestion and spur new economic development.
- Potential to dramatically increase tax base through private sector redevelopment.
- Strong public support for proposal due to its comprehensive treatment of urban riverfront issues, including economic development, transportation, recreation and beautification.

Con's

- May result in displacement of some existing uses along the river area through market forces or road widening.

In addition to the plan meeting or exceeding more than 100 goals and strategies in the City's 2025 Plan, the plan supports the following Goals and Objectives of the City Council's Strategic Operating Plan:

Economic Development Goal # 3, Objective A - Mobilize collective resources and goals by implementing a unified regional economic development plan. Riverfront redevelopment has been a regional goal since the Sustainable Economic Development Task Force made it a priority area in its strategic plan report. Consequently, the Urban Riverfront Master Plan can be considered regional in scope as a critical economic development tool.

Natural and Built Environment Goal # 2 - Increased greenway benefits equitably throughout Asheville. The Urban Riverfront Master Plan contains a greenway network that links the north, central and east parts of the City in a continuous fashion.

City staff recommends City Council adopt the Wilma Dykeman Riverway Master Plan as part of the Comprehensive Plan for the City of Asheville.

Upon inquiry of Vice-Mayor Mumpower of where the funds will come from for implementation of the plan, Ms. Cragnolin said that they are relying on the Amendment One – Self Financing Bonds, noting that most projects are paid for by the N.C. Dept. of Transportation highway funds, as well as other appropriations. Vice-Mayor Mumpower felt that to rely on this type of funding does not realistically support the realities of the plan.

Vice-Mayor Mumpower said that to commit the City to a plan of this magnitude without some budget estimates does not seem prudent. He understood that the plan will be implemented incrementally, but he was unable to develop a sense of that process. He felt the City should have more clarify on the how, when, and how much before we back into a commitment on this good endeavor.

Mayor Worley saw this plan as a vision and not a funding commitment. With a vision in place, it is easier for developers to come in and invest.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

WEED & SEED GRANT FOR POLICE DEPARTMENT

Police Chief Bill Hogan said that this is the consideration of application for the Weed and Seed Grant administered by the U. S. Dept. of Justice, Office of Community Capacity Development.

The U.S. Dept. of Justice Weed and Seed grant is one facet of their Weed and Seed initiative. The program is designed to combat violent crime in a specific geographic area with a four-pronged approach: law enforcement, community policing, prevention/intervention/ treatment, and neighborhood restoration. Law enforcement is the "weeding" part of the program. Community programs aimed at prevention, intervention and treatment and at neighborhood restoration are the "seeds." Community policing is the bridge between the two. The program requires the support and involvement of the local US Attorney.

The maximum grant award is $225,000. At least half of the grant funds must be used for law enforcement. Both the weeding and the seeding activities of the program are based on the strategic plan and budget written by the steering committee and submitted with the application for official recognition in mid-October. Decisions on grant applications are expected to be made in the early spring 2005. Any funds awarded are expected to be available in October of 2005 and must be spent by October of 2006. Program recognition and opportunity to apply annually for grant funding is limited to a term of five years.

This is a long-term approach to crime reduction. Program requirements include a full-time site coordinator, and strongly encourages a "safe haven," in or accessible to the community and open hours that are convenient to residents, to provide services. There are no grant funds to renovate or acquire buildings. The Department of Justice requires academic or other research partners to evaluate the program's success.

The Weed and Seed program is one that allows several departments and community entities to come together for a common goal. This approach could produce a positive, collaborative outcome. It allows the community to state their desires and work, with other agencies to produce a healthy, cohesive community. The law enforcement element consists primarily of suppression activities. These activities include enforcement, adjudication, prosecution, and supervision efforts designed to target, apprehend, and incapacitate violent street criminals who terrorize neighborhoods and account for a disproportionate percentage of criminal activity. The program expects the recognized site to use existing programs already in place and bring in the elements that are missing to make it a success, not re-invent the wheel. The Police Department will form a Steering Committee from multiple agencies. The budgeting decisions and the strategic plan, including program goals, objectives, activities, tasks, and standards for success all come from the steering committee. The program's focus on community involvement, enhancing existing programs, planning for sustainability of the funding beyond the grant horizon, and building community capacity provide a good theoretical basis for long-term community improvement.

Weed and Seed is designed to operate in a specific, identified neighborhood (minimum population 3,000) rather than the city at-large.

This is a selective program, in that 25% of the proposed programs receive official recognition. Of the areas that achieve official recognition, only 60% of those applied will receive any funds.

While at least half of any grant money is required to be spent on law enforcement, that amount does not automatically go to fund more officers. There will be pressure to use part of that required law enforcement money for community policing (not necessarily with APD officers), there will be pressure to limit the law enforcement portion of any grant funds to only the required 50%, and since "enforcement" includes prosecution, there might be some pressure from that front, too.

While at least half of any grant money is required to be spent on law enforcement, that amount does not automatically go to fund more officers. There will be pressure to use part of that required law enforcement money for community policing (not necessarily with APD officers), there will be pressure to limit the law enforcement portion of any grant funds to only the required 50%, and since "enforcement" includes prosecution, there might be some pressure from that front, too.

Long-term sustainability and the capacity for improvement are stressed by the literature. There is an expectation that the city will continue its commitment to the process.

Pros:

- The Weed and Seed program allows City departments and community entities to come together for a common goal.
- Grant funds can be used for police officer overtime.
- There is no local match for this grant.

Cons:

- Before grant submittal, a steering committee must be appointed to develop a community-devised strategic plan and budget.
- It's suggested that a consultant is needed to assist in the facilitation and program creation of the strategic plan. This will require an outlay of money by the city before the grant monies are available. None of the grant monies may be used for this function.
- The timeline to apply for this program this year is extremely tight.

Strategic Operating Plan and Focus Area:

This program would enhance the focus area, "Critical Services & Infrastructure." goal #4, *"Develop programs and policies to defeat street level drug problems and crime."* Depending on the "seeding" programs included by the steering committee, it could also further task #2 of the focus area "Housing Opportunities," goal #4, objective B: *"Increase the number of citizens transitioning from public housing to affordable housing and from rental housing to home-ownership"*

At the request of Councilwoman Jones, Police Chief Hogan said that he would be happy to contact her for additional names from agencies who are willing to participate on the Committee.

Councilwoman Jones hoped that the Housing Authority HOPE 6 Committee and this Steering Committee work together.

Councilwoman Bellamy passed out a brochure from the Raleigh Weed & Seed Program and explained the huge impact that program is making in Raleigh. She talked about the impact the program is also making in Gastonia.

It was the consensus of City Council to make application for the Weed and Seed grant next year since the grant process for this year's deadline is fast approaching (August 29, 2004) and the Steering Committee will need adequate time to develop a strategic plan.

I-26 CONNECTOR

Councilman Newman said that Michael Moule will be providing the N.C. Dept. of Transportation (NC DOT) the information he presented to City Council at their July 13, 2004, meeting. He was looking forward to hearing the results of the discussions between Mr. Moule and the NC DOT. He was hopeful that NC DOT will report back that there is an opportunity for a smaller footprint with an adequate number of lanes.

At 7:25 p.m., Mayor Worley announced a short break.

VACATE AND CLOSE 1086 HENDERSONVILLE ROAD

Due to the lateness of the hour, Councilman Dunn requested, and City Council concurred, to accept the hard copy of the power-point presentation by Housing Code Coordinator Jeff Baker and proceed to the public hearing on the matter at the July 27, 2004, meeting.

STORMWATER BEST MANAGEMENT PRACTICE DEMONSTRATION PROJECT

Transportation Planner Elizabeth Teague said that this is the consideration of a resolution authorizing the City Manager to negotiate an easement agreement with Thomas and Virginia Honea (landowners), and to direct staff to proceed work with North Carolina State University/Cooperative Extension Service Water Quality Group to utilize an EPA 319 grant to construct and maintain a stormwater mitigation facility as part of the Clingman Forest Greenway.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update, The 2001 West End/Clingman Neighborhood Citizens Master Plan, and the Clingman Forest Greenway Master Plan, as well as Goal #1 of the "Natural and Built Environment" Focus Area of the Council's 2004 Strategic Operations Plan, "to enhance and preserve air and water quality through comprehensive efforts." It supports:

- Objective C – developing greenways in strategic locations that improve water quality, and the task of securing easements for greenway development; and
- Objective D – complying with Federal NPDES Phase II Stormwater Rules, and the task of partnering with other agencies to develop educational and outreach programs to improve stormwater run-off.

This project was developed in partnership with the Clingman Forest Steering Committee, landowner's Thomas and Virginia Honea, water quality and stream restoration specialist Jon Calabria of NCSU, and City Parks and Recreation and Engineering Department staff. It will utilize EPA 319 funds obtained through NCSU's Cooperative Extension Service Water Quality Group to reimburse the City of Asheville for the purchase of an easement of approximately 0.3 acres and to fund NCSU to design and construct a stormwater wetland to detain and filter stormwater run-off from the Clingman Forest area and the proposed greenway. The project will:

1. Develop a "first flush" constructed wetland plan that incorporates engineering design, necessary permits, a reconstruction process and pre-and post-stream reconstruction monitoring;
2. Improve water quality to an urban stream, enhancing the Clingman Forest environment and beautifying the proposed greenway corridor;
3. Implement and evaluate the stormwater wetlands restoration as a model for other stormwater treatment facilities and BMPs in the City; and
4. Construct signage describing restoration practices employed for education purposes and establish a demonstration area for workshops and tours.

The positives of this project are that:

- It utilizes EPA 319 funds for easement acquisition and construction costs to the benefit of partners NCSU, community stakeholders, and the City – all easement acquisition and BMP development costs will be covered by the grant funds;
- It will establish a Stormwater BMP demonstration site that will be a resource into the future for Asheville Middle School classes, NPDES Phase II educational programs, and other community stormwater initiatives.
- It will improve an urban stream while managing urban run-off.
- It will enhance the proposed Clingman Forest Greenway, cleaning-up and restoring a polluted area.

The negatives of this project are that:

- It will require time from City staff to manage the easement acquisition process and to coordinate with NCSU on administrative needs for their grant and on BMP construction.
- Once constructed, the facility will need to be monitored and maintained by City staff as a stormwater BMP and as part of the greenway.
- If not properly designed and constructed, the facility could retain standing water for long periods.

Staff recommends that City Council adopt the resolution authorizing the City Manager to move forward with easement acquisition and development of the project.

Upon inquiry of Vice-Mayor Mumpower, Ms. Teague said that the City is still working with the land owners on the actual purchase price (hopefully not over $12,000) and what the easement boundaries will be.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UPDATE OF REQUEST TO NC DOT TO RENAME "AMBOY ROAD"

Councilman Davis met with Irby Brinson, Anthony Butzek and Jeff Richardson and reviewed the request to NC DOT to rename "Amboy Road" to "Bob Pressley Memorial Roadway." Councilman Dunn was unable to attend the meeting. Councilman Davis suggested, after talking with the race people from WNC, that a memorial be done somewhere at the park, rather than name a road for Mr. Pressley. The advantages are that (1) a Memorial is what is called for in the Master Plan; and (2) a Memorial wall will provide opportunity to honor all famous race people in WNC, not just Mr. Pressley. Councilman Davis said that he has talked with Karen Cragnolin, Executive Director of RiverLink, and she is very supportive of the idea. Mr. Brinson and Mr.

Richardson are working on potential private dollar sponsors to pay for the memorial wall. Mr. Brinson's staff can design the wall internally. Councilman Davis will help make the final determination of the list of honorees.

City Attorney Oast reported to Council that they have found no one with the name "Amboy" in the chain of title.

It was the consensus of Council to ask Councilman Davis to move forward in the direction of a memorial, with an anticipated dedication in the spring.

HARD DRUG INTERDICTION – A BRIDGING OPPORTUNITY

Vice-Mayor Mumpower said that based on a conversation with the Police Chief and the City Manager, he would not be making a presentation on this item at this time.

BOARDS AND COMMISSIONS:

It was the consensus of City Council to instruct the City Clerk to arrange for interviews with John Kiser and Ross Dryer for an alternate vacancy on the Board of Adjustment.

Vice-Mayor Mumpower said that on July 9, 2004, an email was received from Mr. Peter Crosa, Chairman of the Civic Center Commission, requesting the Civic Center Commission be reduced from 11 to 7 members, ensuring the certainty of a quorum with at least 4 members. He explained that it has been difficult to reach a quorum at the monthly meetings. They feel the reduction will improve functionality of the Commission and that a reduced number will still assure a talented and diverse group of members. He then presented an alternative request, if Council does not feel it's in their best interest to reduce the membership to 7 – reduce the membership from 11 to 9 members. After discussion, it was the consensus of Council to instruct the City Attorney to amend the Civic Center Commission ordinance by reducing its membership from 11 to 7 members and to revisit the membership reduction in six months.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint John Broadbooks to the Civic Center Commission.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Stephanie Cooper, Alexander Maitland and James Lewis to the Police Officers & Firefighters Disability Review Board.

It was the consensus of City Council to instruct the City Clerk to arrange for interviews with Matthew Marquis, Suzanne Jones and Jaan Ferree for a vacancy on the Historic Resources Commission. In addition, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Keith Hargrove to the Historic Resources Commission.

City Council directed the City Clerk to readvertise the vacancies on the Fair Housing Commission and the Planning and Zoning Commission.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:08 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – July 27, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Col. Ray Green, Veteran of the US Air Force, led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Worley gave the invocation.

I. PROCLAMATIONS:

A. UPDATE ON MEMORIAL STADIUM AND SPECIAL RECOGNITION

Vice-Mayor Mumpower, Chairman of the Memorial Stadium Task Force, briefly updated City Council on the activities taking place for the historic Memorial Stadium renovation by showing a general overview of what is proposed and the Veteran's Memorial concept. He thanked Asheville Splash for their participation in the turf, which was largely donated by them. He feels this will be a powerful memorial, which will be a nice addition to Asheville and our region, with very little City dollars being spent.

Mr. Jim Drummond, President of the Asheville Youth Sports Program, explained the role the Asheville Youth Sports Program played in this recognition and introduced Ms. Wanda Little. He explained that Ms. Little is Leonard Little's mother. Leonard is a former Asheville High graduate and football player with the St. Louis Rams. Mrs. Little was honored to present the City of Asheville with a check in the amount of $15,000 from her son for the Memorial Stadium scoreboard. She stated her son was unable to attend the ceremony due to this being his first day of training camp. He asked that she relay to the City that this is the beginning of an effort to try to touch this community in a positive way.

On behalf of City Council, Vice-Mayor Mumpower thanked Mrs. Little and her son Leonard for his generous contribution.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 13, 2004, AND THE WORKSESSION HELD ON JULY 20, 2004

B. RESOLUTION NO. 04-152 - RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO (1) CANCEL THE AUGUST 3, 2004, WORKSESSION; (2) ADD A COMMUNITY MEETING ON AUGUST 31, 2004, AT 7:00 P.M. AT THE EAST ASHEVILLE COMMUNITY CENTER LOCATED AT 906 TUNNEL ROAD, ASHEVILLE, NC.; AND (3) CANCEL THE OCTOBER 26, 2004, FORMAL CITY COUNCIL MEETING

RESOLUTION BOOK NO. 28 – PAGE 305

C. RESOLUTION NO. 04-153 - RESOLUTION APPROVING THE PURCHASE OF PROPERTY OFF PINNER ROAD FOR THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The consideration of a resolution accepting an Offer of Sale of Land from Grace Henninger for land off Pinner Road for $111,321 for the Asheville Regional Airport Authority.

The property off Pinner Road is located adjacent to and west of the Asheville Regional Airport in a neighborhood with a mix of site built and manufactured homes and somewhat rural character. It is generally rectangular in shape and contains 5.859 acres. It is level to moderately rolling and wooded. Pines are the predominate trees typical of farm land left fallow for a number of years. Its highest and best use per the appraisal is low density residential as permitted by the zoning (Limestone, R-LD). It is proposed to be acquired for future expansion of the Airport. The property will be paid for by the Airport and will be included in the Airport master lease.

The property was appraised by Richard Smith, SRA, and reviewed by Joseph Moore, appraiser at $108,500. An offer in that amount was conveyed to the owner, Grace Henninger and Mrs. Henninger responded with an offer to sell the property at $111,321. Ed Vess, Real Estate Manager, reviewed the appraisals and recommended that the offer be accepted and fair market value be established at $111,321 based on the offer to sell being within 3% of the appraisal and review and the efficiency of a prompt agreement.

The positive aspects of the proposed acquisition are:

1. Offers the opportunity to acquire land within the projected Airport expansion area while it is undeveloped.
2. The savings realized in not having to pay for potential improvements and relocation of occupants later on will offset the cost of the property.
3. It is a voluntary sale at fair market value.
4. It gives the Airport control of the property to ensure that no incompatible use occurs.
5. Will expedite the process when expansion of the Airport occurs in that one less property will have to be acquired.

The negative aspects are:

1. Removes property from the tax base.
2. Removes residential land from the market.

Approval of the resolution will establish $111,321 as the just compensation for the property and accept the Offer of Sale of Land from Grace Henninger for that amount.

City staff and the Airport Authority recommend adoption of the resolution accepting an Offer of Sale of Land from Grace Henninger for land off Pinner Road for $111,321 for the Asheville Regional Airport Authority.

RESOLUTION BOOK NO. 28 – PAGE 306

D. RESOLUTION NO. 04-154 - RESOLUTION OF INTENT TO CLOSE A PORTION OF AN UNNAMED ALLEY OFF SOUTH FRENCH BROAD AVENUE AND SETTING A PUBLIC HEARING ON AUGUST 24, 2004

RESOLUTION BOOK NO. 28 – PAGE 307

E. RESOLUTION NO. 04-155 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT THE CORNER OF WYOMING ROAD AND KEEBLER ROAD IN THE KENILWORTH COMMUNITY

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Wyoming Road and Keebler Road in the Kenilworth community.

A bid has been received from Innova Homes LLC in the amount of $4,400 for the purchase of land at the corner of Wyoming Road and Keebler Road in the Kenilworth Community.

The land at the corner of Wyoming Road and Keebler Road is an irregular triangle shaped residential zoned lot comprising 0.07 acre±. From street grade it slopes up substantially to the rear property line and is covered with non-significant trees, vines and brush. The size, shape and topography render the lot unsuitable as a home site. The subject parcel is a remnant of property acquired at the time Wyoming Road was improved several years ago and is situated diagonally across from the park. The tax value is $4,400. The bid from Innova Homes LLC, owner of an adjacent parcel is in the amount of $4,400. Innova proposes to construct a house on the adjacent property for sale. The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern
5. The sale of this lot to Innova, while not essential to the proposed infill development, will enhance the development by improving the access.

Planning & Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 28 – PAGE 308

F. RESOLUTION NO. 04-156 - RESOLUTION AUTHORIZING SOLICITATION OF ALL FORMAL BIDS BY ELECTRONIC MEANS

Summary: The consideration of a resolution authorizing City staff to solicit invitations for all formal bids by electronic means.

The City of Asheville has invited the solicitation of bids by advertising same in the Asheville Citizen Times for a number of years. Such legal advertisements are expensive and lately have only generated low interest. A few years ago, the N. C. General Assembly amended N.C.G.S. §143-129, to allow cities to use electronic means to advertise for bids without also having to advertise same in a newspaper of general circulation. A number of cities currently advertise their formal contracts exclusively by electronic means and Asheville desires to join those cities.

The positive aspect of advertising by electronic means is that it reaches the same intended audience as newspaper advertisement at a substantial reduction in cost.

The negative aspect of advertising by electronic means is that it only reaches those who are electronically connected.

City staff recommends approval of the resolution authorizing City staff to solicit invitations for all formal bids by electronic means.

RESOLUTION BOOK NO. 28 – PAGE 309

G. RESOLUTION NO. 04-157 - RESOLUTION APPROVING THE CLINGMAN FOREST GREENWAY PROJECT AND AUTHORIZING THE CITY MANAGER TO PURCHASE AN EASEMENT FOR SAID PROJECT

Summary: The consideration of a resolution authorizing the City Manager to negotiate an easement agreement with Thomas and Virginia Honea (landowners), and to direct staff to proceed work with North Carolina State University/Cooperative Extension Service Water Quality Group to utilize an EPA 319 grant to construct and maintain a stormwater mitigation facility as part of the Clingman Forest Greenway.

This project supports the Asheville 1998 Greenway Master Plan and 2003 Update, The 2001 West End/Clingman Neighborhood Citizens Master Plan, and the Clingman Forest Greenway Master Plan, as well as Goal #1 of the "Natural and Built Environment" Focus Area of the Council's 2004 Strategic Operations Plan, "to enhance and preserve air and water quality through comprehensive efforts." It supports:

- Objective C – developing greenways in strategic locations that improve water quality, and the task of securing easements for greenway development; and
- Objective D – complying with Federal NPDES Phase II Stormwater Rules, and the task of partnering with other agencies to develop educational and outreach programs to improve stormwater run-off.

This project was developed in partnership with the Clingman Forest Steering Committee, landowner's Thomas and Virginia Honea, water quality and stream restoration specialist Jon Calabria of NCSU, and City Parks and Recreation and Engineering Department staff. It will utilize EPA 319 funds obtained through NCSU's Cooperative Extension Service Water Quality Group to reimburse the City of Asheville for the purchase of an easement of approximately 0.3 acres and to fund NCSU to design and construct a stormwater wetland to detain and filter stormwater run-off from the Clingman Forest area and the proposed greenway. The project will:

1. Develop a "first flush" constructed wetland plan that incorporates engineering design, necessary permits, a reconstruction process and pre-and post-stream reconstruction monitoring;
2. Improve water quality to an urban stream, enhancing the Clingman Forest environment and beautifying the proposed greenway corridor;
3. Implement and evaluate the stormwater wetlands restoration as a model for other stormwater treatment facilities and BMPs in the City; and
4. Construct signage describing restoration practices employed for education purposes and establish a demonstration area for workshops and tours.

The positives of this project are that:

- It utilizes EPA 319 funds for easement acquisition and construction costs to the benefit of partners NCSU, community stakeholders, and the City – all easement acquisition and BMP development costs will be covered by the grant funds;
- It will establish a Stormwater BMP demonstration site that will be a resource into the future for Asheville Middle School classes, NPDES Phase II educational programs, and other community stormwater initiatives.
- It will improve an urban stream while managing urban run-off.
- It will enhance the proposed Clingman Forest Greenway, cleaning-up and restoring a polluted area.

The negatives of this project are that:

- It will require time from City staff to manage the easement acquisition process and to coordinate with NCSU on administrative needs for their grant and on BMP construction.
- Once constructed, the facility will need to be monitored and maintained by City staff as a stormwater BMP and as part of the greenway.
- If not properly designed and constructed, the facility could retain standing water for long periods.

Staff recommends that City Council adopt the resolution authorizing the City Manager to move forward with easement acquisition and development of the project.

RESOLUTION BOOK NO. 28 – PAGE 310

H. RESOLUTION NO. 04-158 - RESOLUTION AUTHORIZING THE SALE OF TWO LOTS ON MCDOWELL STREET TO LIVINGSTON STREET LLC

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcels 75A and 75B on McDowell Street to Livingston Street LLC in the amount of $33,000.

On July 13, 2004, the City Council directed the City Clerk to advertise for upset bids on Disposal Parcels 75A & B. The advertisement ran in the Asheville Citizen-Times on July 16, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Livingston Street LLC in the amount of $33,000 was not upset and the sale to Livingston Street LLC should be approved.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern.

Approval of the resolution will authorize the sale of the property to Livingston Street LLC for the amount of $33,000.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey Disposal Parcels 75A and 75B on McDowell Street to Livingston Street LLC in the amount of $33,000.

RESOLUTION BOOK NO. 28 – PAGE 311

I. ORDINANCE NO. 3139 - ORDINANCE REDUCING THE MEMBERSHIP OF THE CIVIC CENTER COMMISSION FROM 11 TO 7 MEMBERS

Summary: The consideration of an ordinance reducing the size of the Civic Center Commission from 11 to 7.

At its July 20, 2004, worksession, Council indicated that it wished to reduce the size of the Civic Center Commission from 11 to 7 members. There are currently 4 vacancies on the Commission, so no action to appoint or remove members is necessary. The schedule of appointments to the Commission is such that the terms (3 years in length) of 3 current members will expire within a year, 3 the next year, and one after that. While this staggering is not as evenly distributed as it could be, it appears that little would be gained by changing the term of any current member.

Considerations:

- With eleven members, it was sometimes difficult to muster a quorum.
- A seven member board will allow for more efficient operation, while still permitting a diversity of skills and interests to be represented.

If Council desires to reduce the membership of the Commission from 11 to 7, adoption of the ordinance is recommended.

ORDINANCE BOOK NO. 21 – PAGE 261

J. RESOLUTION NO. 04-159 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Summary: The consideration of a resolution reappointing John Broadbooks to the Commission.

The terms of John Broadbooks, John Hutchby, Larry Smith and Paul Homyak, as members of the Civic Center Commission, expired on June 30, 2004. In addition, there is also an unexpired term until June 30, 2006, left by Lisa Michie.

On July 9, 2004, a request was received from Mr. Peter Crosa, Chairman of the Civic Center Commission, to reduce the membership of the Civic Center Commission from 11 to 7 members, ensuring the certainty of a quorum with at least 4 members. It has been difficult to reach a quorum at the monthly meetings. They feel the reduction will improve functionality of the Commission and that a reduced number will still assure a talented and diverse group of members. If Council did not feel it's in their best interest to reduce the membership to 7, he suggested an alternative to reduce the membership from 11 to 9 members. After discussion at Council's worksession on July 20, 2004, it was the consensus of City Council to instruct the City Attorney to prepare the proper paperwork to reduce the Commission from 11 to 7 members and to revisit the issue in six months.

Also at City Council's worksession on July 20, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint John Broadbooks to serve a three year term, term to expire on June 30, 2007, or until his successor has been appointed.

Staff recommends City Council adopt a resolution reappointing John Broadbooks to the Civic Center Commission.

RESOLUTION BOOK NO. 28 – PAGE 312

K. RESOLUTION NO. 04-160 - RESOLUTION APPOINTING MEMBERS TO THE POLICE OFFICERS AND FIREFIGHTERS DISABILITY REVIEW BOARD

Summary: The terms of Stephanie Cooper, Alexander Maitland and James Lewis, as members on the Police Officers' & Firefighters Disability Review Board, expired on July 19, 2004.

On July 20, 2004, it was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Ms. Cooper, Mr. Lewis and Dr. Maitland to each serve an additional two year term respectively, terms to expire July 19, 2006, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 313

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Dunn and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED ON SPRINGSIDE PARK DRIVE OFF WHITE PINE DRIVE FOR THE CONSTRUCTION OF A 60 UNIT APARTMENT COMPLEX (KENILWORTH FOREST VILLAGE APARTMENTS) IN AN RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Mayor Worley said that this public hearing was originally scheduled for May 25, 2004, but continued at the applicant's request until this date.

Mayor Worley then said that a letter was received on July 16, 2004, from Land Planning Collaborative, P.A., stating that "On behalf of the developer, Virginia May, I am withdrawing our application for the July 27th hearing before City Council." Therefore the public hearing will not be held.

B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING BLANKENSHIP AVENUE

Mayor Worley announced that a letter was received on July 27, 2004, from Ms. Patsy Meldrum, stating that "Our client, Teresa Cathey, has decided to withdraw her request to close Blankenship Avenue. We withdraw the request on behalf of Teresa Cathey and Cheryl S. Warren, owners of the property identified on the Buncombe County tax maps as PIN 9617-14-44-5768. Please note that there are two other property owners whose names appeared on the petition to close Blankenship Avenue and we do not represent those parties. You will need to inquire of them whether or not they wish to proceed."

Since the petition is still active, Mayor Worley opened the public hearing at 5:22 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close Blankenship Avenue between Smoky Park Highway and Brookside Circle. This public hearing was advertised on July 2, 9, 16 and 23, 2004.

N. C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys without regard to whether they have actually been accepted as city maintained streets.

Pursuant to this statute, the adjoining property owners have requested the City close Blankenship Avenue, extending north from its intersection with Smoky Park Highway to its intersection with Brookside Circle.

Public Works Department staff has researched and established that this portion of right-of-way is not a City maintained street and its closure will not deprive any property owner of a reasonable means of ingress or egress to their property. This portion of right-of-way is abutted by three lots, identified by PIN Nos. 9617.14-44-5768; 9617.14-44-3873; and 9617.14-44-3740.

However, the City's Traffic Engineer has determined that Blankenship Avenue provides an important connection between Brookside Circle and Smoky Park Highway. Though not a City maintained right-of-way, Blankenship Avenue is signed, has a gravel surface and is used by pedestrian and vehicular traffic. Consequently, City staff advises that closing Blankenship Avenue without any alternate provisions for a transportation connection would be contrary to the public interest.

On Thursday, May 27, 2004, the Traffic Engineer and Assistant Director of Public Works met with Patsy Meldrum, counsel for petitioner Teresa Cathey, to discuss staff concerns about closing Blankenship Avenue. Ms. Meldrum was vague about the needs underlying her client's request to close the street. Consequently, it was difficult to generate alternatives that might satisfy both Ms. Cathey's interests and the City's interests in preserving connectivity.

Assuming that setbacks from Blankenship Avenue's right-of-way could be a concern, staff offered two potential alternative solutions: 1) to relax setback requirements from Blankenship Avenue or 2) to support closure of the right-of-way under an agreement that the petitioners provide a 20-foot public access easement in its place. Either alternative would have the same effect on setback requirements as closing the street, but would preserve the public's right to use the right-of-way for travel. However, Ms. Meldrum has indicated that her client is not amenable to either of these alternatives and wishes to pursue the petition to close Blankenship Avenue over staff objections.

Though intent to close Blankenship Avenue has not yet been advertised or posted, the Public Works office has received three telephone calls from local residents objecting to the closure. The primary concern voiced was that the street is used as a pedestrian access for people walking to and from Brookside Circle and The Lunch Box, a restaurant on Smoky Park Highway. Closing this right-of-way would require that these people walk along Brookside Circle and Smoky Park Highway, neither of which have sidewalks.

Progress Energy, BellSouth Telephone, and Charter Communications (cable television) all have aerial lines on Blankenship Avenue. Additionally, BellSouth has underground conduit (approximately 4-feet wide) along the eastern margin of right-of-way. Easements must be provided or arrangements made by the petitioners to relocate these utilities in order to close Blankenship Avenue.

Based on its importance as a connection between Brookside Circle and Smoky Park Highway, it is the opinion of City staff that closing Blankenship Avenue is contrary to the public interest. Therefore staff recommends against adoption of a resolution to permanently close Blankenship Avenue.

Mr. Alan Ditmore said any decision made by Council will have an effect on the rich and poor.

Mayor Worley closed the public hearing at 5:30 p.m

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved to not close Blankenship Avenue. This motion was seconded by Councilwoman Bellamy and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTIES LOCATED AT 40 ROBERTS STREET FOR THE CONSTRUCTION OF SINGLE-FAMILY CONDOMINIUM UNITS, USING THE DEVELOPMENT STANDARD BONUS

ORDINANCE NO. 3140 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTIES LOCATED AT 40 ROBERTS STREET FOR THE CONSTRUCTION OF SINGLE-FAMILY CONDOMINIUM UNITS, USING THE DEVELOPMENT STANDARD BONUS

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:31 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for properties located at 40 Roberts Street for the construction of single-family condominium units, using the development standard bonus.

The 2025 Asheville City Development Plan encourages a variety of housing types and products to meet the growing needs of the community. Affordable housing even for small projects is important to encourage throughout the community.

A mixed-use project is currently under review along Roberts Street for two parcels at the corner of Trade Street. Adjacent to the Roberts-Trade project the property was zoned to RM-16 in 2001 (City Exhibit 3 – Aerial Photo).

The property is located within the City limits in the central area of the City (City Exhibit 3 – Site Plan). The site overlooks the River area and is located within the recently completed

WECAN Citizens Master Plan. The plan recommends a variety of in-fill housing types using architectural styles sympathetic to the neighborhood.

The developers are seeking approval for a Conditional Use Permit using the Developers Standard Bonus to allow 5 single family homes on 2 parcels with a combined acreage of .34 acre. Conditional Use Review through this process determines such things as property line setbacks and lot size. Heights of any structures in this project are limited to 50' and the project is reviewed to assure that it will fit in with the environmental and architectural character of the neighborhood. To qualify for the Developers Standard Bonus the project must exhibit exceptional site and or environmental context within the surrounding neighborhood. The project must also provide a minimum of one unit at an affordable price (20% of the units offered). The developer standard ordinance allows up to 200% density bonus of the underlying density in residential multi-family districts.

The areas to the east north and south of the surrounding the subject properties are zoned RM-8, residential multi-family medium density. The properties on the west side of Roberts Street are zoned Commercial-Industrial. The surrounding area includes some vacant properties and single-family uses. The area adjacent to the project on the south side is Park Place, an older neighborhood with densities similar to the current proposal.

The developer has submitted a site plan which portrays the locations and layout for the 5 residential units. Although the setbacks are somewhat reduced for typical RM-8 zoned areas, the project will not be out of keeping with community norms. The proposed facades of the 5 residential units are complimentary to the neighborhood fabric. The house drawings are similar to that described in the WECAN Citizen Master Plan under types of in-fill housing recommended for the neighborhood. The homes will be sold condominium style with the property in common ownership (City Exhibit 3 – Façade Drawings).

The Technical Review Committee (TRC) reviewed the project at their June 21, 2004, meeting. In addition the developer asked that alternative compliance for the limited landscaping requirements be considered. The Public Works Department suggested that the City Arborist be consulted for alternative compliance and encouraged tree preservation for existing trees. Other outstanding issues identified during the TRC review are also proposed to be conditions of the approval. No other environmental or safety concerns were noted for the project.

Because this is a conditional use permit, if approved, the uses on the site are limited to those applied for during this permit review process. The site plan and building façade elevations are submitted for approval. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

City Council must take formal action as set forth in section 7-9-9(c) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

1) That the proposed use or development of the land will not materially endanger the public health or safety. **The project has been reviewed by the Technical Review Committee. The project will have to meet State Building Code requirements for new construction. No other safety concerns were noted.**

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures

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proposed by the applicant. **The site naturally has a steep grade from the street up to the rear of the property. The houses will step up the hillside along with the grade.**

3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is not expected to injure the value of adjoining or abutting properties. There is a substantial amount of un-developed property in the area. The investment in this project will encourage redevelopment of other vacant lots too.

4) **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The project as proposed is developed after other nearby existing residential areas. The proposed building styles are reminiscent with a modern twist of the traditional housing forms found in the neighborhood. The project is in harmony with the scale, bulk, coverage, density and character of the neighborhood.

5) **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project will provide housing that is needed in the community and matches goals from the City Plan 2025 to provide a variety of housing types at a variety of prices in neighborhoods throughout the City. In-fill projects are important to the continuing strength of the City center. Affordable residential units are needed all over the City.

6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Requirements of utility providers will be met for this project. An Asheville Transit route travels within a few blocks of this site along Clingman Avenue and Haywood Road.

7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project was considered at the TRC it was felt that traffic would not be negatively impacted by this small project.

Pros:

- Provides an in-fill housing project in the community.
- The neighborhood will have an affordable residential unit nearby.
- Positive re-development will begin on Roberts Street.

Cons:

- Adds a multifamily project to a single-family neighborhood (a potential plus).
- Project includes on-street parking on Roberts Street, which may act to slow traffic through the area (a potential plus).

The project provides a site-specific plan to develop housing in a way that fits the neighborhood produced master plan. Affordable housing is needed in all area of the City. The plan will provide a new housing product in a predominately single-family neighborhood. Neighborhood impact is minimal when considering traffic issues or the project's visual character and harmony. In addition the 7 standards that must be considered for Conditional Use Permits all appear to be met as noted previously.

The Planning and Zoning Commission at their July 7, 2004, meeting voted to recommend approval of the Conditional Use Permit with conditions that the outstanding TRC issues are satisfied. Staff also recommends approval of the rezoning request.

Mr. Whit Rylee, property owner, used photos (Applicant Exhibits 1-9) to support the permit and described how they tried to match the neighborhood fabric with this plan.

Upon inquiry of Councilwoman Bellamy, Mr. Rylee said the styles are widely spread throughout the neighborhood.

Upon inquiry of Councilman Newman, Mr. Rylee said that at least one of the homes will be affordable at $130,000 and the other homes will be in the range of $150,000-$225,000.

When Councilwoman Bellamy asked how much time the builder has to complete the development, City Attorney Oast said that unless Council puts a limit on the time, there is not set time for completion. He said the key component is how long the builder has to start the development. If Council wishes to add a time restriction as part of the permit, Council may wish to hear from the developer if that is realistic before the condition is imposed.

Councilwoman Bellamy was concerned that the developer will take 3-5 years to complete the project. Using a photo (Applicant Exhibit 10), Mr. Rylee showed his progress to date on one home and that he hopes to be in that house by Christmas. He already has the funding in place to build the next four homes next year, but it really depends on the economy on when the homes sell.

After rebuttal, Mayor Worley closed the public hearing at 5:52 p.m.

Vice-Mayor Mumpower was surprised that the designs fit into that neighborhood since they are magnified dramatically what exists there now. Mr. Glines responded that it's a creative blend of materials and between historic and new modern, especially fitting in with the artsy River District so close.

Councilwoman Bellamy wondered if Council could request, via the conditional use permit, that the fixtures be moved off the front of the house with the different type of gingerbread ornaments. Mr. Glines felt that City Council can make that a condition.

Councilwoman Bellamy asked Mr. Rylee if he saw a need for that many type of ornaments. Mr. Rylee responded that he doesn't want to hurt the neighborhood and will try to keep to what their desire is.

Councilwoman Bellamy explained that she has spent a lot of time in this neighborhood helping to put the WECAN Citizen Master Plan together. She agreed the neighborhood is changing. But, when they tried to obtain a historic designation, it was denied because a lot of development that occurred did not blend in. The neighborhood has worked very hard to seek that designation and she doesn't want that possible designation jeopardized. Mr. Rylee responded that he felt the historic designation was denied, not because things have been built there because there hasn't been a home built on that side of the hill since 1949, but because there has been such a loss of historic structures that they don't find it a cohesive neighborhood. Whether or not homes are built there or not is not going to solve that problem for the neighborhood. In the Master Plan adopted by the community, there are a lot of different historic details, which may or may not be existing there today nor may not have ever existed in that neighborhood. What they have tried to do is to say this is a historic neighborhood that has different styles and the plan seems to encourage people to try to interpret the styles into structures. That is what he tried to do in these homes. These will be newer buildings that will also have the scale and character of the historic neighborhood. It meets the Department of Interior Standards to get the neighborhood declared historic.

Councilman Newman moved for the adoption of Ordinance No. 3140, granting a conditional use permit for properties located at 40 Roberts Street for the construction of single-family condominium units, using the development standards, subject to the outstanding TRC issues being satisfied. This motion was seconded by Councilwoman Jones and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF TWO LOTS ON ROBERTS STREET FROM RM-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO ALLOW FOR A MIXED-USE DEVELOPMENT

ORDINANCE NO. 3141 - ORDINANCE REZONING TWO LOTS ON ROBERTS STREET FROM RM-8 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3142 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR TWO LOTS ON ROBERTS STREET TO ALLOW FOR A MIXED-USE DEVELOPMENT

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:04 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of a conditional use zoning request of two lots on Roberts Street from RM-8 Residential Multi-Family Medium Density District to Neighborhood Corridor District/Conditional Use, and a request to issue a conditional use permit to allow for a mixed-use development.

The West End Clingman Plan, developed as part of the 2010 Comprehensive Plan, identifies this area for residential development.

Although not yet adopted, this project supports the WECAN Citizens Master Plan initiative that identifies this area for small-scale, mixed-use development.

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies and affordable housing. The project proposes a medium-density, mixed-use development that is designed to serve and blend in with the surrounding neighborhood (City Exhibit 3 – Location Map). The site is within walking distance to transit service and is located within 1 mile of the City's Central Business District and park services (Aston Park). Additionally, the proposed zoning of NCD, is in accordance with the future land use and transportation plans which has this area targeted for redevelopment as a neighborhood corridor.

A conditional use rezoning to CB-1 for a similar mixed-use development was approved by City Council in July 2000, for the larger of the two tracts (PIN# 1762). This approval, however, expired and the property reverted back to the RM-8 zoning district.

The parcel to the south of the site was rezoned to RM-16 in July 2002.

The applicant, Binna Green, is seeking a conditional use rezoning of two vacant parcels of approximately .2 acres, located on the corner of Roberts Street and Trade Street. The site is located less than a mile west of downtown in the "Chicken-Hill" area of the West End/Clingman neighborhood. Both properties are currently zoned RM-8.

Properties across Roberts Street west of the site are zoned Commercial Industrial and have the potential of being developed to a high intensity use. A transition is needed between the high intensity use and the adjacent residential area. The mixed-use development proposed is considered to be low impact and would provide an effective transition between the two areas.

The West End/Clingman Avenue Neighborhood Plan was developed as part of the 2010 Comprehensive Plan. In recent months, a cooperative effort by residents, designers, community leaders, and city staff has been underway to develop and update the long-range development plan for this area. It is hoped that the plan will be ready for consideration by the end of 2004 making it relevant to the evaluation of this project.

Although not yet officially adopted by the City, in context of the subject property, the plan calls for the promotion of Residential and Arts District infill development along Roberts St. The subject property is located on the fringe of the Arts District, Single Family District, and the Commercial Industrial District making it an ideal candidate for a conditional use rezoning to allow for a combination of art production and retail along with loft residences, serving as an appropriate transition use between the three districts.

The purpose of the RM-8 zoning district is to establish a diverse medium density multi-family and single-family district in areas where public infrastructure is sufficient to support such densities. The purpose of the Neighborhood Corridor District is intended to foster medium density, mixed-use development opportunities that are economically viable, pedestrian oriented, and that contributes character to the built environment.

The conceptual master plan provided with the report was revised to address several Technical Review Committee (TRC) comments that were made at their June 21, 2004, meeting (City Exhibit 3 – Conceptual Master Plan). Subsequently, the Planning and Zoning Commission reviewed the proposal at their July 7, 2004, meeting and made a 5-0 vote in favor of the project subject to the conditions outlined by TRC and staff.

Revisions to the plan include: impervious surface calculations, Alternative Compliance for Landscaping, and elevations addressing the Design and Operation Standards. The plans also reflect changes in size and square footage of each building and also address a building setback variance and parking location variance that was approved by the Board of Adjustment on Monday, June 28, 2004 (City Exhibit 3 – Building Elevations).

- Building A located closest to Roberts Street proposes approximately 2,341 square feet of artist studio retail space on the lower floor and 2 residential units on the second floor.
- Building B located towards the rear of the lot will house 4 residential units, two units per level.

As part of the project, the applicant is proposing to develop an unopened alleyway along the eastern side of the property in order to provide access to the parking spaces proposed. The plan also illustrates the applicant's request for alternative compliance in regards to the landscaping required for the project. Staff feels that the alternative landscape plan submitted meets the intent of the ordinance by providing an effective buffer where required.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The project site is relatively flat. Grading will be necessary to accommodate storm water and erosion control requirements, and other proposed site improvements. More extensive grading may be necessary to develop the alleyway located east of the site where the land begins a gradual increase in slope.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed use is as small-scaled, low-impact mixed-use development that will be compatible with surrounding residential development. The building located to the rear of the property where adjacent lots are zoned RM-8, will house 4 residential units. The commercial aspect of the project will front Roberts Street where adjacent properties are zoned Commercial Industrial. This project would provide an effective transition and buffer between the commercial industrial property and the residential neighborhood.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed use of the property as artist studio retail space and residential apartments serves as an effective transition between commercial and residential land. The proposed building design demonstrates small-scale pedestrian-oriented development that will contribute to the character of the neighborhood.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies and affordable housing. The project proposes a medium-density, mixed-use development that is designed to serve and blend in with the surrounding neighborhood. The site is within walking distance to transit service and is located within 1 mile of the City's core downtown area. Additionally, the proposed zoning of NCD is in accordance with the future land use and transportation plans which has this area targeted for redevelopment as a neighborhood corridor.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The subject site is located near a current bus route. Additionally, the proposed development was reviewed by the City's Technical Review Committee that includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Public Works Department.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   Roberts Street serves as a connection between the residential and commercial areas of the neighborhood. Trade Street is a narrow, one-way street that empties onto Club Road. An increase in traffic is not expected to occur from the proposed low impact development.

Pros:

1. The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies and affordable housing.
2. The proposed use and development is supported by the future land use and transportation plans in this area.
3. Although not yet officially adopted, the proposed project is supported by the WECAN Citizens Master Plan in the type of use and building design proposed for this area.
4. The project site is centrally located and within walking distance of the City's core downtown area and the River District.

Cons:

1. Power lines and utility easements render part of the property unusable and relatively small for the number of buildings and off-street parking spaces that are proposed.
2. Due to the size of the lot and hardships created by the location of power lines and utility easements, Alternative Landscape Compliance will need to be considered in order meet the buffer requirements for the project.
3. An unopened alleyway will need to be developed in order to utilize the majority of off-street parking spaces proposed for this project. This will increase the overall amount of grading necessary for the project.

The site plan and building elevations provided for this project supports the intent and goals of the proposed rezoning to Neighborhood Corridor District by it's design and scale, orientation and relation to the street and services offered to the neighborhood and the surrounding area. The proposed project meets many goals of smart growth and infill development and will also provide several affordable rental units to the neighborhood. Additionally, the proposed development will provide a needed transition between the Commercial Industrial properties located across from the subject site on Roberts Street and the residentially zoned properties located east of the site. With conditional use zoning, the site plan and building design are regulated to ensure that this use remains low-impact to provide the desired transition.

Based on the proposed development and the seven findings staff recommends approval of the project subject to the conditions outlined by the Technical Review Committee. The Planning and Zoning Commission reviewed the proposal at their July 7, 2004, meeting and made a 5-0 vote in favor of the project subject to the conditions outlined by TRC and staff.

Mr. Gerald Green, representing the developer, spoke in support of the project and its contribution to the ongoing renovation of the West End/Clingman Avenue neighborhood.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:12 p.m.

Upon inquiry of Councilman Davis, Planning & Development Director Scott Shuford said that to accommodate the proposal, staff has recommended the use of the NCD zoning. NCD would typically be applied to a larger area of property such as a section of a road corridor and we understand there may be concerns about its application on this scale. In this case, both the WECAN Citizens Master Plan and the Riverfront Urban Master Plan (which will be considered for adoption by Council later in this meeting) call for this type of development in this immediate area. Consequently, staff was comfortable using NCD but only on a conditional use zoning basis. Since Council has adopted neither plan to date, staff used the NCD/Conditional Use to minimize any precedent for Council consideration and adoption of these plans and any future zoning pattern that implements them while still accommodating the developer's proposal.

Councilman Davis was concerned that City Council is using the conditional use zoning tool is being applied a lot and wondered if we are losing the effect of straight rezonings. He thought that when we first started using that tool, it was to be used sparingly, but we seem to be using it more and more. With infill development we will probably find that a more useful too, but it seems like we are making zonings fit wherever we want it to fit and losing the intention of straight zoning efforts. He suggested meeting informally with the Planning & Zoning Commission or perhaps a task force to look at some of the planning we do in the future. Mr. Shuford said that he would be happy to give Council a report on its application and how we've used it. He did say that staff has tried to use it appropriately as a tool to balance a person's desire to make effective use of their property and the neighborhood's interest in seeing what that use would be. He also felt it would be appropriate to schedule a Planning & Zoning Commission worksession to talk about this issue.

Councilwoman Bellamy did not support the Neighborhood Corridor District being applied in this instance.

Vice-Mayor Mumpower moved to adopt Ordinance No. 3141 to approve the conditional use rezoning for two lots on Roberts Street from RM-8 Residential Multi-Family Medium Density District to Neighborhood Corridor District/Conditional Use. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilwoman Bellamy voting "no."

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Vice-Mayor Mumpower moved to adopt Ordinance No. 3142 to issue a conditional use permit for two lots on Roberts Street to allow for a mixed-use development, subject to the conditions outlined by the Technical Review Committee. This motion was seconded by Councilman Davis and carried on a 6-1 vote with Councilwoman Bellamy voting "no."

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E. PUBLIC HEARING TO CONSIDER THE CONDITIONAL USE ZONING OF 200 CHARLOTTE STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE; AND THE ISSUANCE OF A CONDITIONAL USE PERMIT TO EXPAND A PARKING AREA AND PROVIDE PARKING LOT LANDSCAPING TO MEET THE REQUIREMENTS OF THE UNIFIED DEVELOPMENT ORDINANCE

ORDINANCE NO. 3143 - ORDINANCE REZONING 200 CHARLOTTE STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND COMMUNITY BUSINESS I DISTRICT TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL USE

ORDINANCE NO. 3144 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR 200 CHARLOTTE STREET TO EXPAND A PARKING AREA AND PROVIDE PARKING LOT LANDSCAPING TO MEET THE REQUIREMENTS OF THE UNIFIED DEVELOPMENT ORDINANCE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process by stating that this is a two-part process. It requires rezoning, which is a legislative act, and the issuance of a conditional use permit, which is a quasi-judicial site-specific act. Even though the public hearing on those two items will be combined, all the testimony needs to be sworn and two votes will need to be taken. The first vote will be to grant the rezoning to the conditional use district category and the second vote will be to issue the conditional use permit. If Council runs into a situation that it votes to rezone, Council doesn't have to issue the conditional use permit on the same night.

City Attorney Oast said that a valid protest petition has been filed, thus requiring a three-fourths vote of City Council to approve the rezoning of the property. If the rezoning passes by the three-fourths vote, then the conditional use permit is subject to a simple majority vote.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 6:25 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of a request to rezone property located at 200 Charlotte Street from RM-16 Residential Multi-Family High Density District and Community Business I District to Community Business I District/Condition Use, and a request to issue a conditional use permit to expand a parking area and provide parking lot landscaping to meet the requirements of the Unified Development Ordinance (UDO).

The Future Land Use and Transportation Plan of the 2025 Asheville City Development Plan recommends a mixed-use corridor along Charlotte Street.

No recent zoning actions have taken place in this area.

The property is located within the City limits in the north area of the City. This proposal is a Conditional Use Rezoning to provide adequate facilities for a parking lot expansion. The parcel is located at 200 Charlotte Street and is used as a medical office. The parcel which is .71 acre is split zoned between CB-1 towards Charlotte Street and RM-16 in the rear area of the lot. The portion of the parcel along Charlotte is zoned CB-1 and the rear of the parcel is zoned RM-16 (City Exhibit 3 – Location Map and Aerial Photo).

The project came to the attention of the Planning and Development Department because of a complaint regarding grading, clearing and parking lot expansion on the site without a permit. This current submittal is provided to remedy the situation. The project seeks approval to expand the parking area to the north side of the parcel and provide a landscape buffer on the west side of the parcel. Commercial parking is not allowed on residentially zoned land so the rezoning is a requirement for this (City Exhibit 3 – Site Plan).

Outstanding issues identified during the Technical Review Committee (TRC) review are also proposed to be conditions of the approval. Since the TRC meeting the agent for the project, Mr. Hewitt has provided a plant species list which is only lacking evergreen trees for the buffer planting. He has also noted the intention to provide 14 parking spaces for the parking area (a reduction from what is illustrated on the plan). This may change the exact layout for the parking lot to provide for additional area for landscaping. Finally staff recommends closing the east driveway but will accept closing the west driveway instead if elevation changes are an issue. No other environmental or safety concerns were noted for the project.

RM-16 Zoning District (residential multi-family high density) is developed to set aside areas for high density multi-family uses with a broad range of housing types. RM-16 also allows other non-residential uses including limited institutional, public and commercial uses appropriate within high density residential areas.

Community Business I District (CB-1) is established to provide areas for medium-density business and service uses serving several residential neighborhoods. The CB-1 district is designed to be located along streets which serve multiple residential neighborhoods and provide pedestrian connections and safe vehicular access.

Because this is a conditional use rezoning, if approved, the only use of the site that would be allowed would be the office use and parking lot as proposed in this plan. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

City Council must take formal action as set forth in section 7-9-9(c) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

1. That the proposed use or development of the land will not materially endanger the public health or safety. **The project has been reviewed by the TRC with a few safety comments noted.**

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant. **The property is very urban in nature. New construction is happening on adjacent properties. Landscaping proposed and existing will make the site attractive and will provide the necessary buffering.**

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is not expected to injure the value of adjoining or abutting properties.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** The project is closely associated with Charlotte Street. The project is compatible with uses in place on Charlotte Street.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** The project is providing investment in an existing parcel and business. Development and re-investment in existing businesses matches goals from the City Plan 2025 to strengthen the business climate for the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** Requirements of utility providers will be met for this project. All utility needs can be met at this site.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** This project was considered at the Technical Review Committee it was felt that traffic would not be negatively impacted by this small project.

Pros:

- Provides an adequate buffer space to nearby residentially zoned land.
- Maintains the existing visual character for this section of Charlotte Street.

Cons:

- The rezoning reduces RM-16 zoned property (although CB-1 allows a similar residential density).
- The site has the potential to change to other CB-1 uses if approved through the conditional use approval process (a potential plus).

The project provides a site specific plan to expand a parking area for the medical office use. The project will be adequately landscaped from adjacent residential uses following requirements for such in the UDO. The existing uses on the site meet the requirements for CB-1 zoning.

The Planning and Zoning Commission, at its July 7, 2004, meeting, voted 5-0 to recommend approval with conditions that the outstanding TRC issues be satisfied. Staff also recommends approval of the rezoning request.

After hearing no rebuttal, Mayor Worley closed the public hearing at 6:30 p.m.

Upon inquiry of Mayor Worley, Mr. Glines said that if the property was entirely zoned Community Business I there would not have been a problem regarding the parking lot expansion.

Mr. Glines responded to some questions from Councilman Newman about the number of parking spaces.

Councilman Davis moved to adopt Ordinance No. 3143 to approve the conditional use rezoning for property located at 200 Charlotte Street from RM-16 Residential Multi-Family High Density District and Community Business I District to Community Business I District/Condition Use. This motion was seconded by Councilman Dunn and carried unanimously.

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Councilman Davis moved to adopt Ordinance No. 3144 to issue a conditional use permit for property located at 200 Charlotte Street to expand a parking area and provide parking lot landscaping to meet the requirements of the UDO, subject to the outstanding TRC conditions being satisfied. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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F. PUBLIC HEARING TO CONSIDER ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

City Attorney Oast said that just prior to this meeting, the attorney for the owner of the property said that they would like to work with the City Attorney's Office to negotiate a potential resolution and asked that the matter be continued until the next formal meeting.

Councilwoman Bellamy moved to continue the public hearing until August 10, 2004. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

Councilman Dunn felt that Council might be setting a precedent in allowing property owners to come in at the last minute and try to negotiate a settlement, when they have in fact had ample opportunity to meet our Housing Code.

At 6:39 p.m., Mayor Worley announced a short recess.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 04-161 – RESOLUTION ADOPTING THE WATERSHED MANAGEMENT PLAN

Mr. David Hanks, Interim Director of Water Resources Director, said that this is the consideration of a resolution adopting a Forest Management Plan for North Fork and Bee Tree Watersheds.

The forestry management consultant firm of Wildwood Consulting, LLC was retained by the City to provide a forest management plan at the North Fork and Bee Tree watersheds, including the current state of the trees, shrubs, underbrush, grassy areas, roads, streams, wildlife, and maintenance to ensure high quality water flow in to the two reservoirs. Secondly to make recommendations on areas requiring improvement. The plan is the first step in a five to ten year planning process, which will establish best forestry management practices for proper management of the watersheds.

Mr. Hanks said that the forestry management study was the result of an airplane crash in the watershed area in 2002. Due to the overgrowth within the watershed and inaccessibility of roads it was extremely difficult for fire and rescue workers to reach the downed airplane. This prompted the fire chiefs of the City of Asheville and Town of Black Mountain to request accessibility and maintenance of the watersheds. This included analyzing the potential for fire and fire fighting capabilities in the watershed based upon its current status. It also included analyzing large areas of the watershed where trees were down and overgrowth did not allow for emergency and maintenance vehicles and/or equipment to be brought in. The forester's primary direction is the proper management of the forest through Best Management Practices in order to maintain the functions of the forest contributing to water quality and to reduce the risk of catastrophic loss by fire, insects or disease. Any watershed maintenance, including tree removals, grass removal and road improvements will be accomplished in compliance with the Asheville Watershed Conservation Easement.

Staff will bring an annual plan to City Council outlining specific details of what will be done within the watershed for approval.

City staff recommends City Council adopt a Forest Management Plan for North Fork and Bee Tree Watersheds.

Mayor Worley made perfectly clear is that this is not a logging plan. There are one or two references to logging, or clear-cutting between 5-10 acres, in the plan itself. One thing that came out of Council's worksession discussion on July 20, 2004, is that those references are inconsistent with our conservation easement which prohibits any logging of even-aged trees. That effectively prohibits any logging, and, again, the plan itself was never intended to be a logging plan.

Mayor Worley said that the public hearing comment period will be limited to one hour. Comments will be taken first from individuals whose names appear on the sign-up sheet.

Ms. Leslee Kulba spoke in support of the management plan. She was disturbed with a lot of the materials and exaggerated, out of context information being circulated in the community that this is a clear-cutting document. She urged the community to become informed before circulating misinformation.

Mr. Eric Gorny, property owner adjoining Bee Tree Reservoir, spoke in support of the plan. He is concerned about the lack of access for the fire departments to control fires. Being a hunter, he explained how thinning and clear-cutting is necessary for new growth to feed the wildlife.

The following individuals, who were basically in support of a good management plan, spoke against adoption of this management plan for several reasons, some being, but are not limited to: there is nothing in the plan about the role of the watershed and the larger Black Mountain conservation area; there is no mention in the plan that there is a conservation easement; there are a number of provisions in the plan that would violate the conservation easement, e.g., clear-cutting; the plan poses an unnecessary risk to our water supply; the plan is vague and inadequate with regard to protecting water quality; the plan suggests engaging in practices which have the potential to reduce water quality and reduce the ability of the forest to filter and capture water; the number, location and method of logging practices suggested in the plan are not clearly defined; permissive loosely defined documents, such as this plan, can be used by polluters and economic-interests to profit without consequences while degrading a public resource; the plan provides neither a baseline inventory of the watersheds natural resources or documentation for the lands ability to capture and clean incoming water, plans falls short of serving as a guiding document which outlines the future of management in the watershed; plan only provides a brief introduction of the management possibilities and far-fetched worse case scenarios; the plan should include clear goals that have been agreed upon by a variety of stakeholders and outline objectives; objective should be matched with significant scientific recommendations for action and contingency; the public should be allowed to be part of the planning process; prior to developing a plan, there should be a baseline forest inventory and assessment, complete inventory and survey of current conditions of local flora and fauna, an analysis of the cumulative and environmental impacts to determine how proposed activities will alter the watershed landscape, a visual quality analysis from the Blue Ridge Parkway to ensure the areas highly visible from the Parkway are not negatively impacted, and a cost benefit analysis of the economics of managing the property, a road analysis to identify the critical roads that must be maintained and those roads that should be decommissioned, and public input; the Blue Ridge Parkway, Conservation Trust for North Carolina and other key partners and interest groups were not contacted to ask for their thoughts on the plan; timber harvesting methods in the plan appear to violate the intent and letter of the conservation easement; potential visual impacts to the Parkway view areas have not been evaluated as part of the planning process; need water management plan, not a forest management plan; rare and endangered species are not addressed; control of exotic invasive species is extremely important but cutting 50-foot strips at roads and small clear-cuts will open up new areas for the invasive species to thrive; we cannot create 50-foot roads in all parts of our mountainous region in the off chance of a fire or a plane crash, maintenance of the current roads should be adequate and all emergency vehicles should carry chainsaw equipment when entering the watershed; question of the City's consultant competence regarding birds; logging is part of every habitat recommendation; 50-foot road maintenance recommendation is overkill; study found that "timber harvest through its effects on forest structure, local micro-climate and fuel accumulation has increased fire severity more than any other recent human activity"; an organization that specialize in the management and protection of drinking watershed water should be consulted; conservation easement needs to be updated by placing the entire property in a protective easement that prevents commercial logging; we should not damage our drinking watershed because we have the technology to make polluted surface water drinkable; an expert committee needs to be formed to advise the development of a management plan for the watershed using experts in soils, plant and animal life, hydrology, etc.; there are other options to management the watershed; the plan exaggerates the risk of catastrophic fire beyond reason; disagreement with Miscanthus Sinensis being "shade tolerant" and with the proposed fire scenario laid out in the plan regarding the plant; City's consultant has no knowledge about what measures are currently in place to monitor and prevent forest fires; detrimental effects of herbicides on the water quality; who will implement the plan; if you don't removal all the invasive species, they will grow back; and concerns for lack of enforcement of the management plan

Mr. Hugh Irwin, Conservation Planner with the Southern Appalachian Forest Coalition (two pages of information from the Southern Appalachian Forest Coalition and a map)
Ms. Gracia O'Neill, Outreach Coordinator for Clean Water for North Carolina
Mr. Ben Prater, Staff Ecologist for the Southern Appalachian Bio-Diversity Project (bibliography of watershed research; photo petition; and petition requesting Council "reject any and all proposals to allow commercial logging in the Asheville watershed.")
Mr. Gary Johnson, representing the Blue Ridge Parkway (letter dated July 27, 2004, from Daniel W. Brown, Superintendent, Blue Ridge Parkway)
Ms. Alyx Perry, WildLaw sustainable forestry program
Mr. Carl Nyberg, Asheville resident
Ms. Charlotte Goedsche, Secretary of the Elisha Mitchell Audubon Society

Mr. Monroe Gilmore, Coordinator of the Swannanoa Valley Alliance for Beauty and Prosperity (Comments of Monroe Gilmore, SVABP Coordinator)
Mr. Bud Howell
Ms. Susan Andrew, forest ecologist with special interest in watershed ecology and function (pictures of her daughters)
Ms. Robin Cape, Board Member of the Woodfin Water District
Mr. Bob Gale, Ecologist with Western North Carolina Alliance (information on ecological aspects within the Asheville watershed proposal)
Ms. Julie Brandt, representing Asheville Park People Advocating Real Conservancy
Mr. Alan Ditmore
Ms. Carol Wilson

Mr. Rusty Painter, Director of Land Protection for the Conservation Trust of North Carolina, read a prepared statement stating that they "are the holder of a conservation easement on 17,356 acres of the Asheville Municipal Watershed. The primary purpose of the easement is to protect the property's ability to provide a clean, safe and plentiful source of drinking water. The easement also protects the nationally significant natural areas within the watershed and the scenic vistas from the Blue Ridge Parkway. The Asheville City Council now begins a public process to consider possible forest management activities on this property and we encourage Asheville citizens to participate in this process. The Conservation Trust will continue to work with the Asheville City Council to ensure that the intent and terms of the conservation easement are honored and that any management plan respects the restrictions in the conservation easement." He said the City's consultant Mr. Hicks has done the job he was hired to do. He looks forward to working with Council to continue to resolve this issue and find a compromise and a way we can manage the property in a way that suits everyone and still respects the constraints of the easement.

Councilman Dunn initiated a brief discussion about the need for cooperative partnership with the Blue Ridge Parkway especially regarding a permit for the Swannanoa River bridge at Azalea Road Park.

Mr. Edward B. Hicks, Forester with Wildwood Consulting, LLC, said he has listened to all the comments. He agreed that this is not a complete plan and it is not intended to be complete. This plan stops at the general recommendations. At this point they are trying to get Council and public input before they give specific recommendations. On an area this large, if you present specifics and then you get input, someone may say they didn't want to go that direction at all, there is a lot of wasted time. He is not asking for blank authority. He will be happy to work with the Conservation Trust of North Carolina, the Park Service and other interested parties who would like to participate as we refine the process and get more details in the plan. He said the conservation easement clearly says no even-aged management, so the small 10-15 acre clear-cut ideas, which were not for actually oak regeneration but for early successional habitat for grouse, will be removed from the plan as one of the recommendations.

Mr. Hicks said that they are asking for a 50-foot area to improve road maintenance basically to reduce the area where there will be probable tree fall across the roads. There is only one person to maintain 65 miles of roads in the watershed and it would be fine for them to carry chainsaws but he doesn't have the time to keep all the roads clear. The idea is to take parts of those roads where we see a particular hazard and clear back about 50 feet. There will be places where we may not clear all the trees because we are trying to promote white oak and northern red oak. Also, we will not be clearing the roads that go across the stream-heads. It's not even-aged management from the standpoint we are not regenerating the trees. We would come back with a chainsaw to cut down the tree form vegetation. Regarding expense to maintain this, he said that every year you would do several stretches of road on maybe a 10-year rotation. The idea is that every year you harvest a little from the small group selections and individual tree selections to generate revenue to pursue the maintenance that is recommended in other areas.

Mr. Hicks said that the final plan will be very intentional about our water quality not being negatively impacted. He hoped to enhance the water quality not by logging, but taking some of the revenue from the logging and improving the roads so that conditions that exist now can be improved and reduce the sedimentation into the watershed.

Considerable discussion followed. Mr. Hicks and Mr. Hanks responded to various questions and comments from Council, some being, but are not limited to: why shelterwood cuts are not removed from the plan; discussion of aged stands; has there been discussion with the Conservation Trust about whether or not the clearing along the roads is an even-aged technique; is it true that Chinese silvergrass tends to spread more quickly in areas that have full sunlight; how have you researched the conclusion that daylighting the roads by 50-feet may not have an aesthetic impact on the Parkway views, especially in the winter; what steps are being taken to avoid the impact on water quality; what type of problems can occur if there isn't a 50-foot road maintenance; should we be concerned about a fire in our watershed and what is the real likelihood of a catastrophic fire; even if we do get rid of the Miscanthus, it is still quite a common species in our community; if we do more activities to open up the watershed, are we at a higher risk having an on-going maintenance problem of Miscanthus; how is Miscanthus spread; what is the best way to get rid of Miscanthus; how many miles of roadway is proposed for the 50-foot daylighting; has the City looked at the other area municipalities management plans to see what kind of direction they are moving forward with; and, have we explored the options of commercial logging or total preservation of the watershed property.

Upon inquiry of Vice-Mayor Mumpower, Mr. Hicks said they are seeking direction on this general plan in order to present Council with specific details. Again, this is not a complete plan. After direction is received by Council and the public, Mr. Hicks said that he will meet with the Conservation Trust of North Carolina, the Park Service and other interested individuals to write specific recommendations over a 10-year period. These recommendations will be brought back to Council on an annual basis, after having a session with the stakeholders, with a plan for the next year. He said it will all be in stages and this is the stage where they receive Council and public comment.

Councilman Davis agreed that the plan is very open-ended and he personally doesn't want any logging in the watershed. If we are going to daylight that large of area, he feels that would make itself more available to a heavier scale of logging and that is a concern. He was, however, certain that we did need a plan for watershed management and the Tree Commission agreed. He felt it was important to know how many miles of primary roadway we are talking about in order to access the secondary areas before we proceed. He wondered if it would be better off to hire a few extra crew people to do road maintenance rather than to go in and do a 50-foot daylighting and logging operation. He felt that we should call the document a watershed management plan, which better fits what we are doing. We have to come to terms with the fact that the wildlife habitat management is probably not the most important thing in the plan and he personally did not want to get into that type of management. He suggested that once the plan is formulated each year, after public input, with specific recommendations on what they would like to accomplish in the coming year, that it be taken to the Tree Commission for review prior to being presented to Council. There are mechanisms already in place to get the public input. And, he felt there may be the potential in the future for recreation in the watershed, more specifically in the Bee Tree watershed.

Councilman Dunn felt we are just wanting to lower the odds of having a catastrophic fire. Mr. Hicks said that he didn't think we can lower the risk of having the fire, but what they are trying to do is have some security that if we have their fire, we can get to it in a timely fashion. The slopes on the watershed are very steep and any roads that are running straight up, we will try to close those. We are looking to daylight the roads that are going around the topography climbing at a fairly slow angle.

Councilman Newman said that the plan is very open-ended. Council has to think about the policies we make now, which we might have a certain understanding of, but in ten years from now, a future Council or a future forester who is responsible for implementing the plan, could read this plan and interpret it to do much more extensive forestry than you are describing, because it is pretty broad. You could theoretically not violate that plan and cut a lot of timber off that watershed. City Manager Westbrook responded that it would be the staff's responsibility to proceed with the policy Council set. Mayor Worley also responded that future Council's could hire another forester and go in a total different direction.

Councilwoman Jones said that there is a lot of knowledge in the community and she has learned a lot from the public's input. She didn't feel that there was an urgency to adopt the plan right now and suggested we bring in the public to utilize the amount of knowledge they have to take us to the next place.

Councilman Newman's main goal is to protect the water quality. He asked Mr. Hanks, who responded, questions regarding whether it would be worthwhile to look at recreation activity at Bee Tree and if it would be consistent with protecting our water quality.

Upon inquiry of Mayor Worley, Mr. Hanks said that if Council approves this plan, no activity would start this year but that staff will develop the next step of the plan and bring it back to Council as part of the next year's budget. He said we don't have funding this year to start the process. He anticipated that in approximately six months, we would meet with the stakeholders, e.g., the Conservation Trust of North Carolina, Blue Ridge Parkway, Forest Service, Tree Commission, et al., and show them what the staff will be recommending with the possible cost estimate to see if the next stage can be implemented.

City Manager Westbrook said we are requesting approval of a broad, general public policy that staff can move forward on. Then we will come back and hone it down each year. There are several questions, but he feels those will be answered on an annual basis on a much smaller scale than the basic plan.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved to approve the adoption of the amended Forest Management Plan (as just presented by Mr. Hicks), which includes the removal of the small 10-15 acre clear-cuts, keeping the shelterwood cuts as a potential possibility and the 50-foot clearing along the primary roads as a option. This motion was seconded by Councilman Dunn.

Councilman Dunn asked Vice-Mayor Mumpower for a friendly amendment to change the name of the Plan to "Watershed Management Plan." Vice-Mayor Mumpower accepted the amendment.

Councilman Newman moved to amend the motion that we accept the information presented to Council and approve all parts of the proposed plan as presented, (1) including all the activities of removing exotic species (including Miscanthus) from the watershed; actions to maintain and rehabilitate roads and bridges on the property; close roads that are impacting water quality; improve signage on the watershed property; the activities that are proposed to restore American chestnuts on the property and manage the hemlock woolly adelgid infestation; and other specific recommendations that are in the plan, but defer a decision to implement any logging activities on the property until we develop a more comprehensive watershed plan; and (2) that we create an advisory task force of citizens to gather more public input on the development of a more comprehensive watershed plan that takes a look at some of the recreational issues that have been raised as a possibility, but doesn't necessarily preclude silviculture as a tool that can be used on the watershed, and hopes to gather a more thorough biological inventory of the property that we have so that whatever decisions we make is based on good science. This motion was seconded by Councilwoman Jones.

Councilwoman Bellamy suggested that the task force also consist of experts in soil, plant and animal life, and hydrology.

Vice-Mayor Mumpower understands Councilman Newman's intent to post limits before anything is done, but he felt the limits already exist. We are voting to ask our staff to press forward with developing a more specific sequential plan extended over time and to artificially impair their ability to do that by removing too many options is not something he personally would be comfortable in doing and he doesn't think it is necessary.

Councilman Davis said that if we accept the plan, it won't move forward until we get the specifics we have asked for in a more narrowed form. He would be comfortable in leaving the logging portion in the plan since it will not move forward until staff comes back with a more narrow plan after having received public input. In an effort to move the process along and get to the next level, he will support the original motion.

Councilwoman Jones noted that Council has a wonderful resource in Councilman Newman who has worked in the environmental area for ten years.

Mayor Worley said that if we adopt the plan tonight, nothing takes place until next year and until we have an opportunity to develop the specific plans for whatever will take place. That will be brought back to Council for approval as part of next year's budget. He would be supportive of adopting the plan with that in mind. He suggested adopting the plan but put a restriction that specifically says no logging activities until we have consulted with the Conservation Trust of North Carolina, Blue Ridge Parkway, and whoever else might be necessary for that consulting. Then, whatever comes out of that as a proposed plan will come back to Council for approval.

Councilman Newman explained the intent of his motion. He felt that it is different to say we are going to move forward with the consensus items, but we are going to put together a team of people with areas of expertise and different fields to come up with a comprehensive watershed plan. This is a plan that includes logging, more or less. He is not, in his motion, wanting to necessarily close the door on that question, but if we approve this plan we have approved a plan that includes more or less logging. That is the distinction in his mind and why he would prefer the way his amended motion is phrased.

Councilman Dunn said that a few trees are going to have to be cut down and if we have to cut them down, why don't we sell them. We are not talking about funding the City budget. The City has many plans already in place and felt we now needed a watershed management plan to make sure we are being good stewards of our resource.

Councilman Davis felt he could support the suggestion made by Mayor Worley.

Upon inquiry of Councilwoman Bellamy, Mayor Worley supported a task force but he felt that Council may have to work on how that is formulated and what the qualifications might be to serve on it. He wasn't sure if he was prepared to put that in his suggestion at this time, but it is something we need to seriously consider.

Councilwoman Bellamy said that we haven't brought out the financial ramifications of this plan. We can't even get a Water Authority budget approved by the three bodies necessary and wondered if this will be a major part of that budget. If Council is in agreement on formulating a task force, she felt it was important for Council to agree on how the task force's recommendations will be received.

Councilman Newman moved to call the question on his amendment to the original motion. This motion was seconded by Councilwoman Jones and carried unanimously.

The amendment to the motion made by Councilman Newman and seconded by Councilwoman Jones was defeated on a 3-4 vote, with Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "no."

Councilwoman Bellamy requested the original motion be rescinded so Council can vote on each part of the plan separately. Mayor Worley explained the motion was to adopt the plan as presented.

Mayor Worley then moved to amend the original motion to adopt the plan as presented tonight by Mr. Hicks with the additional provision that there be no logging activities until after a consultation with the Conservation Trust of North Carolina, the Blue Ridge Parkway, and whoever else might be necessary for that consulting, and a clear plan for any such activities be prepared in consultation with them and then brought back to City Council for final approval. This motion was seconded by Councilman Davis.

Mayor Worley supported an advisory group to review and offer additional input, but he would rather not deal with that in a motion now, but to give Council time to develop that motion in terms of qualifications of who might be on that task force and deal with that at a subsequent meeting.

The amendment to the original motion made by Mayor Worley and seconded by Councilman Davis carried on a 5-2 vote, with Councilwoman Jones and Councilman Newman voting "no."

The amended original motion as follows carried on a 4-3 vote, with Mayor Worley, Vice-Mayor Mumpower, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Bellamy, Councilwoman Jones and Councilman Newman voting "no": To adopt the Watershed Management Plan as presented tonight by Mr. Hicks with the additional provision that there be no logging activities until after a consultation with the Conservation Trust of North Carolina, the Blue Ridge Parkway, and whoever else might be necessary for that consulting, and a clear plan for any such activities be prepared in consultation with them and then brought back to City Council for final approval.

At 9:50 p.m., Mayor Worley announced a short break.

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B. MOTION RECEIVING THE FINAL REPORT OF THE DOWNTOWN SOCIAL ISSUES TASK FORCE ON GRAFFITI

Ms. Sasha Vrtunski, Director of City Development, explained that the Downtown Social Issues Task Force broke their work up by topics: Graffiti, Panhandling, Public Drunkenness and Homelessness. City Council has already heard the report regarding the 10-year Plan to End Homelessness and taken action. Because each of these issues is so complicated, the Task

Force is coming to Council in July with their graffiti recommendations and in August with the panhandling and public drunkenness recommendations.

The Task Force took the approach of recommending stiffer penalties for vandals while reducing the incentive for doing graffiti by asking property owners to remove graffiti within forty-eight (48) hours. This has been a proven approach in other cities; when graffiti is removed within the first 48 hours, the incentive for future vandalism is greatly reduced. In other cities building owners are required to remove the graffiti within the 48-hour period, or be faced with large fines. The Task Force recognized that this could be a large burden on property owners and worked to make the program as easy as possible. In conjunction with recommending such an ordinance, a companion volunteer clean-up group would be set up through Quality Forward to be able to respond to instances of graffiti, where the property owner has signed up to allow them to clean his or her property. This approach has the potential to get graffiti off of downtown buildings quickly with no penalties to building owners.

The Task Force is also recommending that the City install additional kiosks around downtown to provide spaces for flyers; create a website about the graffiti abatement program; support the Asheville mural project, and provide additional street police officers as a deterrent. Finally, the Task Force is also asking that City Council ask the District Attorney's office prosecute offenders to the greatest extent possible and seek full restitution for property owners

Advantages

- Removal of graffiti within 48 hours has been proven to be a deterrent to graffiti artists and vandals.
- These recommendations provide both "carrots and sticks" to combat the problem of graffiti in downtown.

Disadvantages

- The Volunteer program is quite ambitious and may have to be adjusted over time.
- There are some property owners that feel that 48 hours is too short of a time for them to remove graffiti, while at the same time supporting the concept in general.

City staff recommends City Council adopt the Downtown Social Issues Task Force's Graffiti recommendations. City Council may want to consider the 48-hour period to be business hours. City staff will evaluate each of the recommendations for legal sufficiency, and if any recommendation is unable to be carried out for legal reasons, staff will notify Council. Upon Council direction, staff will work on a draft ordinance for graffiti removal.

Mr. Patrick Whalen, Chair of the Downtown Social Issues Task Force and the Graffiti Sub-Committee, and Graffiti Sub-Committee members Ms. Leslie Huntley, Ms. Kitty Brown, and Ms. Kim MacQueen each addressed the concerns expressed by Council at their July 20, 2004, worksession on the recommendations presented. They explained that hundreds of hours by volunteers were spent in developing and understanding the problem of graffiti and then researching solutions and approaches tried by other cities. They highlighted the findings which are provided in detail with supporting research, reasoning and examples of model program in the 125 pages of the report and supporting appendix.

Sub-Committee members responded to Council's prior concerns/comments, some being, but are not limited to: how important it is for the quick removal of graffiti; who is responsible for the quick removal of graffiti – City government, property owners, volunteers or graffiti offenders; why the Committee is recommending a program of large community volunteers to remove graffiti cost-effectively and in order to heighten community-wide awareness of the problem; the research of over 50 cities that have various problems with graffiti; in cities where they take responsibility for the clean-up, they end up back-charging the property owner anyway at much higher rates than the fines the Committee is suggesting; property owners who do not remove the graffiti quickly are actually hurting the entire neighborhood by encouraging graffiti on adjacent buildings and near-by areas; as opposed to punishing the building owner with a fine or a City with clean-up charge, they felt it was important that we as a community aid the victim because the City might not be able to afford to, therefore they recommend the fine only if the building owner would neither clean the building themselves nor allow volunteers to clean it; volunteer clean-up crew is a challenge but it is working in other cities; and building owner liability.

The following are the recommendations, along with action steps for each one:

1. We recommend that the City of Asheville, in cooperation with Quality Forward, the Asheville Downtown Association, organizations like Project STEAM and Buncombe Alternatives, private property owners, business owners, and community volunteers, commits to removing *graffiti* within 48 hours after its appearance has been reported.
    - We propose a pilot removal program on a smaller section of downtown to be followed by its implementation throughout the central business district.
    - The program would involve the implementation of a graffiti reporting hotline at Quality Forward which would dispatch a volunteer force of "graffiti busters" to remove reported graffiti within 48 hours.

2. We recommend that the City pass a local ordinance which requires building owners to either remove all graffiti themselves within 48 hours of its being reported or to grant permission for their property to be cleaned by graffiti volunteers.
    - Violations of this ordinance would be enforced with a penalty of $25 a day for each day the graffiti remains after notice to the building owner.
    - In the case of acid etching, the release will allow the volunteers to cover the graffiti etching with a larger geometric etching or allow the owner to opt out of volunteer repair and agree to replace the window glass within 2 weeks.
    - It is also recommended that the City create a low interest loan fund to aid building owners victimized by acid etching who choose to replace their glass.

3. We recommend that the City create a web page describing Asheville's graffiti abatement program with a hot link to Quality Forward's website which would describe their role in the graffiti abatement program.

4. We recommend support of the Asheville Mural Project, a program of public art murals, as a viable deterrent to graffiti vandalism creating opportunities to develop neighborhood ownership and pride.

5. We recommend that the City add five additional round legal posting sites (similar to the library poster kiosk but much smaller) appropriately spaced around downtown in an effort to reduce and concentrate sticker/flyer graffiti

6. We recommend that the City Council issue a resolution to the District Attorney's office requesting:
    - The DA prosecute graffiti offenders, and in particular repeat offenders and acid etchers, to the fullest extent of the law;
    - The DA seek awards of full restitution to property owners for damage;
    - First-time offenders be sentenced to 100 hours of participation in graffiti cleanup and repair under the auspices of an organization like Buncombe Alternatives; and

- Repeat offenders and acid etchers be required to perform 500 hours of service in cleanup efforts.

7. We support a greater police presence on the street as a deterrent to graffiti and similar forms of vandalism.

8. Upon hearing the interest for a legal graffiti wall during public input sessions, the Task Force suggests the following:

   - The graffiti subcommittee will entertain proposals from individuals who are interested in coordinating such a legal wall. Proposals should include location, monitoring the site (loitering, letter, profanity), maintenance, etc. It is our intention that a legal wall be on private property and be privately monitored and maintained.

   After reviewing proposals, the subcommittee will make further recommendations to City Council regarding legal graffiti walls.

Task Force members then explained what a thorough 18-month investigative job they did in compiling this exhaustive report. Because of the discussion by Council at the July 20, 2004, worksession when the recommendations were submitted, the Task Force members were disappointed when City Council asked them to go back and research more. They suggested that in the future if Council creates a task force, they should be treated with more respect or the process needs to be altered. They only ask that Council accept their recommendations and that the Council put the same amount of time into any changes to their recommendations, as the Task Force put into making the recommendations. It will be up to Council to implement some, all or none of them.

Mr. Alan Ditmore, Leicester resident, felt the recommendations should be rejected because any rise in downtown rents will cause more homelessness.

Ms. Patricia Wald, employee on Broadway Avenue, appreciated the efforts of the Task Force, however, was appalled of penalizing the property owners for the actions of criminals. She felt the Police Department should make more of an effort to catch the graffiti criminals, send them to jail and fine them as well.

Ms. Rosanna Coates also spoke against fining property owners for the actions of graffiti criminals.

Mr. Bill Stamey urged Council not to penalize the people who own the property. He would be willing to pay more in his tax dollars to get the City to remove the graffiti.

Councilman Newman explained that part of the proposal is that the property owners can call Quality Forward and be placed on a list where the Quality Forward volunteers would remove the graffiti. If they are placed on the list, they would not be fined under any scenario. That option is out there for property owners to escape the burden of removing the graffiti themselves.

Ms. MacQueen clarified the recommendation in that they are mostly calling for a volunteer graffiti removal force, which is going to be operated out of Quality Forward, where we have a cadre of volunteers who are going to go onto property owners property with their permission and remove that graffiti for free. Should we find a property owner (absentee or one who just doesn't care), we would like to be able to ensure that there is a method to get that graffiti removed as well. The fine is Part B of the recommendation, with Part A being the volunteer graffiti removal force.

Councilwoman Bellamy felt that Council needs to decide how to deal with the recommendations they receive (prior to them being received) from the various task forces and committees they appoint. She thanked the Task Force for their 18-months of hard work on this difficult topic.

Councilwoman Jones was sorry that the Task Force felt they were not treated with respect. Council is well-intended and Council needs to figure out a better way of relaying that. She felt the report was impressive.

Councilman Dunn also was sorry the Task Force didn't think they were treated with respect. Sometimes Council has to give constructive criticism where they feel it is appropriate. He has a problem with this being limited to just the downtown because there is graffiti all over the City. He supported the recommendations, except he would not support fining property owners.

Vice-Mayor Mumpower said he did not mean to be disrespectful or inconsiderate at the July 20 worksession when he raised questions. Council is faced with a parade of issues and they have to be dealt with in a fairly brief time. When Council sees something they have a philosophical disagreement, they are compelled to raise a flag. He did not want to encourage a momentum of penalizing the victim. He thought his comments were on the basis of inquiry with the rest of Council and the Task Force vs. a criticism of the Task Force and if it came across that way, it was not intended. He felt there is a lot we can do before we go this far. Our Police Chief has some ideas and he thinks there are some models that show stronger law enforcement can make a difference. The volunteer effort sounds great, but his personal concern is that if we start out with that volunteer effort, he doesn't believe we will be successful in sustaining it, and if you don't, it comes back to the property owners and City taxpayers. He supported getting the volunteer effort started and seeing how it works. He would support Council creating a budget item for some rewards for catching the graffiti vandals. If graffiti is on your property, it's a form of community terrorism, not art. Council has concerns about the recommendations, but that doesn't mean we don't appreciate the work of the Task Force. He apologized for the pressures of the parades that Council has to deal with, but he doesn't apologize for trying to get to the best place for the most people.

Councilman Davis apologized that the Task Force felt disrespected. Being a former member of the Planning & Zoning Commission and a member on various other committees, he can understand the frustration the Task Force felt. He appreciated the hard work that has gone into the research. He has read the report and he assumed the worksession was the place where questions were asked. He is a small business owner in the downtown and has painted graffiti off his walls so he understands the problem. He does have several questions, e.g. how do we collect the fines, how to do impose the fines, and how do we enforce it.

Mayor Worley said that Council created the Task Force and charged them with a number of things to study and research, including graffiti, public drunkenness, panhandling and the issue already being implemented regarding homelessness. The two reports submitted have indicated they have done an outstanding job in that charge. Council does appreciate the efforts of the Task Force. Regardless of what actions the City takes or doesn't take, the effort is greatly appreciated. The bottom line is that the City could not function without the services provided by volunteers and this is one example of those services.

Councilman Davis moved to receive the report of the Downtown Social Issues Task Force on Graffiti, and that City staff be instructed to evaluate the recommendations for legal sufficiency and report back to Council on how to proceed further. The motion implies no decision on whether Council will implement any or all of the recommendation contained in the report. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Upon inquiry of Councilman Newman of a timeline, City Manager Westbrook said that staff will look at this issue and all the other issues we are working on for Council and come back as soon as possible with what we think the timeline will be. If the timeline is not quick enough, then Council can re-prioritize our issues and we will move forward. Councilwoman Bellamy wanted to make sure the Police Chief is implementing ideas he thinks is appropriate.

C. RESOLUTION NO. 04-162 - RESOLUTION ADOPTING THE WILMA DYKEMAN RIVERWAY MASTER PLAN AS PART OF THE COMPREHENSIVE PLAN FOR THE CITY OF ASHEVILLE

Planning & Development Scott Shuford said this is the culmination of a fairly long process that has involved extensive public input and considerable consultant expertise. This is a private sector plan in which economic development is a clear focus. The plan takes the approach that if you provide the vision and the enthusiasm, the private sector will take over and move it forward. The City's role under this plan is basically a fairly small role. The City would help support the riverway project and since that will be a state highway project, that is not a monetary support. That's a support from the standpoint of lobbying and trying to get it to occur. There will be some future zoning changes and regulatory changes that will be necessary to implement the plan and make it move forward. There will continue to be the same sort of incremental enhancement of recreational opportunities along the riverfront. In addition, there needs to be support from Council for private sector redevelopment so that when people come forward with redevelopment that is in keeping with the general direction of this plan and others in the City along the riverfront, that receives appropriate Council support.

Ms. Karen Cragnolin, Executive Director of RiverLink, introduced her Board members present, and said that several years ago, the City contracted with RiverLink for the preparation of a master plan for the urban areas of the French Broad and Swannanoa rivers. Later, the scope for this plan was broadened to include what is now called the Wilma Dykeman Riverway concept.

Working with a large, broad-based group of citizens and with City staff, RiverLink and its consultants have completed an Urban Riverfront Master Plan that envisions nodes of relatively dense urban development in a scenic riverfront setting. The plan capably marries land use, transportation, water quality, and economic development goals in a manner that implements City Sustainable Economic Development Task Force and Smart Growth objectives. Under the plan, the main road linking the two rivers will become a unified transportation corridor; economic development opportunities and strategies are identified and mapped out; and a land use pattern consistent with traditional development design throughout the City is encouraged. Additionally, environmentally sensitive restoration of the rivers to promote public access, recreation, and commerce is to be accomplished through plan implementation.

There has been considerable public involvement in the development of this plan and the extent of this involvement will be detailed to Council in the presentation of the plan. Additionally, RiverLink received preliminary feedback from City Council concerning the direction of the plan in January of this year.

Key future actions for the City called for in the plan include:

- Continued support for moving the Riverway project forward.
- Continued involvement in the recreational improvements called for in the plan.
- Consideration of changes to zoning requirements to implement key plan components.

- General support for private sector redevelopment of properties as proposed in the plan.

Pro's

- Major new transportation initiative has the potential to relieve traffic congestion and spur new economic development.
- Potential to dramatically increase tax base through private sector redevelopment.
- Strong public support for proposal due to its comprehensive treatment of urban riverfront issues, including economic development, transportation, recreation and beautification.

Con's

- May result in displacement of some existing uses along the river area through market forces or road widening.

The plan supports the following Goals and Objectives of the Strategic Operating Plan:

Economic Development Goal # 3, Objective A - Mobilize collective resources and goals by implementing a unified regional economic development plan. Riverfront redevelopment has been a regional goal since the Sustainable Economic Development Task Force made it a priority area in its strategic plan report. Consequently, the Urban Riverfront Master Plan can be considered regional in scope as a critical economic development tool.

Natural and Built Environment Goal # 2 - Increased greenway benefits equitably throughout Asheville. The Urban Riverfront Master Plan contains a greenway network that links the north, central and east parts of the City in a continuous fashion.

Mr. Shuford said that City staff recommends City Council adopt the Wilma Dykeman Riverway Master Plan as part of the Comprehensive Plan for the City of Asheville.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower supported the Plan, but with some qualifications. He felt we are downplaying the importance of the plan. He feels it is the project of the century. When you look at the scope and impact of what is being proposed, it will lay a touch on this City that will change us profoundly forever. He personally felt that it will, eventually, involved significant City dollars. He knows RiverLink has great success in reaching into other generous pockets and have helped get things happen and he doesn't doubt they will do that from this point forward.

Councilwoman Jones moved for the adoption of Resolution No. 04-162. This motion was seconded by Councilman Davis and carried unanimously.

Ms. Cragnolin presented City Council with a check in the amount of $50,000 for the bridge at the French Broad River Park Phase 4.

RESOLUTION BOOK NO. 28 – PAGE 315

D. RESOLUTION APPOINTING A MEMBER TO THE BOARD OF ADJUSTMENT

Vice-Mayor Mumpower said that this is the consideration of appointing an alternate member to the Board of Adjustment.

Bradley Taylor has resigned as an alternate from the Board of Adjustment, thus leaving an unexpired term until January 21, 2006.

On July 20, 2004, it was the consensus of City Council to instruct the City Clerk to arrange interviews for Ross Dryer and John Kiser.

Councilwoman Bellamy moved to delay the appointment of this alternate position and re-advertise the vacancy. This motion was seconded by Councilman Davis and carried unanimously.

E. RESOLUTION NO. 04-163 - RESOLUTION APPOINTING MEMBERS TO THE HISTORIC RESOURCES COMMISSION

Vice-Mayor Mumpower said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of Keith Hargrove and Kevan Frazier, as members on the Asheville-Buncombe Historic Resources Commission, expired on July 1, 2004.

At City Council's worksession on June 15, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Keith Hargrove to serve a three year term, term to expire on July 1, 2007, or until his successor has been appointed.

At City Council's worksession on July 20, 2004, City Council instructed the City Clerk to arrange interviews for Suzanne Jones, Jaan Ferree and Matthew Marquis. Mr. Marquis was unable to attend the interview.

After Council members spoke in support of both candidates interviewed, Suzanne Jones was unanimously appointed to serve a three year term, term to expire July 1, 2007, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 316

VI. OTHER BUSINESS:

Claims

The following claims were received during the period of July 9-15, 2004: Vincent Ross (Sanitation), Elizabeth Bryson (Fire), Ledgewood Village (Fire), Ledgewood Village (Water), Edith McCants (Sanitation), Daniel Sherlin (Sanitation) and Charles Williams (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Rosanna Coates, adjoining property owner to 27 Catawba Street, explained that she recently purchased her property but was not notified of Council's public hearing to issue a conditional use permit for 27 Catawba Street on July 13, 2004. City Manager Westbrook said that he would have City staff investigate any options for Ms. Coates, but that the City of Asheville obtains the addresses for mailings from Buncombe County.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 11:22 p.m.

Magdalen Burleson	Charles R Worley
CITY CLERK	MAYOR

Tuesday – August 10, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Col. Ray Green, Veteran of the US Air Force, led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Mumpower gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

Councilwoman Bellamy asked that Consent Agenda Item "J" be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 27, 2004

B. RESOLUTION NO. 04-164 - RESOLUTION SELLING PROPERTY AT THE CORNER OF WYOMING ROAD AND KEEBLER ROAD IN THE KENILWORTH COMMUNITY TO INNOVA HOMES, LLC

Summary: The consideration of a resolution authorizing the Mayor to convey property at the corner of Wyoming Road and Keebler Road to Innova Homes, LLC, in the amount of $4,400.

On July 27, 2004, the City Council directed the City Clerk to advertise for upset bids on a parcel of land at the corner of Wyoming Road and Keebler Road in the Kenilworth Community.

The land at the corner of Wyoming Road and Keebler Road is an irregular triangle shaped residential zoned lot comprising 0.07 acre±. From street grade it slopes up substantially to the rear property line and is covered with non-significant trees, vines and brush. The size, shape and topography render the lot unsuitable as a home site. The subject parcel is a remnant of property acquired at the time Wyoming Road was improved several years ago and is situated diagonally across from the park. The tax value is $4,400. The bid from Innova Homes LLC, owner of an adjacent parcel is in the amount of $4,400. Innova proposes to construct a house on the adjacent property for sale. The proposed construction is consistent with the Strategic Plan policy of encouraging infill development.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

- A non-buildable lot will be assembled with an adjoining parcel to provide a more coherent land use pattern
- The sale of this lot to Innova, while not essential to the proposed infill development, will enhance the development by improving the access.

The advertisement for upset bids ran in the Asheville Citizen-Times on July 30, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Innova Homes, LLC, in the amount of $4,400 was not upset and the sale to Innova Homes, LLC should be approved.

Planning Department staff recommends adoption of the resolution authorizing the Mayor to convey property at the corner of Wyoming Road and Keebler Road to Innova Homes, LLC, in the amount of $4,400.

RESOLUTION BOOK NO. 28 – PAGE 317

C. RESOLUTION NO. 04-165 - RESOLUTION APPROVING A GRANT FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution approving a grant from the Federal Aviation Administration in an amount not to exceed $2,764,492.

The Federal Aviation Administration (FAA) has offered a grant agreement to the Asheville Regional Airport. This grant, in an amount not to exceed $2,764,492, is for the project consisting of: construct service road (Perimeter Road, Phase III), update Airport Master Plan Study (Terminal Area Plan and Forecast), expand apron (includes rehabilitation), expand maintenance building, and install perimeter fencing.

Staff recommends adoption of the resolution authorizing the Mayor to execute the grant agreement for Project No. 3-37-0005-29.

RESOLUTION BOOK NO. 28 – PAGE 318

D. RESOLUTION NO. 04-166 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF INSURANCE, OFFICE OF STATE FIRE MARSHAL, AND N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM, FOR MAINTAINING THE PERMANENT SAFETY SEAT CHECKING STATION

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Insurance, Office of State Fire Marshal, for maintaining the currently established permanent safety seat checking station and procurement of additional equipment for Asheville Fire and Rescue Department; and an associated budget amendment, in the amount of $4,000, to receive the grant money.

The City of Asheville Fire and Rescue Department requested $4,000 from the Office of State Fire Marshal to maintain the permanent child safety seat checking station and for equipment to assist in this project. City staff was successful in obtaining those funds. We received the grant in order to purchase additional safety seats and associated equipment and to add graphics to a trailer supplied in an earlier grant.

Pros:

- No matching funds are required.
- These funds will significantly enhance our ability to effectively provide quality safety seat equipment and associated devices.
- Currently, the trailer that was awarded in an earlier grant has no markings or graphics to identify it as Asheville Fire and Rescue and to promote the safety program.

Cons: None noted.

City staff recommends City Council authorize the City Manager to enter into an agreement with the N.C. Dept. of Insurance, Office of State Fire Marshal, for maintaining the currently established permanent safety seat checking station and procurement of additional equipment for Asheville Fire and Rescue Department; and adopt the associated budget amendment, in the amount of $4,000, to receive the grant money.

RESOLUTION BOOK NO. 28 – PAGE 319

E. ORDINANCE NO. 3145 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF INSURANCE, OFFICE OF STATE FIRE MARSHAL, AND N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM, FOR MAINTAINING THE PERMANENT SAFETY SEAT CHECKING STATION

See Consent Agenda "D" above.

ORDINANCE BOOK NO. 21 - PAGE 271

F. RESOLUTION NO. 04-167 - RESOLUTION APPROVING ACCESS TO MILLS RIVER WATER TREATMENT PLANT FOR WETLANDS PLANT TRANSFER

Summary: The consideration of a resolution approving access to Mills River Water Treatment Plant for wetlands plant transfer.

Dr. Tom Burnet of the Mills River Watershed Conservation Group has requested permission to remove and transfer wetlands plants from the river bank and surrounding areas along City of Asheville property at the Mills River Water Treatment Plant to adjacent properties that require bank stabilization. Dr. Burnet is part of the environmental project in the Mills River area to oversee the protection and continued improvement of water quality of the Mills River.

Dr. Burnet has requested access to City of Asheville property on August 20 and 21, 2004, to remove small amounts of the following plants:

Genus	Species	Common Name	Wet Class	Notes
Andropogon	virginicus	Broomsedge Bluestem	FAC-	WA-inv
Carex	frankii	Frank's Sedge	OBL	WA
Carex	lupulina	Hop Sedge	OBL	WA
Carex	scoparia	Broom Sedge	FACW	WA
Carex	vulpinoidea	Fox Sedge	OBL	WA
Cyperus	esculentus	Chufa Flatsedge	FAC	WA-inv
Echinochloa	crus-galli	Barnyardgrass	FACW-	WA-nn?

Helenium	autumnale	Common Sneezeweed	FACW+	WA
Juncus	gymnocarpus	Pennsylvania Rush	OBL	WA
Juncus	tenius	Poverty Rush	FAC	WA-inv
Scirpus	cyperinus	Woolgrass	OBL	WA

WA = Water Authorty (City of Asheville land)
inv = invasive, nn = non-native

Indicator categories

Code	Wetland Type	Comment
OBL	Obligate Wetland	Occurs almost always (estimated probability 99%) under natural conditions in wetlands.
FACW	Faculative Wetland	Usually occurs in wetlands (estimated probability 67%-99%), but occasionally found in non-wetlands.
FAC	Faculative	Equally likely to occur in wetlands or non-wetlands (estimated probability 34%-66%).
FACU	Faculative Upland	Usually occurs in non-wetlands (estimated probability 67%-99%), but occasionally found on wetlands (estimated probability 1%-33%).
UPL	Obligate Upland	Occurs in wetlands in another region, but occurs almost always (estimated probability 99%) under natural conditions in non-wetlands in the regions specified. If a species does not occur in wetlands in any region, it is not on the National List.

Dr. Burnet plans on transferring some of these plants to adjacent properties which are having storm water runoff problems which are eroding the river banks. The transfer of wetlands plants will help stabilize the river banks and help promote water quality by decreasing runoff in to the river. Access will be from 8:00 am to 5:00 pm and requires picture identification, signage of liability waiver and restoration of any plant removal areas if requested by staff.

City staff recommends City Council approve access to Mills River Water Treatment Plant river bank area for wetlands plant removals.

RESOLUTION BOOK NO. 28 – PAGE 320

G. RESOLUTION NO. 04-168 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR GRANT FUNDS THROUGH THE N.C. PARKS AND RECREATION TRUST FUND TO ASSIST WITH RENOVATIONS TO MEMORIAL STADIUM

Summary: The consideration of a resolution authorizing the Mayor to enter into a grant agreement for $248,800 with the N.C. Dept. of Environment and Natural Resources, Division of

Parks and Recreation, for funds through the N.C. Parks and Recreation Trust Fund, for the renovation of Memorial Stadium; and an associated budget amendment, in the amount of $263,800, to receive the grant funds and donations for the project.

Resolution No. 04-26 approved by the Asheville City Council on January 27, 2004, authorized the City Manager to enter into the grant agreement with the N.C. Dept. of Environment and Natural Resources, for the renovation of Memorial Stadium. The State of North Carolina requires the Mayor sign the agreement, therefore, the resolution is being brought back to Council for ratification and authority for the Mayor to sign.

The budget amendment of $263,800 consists of a grant from the State of North Carolina, N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation in the Parks and Recreation Trust Fund and $15,000 from donations. The budget amendment supports the ongoing fundraising campaign to raise funds to support the renovations at Memorial Stadium.

Pros:

- Compliance with the grant guidelines as required by the State of North Carolina
- City can move forward in the grant award process in preparation to implement the grant
- City can implement the project and expend the funds to start work on the next phase of work at Memorial Stadium

Cons: None noted.

The Parks and Recreation Department recommends City Council authorize the Mayor to enter into a grant agreement with the N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation, for funds through the N.C. Parks and Recreation Trust Fund, and to adopt the budget amendment, in the amount of $263,800, to receive the grant funds and donations for the renovations at Memorial Stadium.

RESOLUTION BOOK NO. 21 – PAGE 321

H. ORDINANCE NO. 3146 - BUDGET AMENDMENT TO REFLECT GRANT FUNDS RECEIVED AND DONATIONS TO ASSIST WITH THE RENOVATIONS TO MEMORIAL STADIUM

See Consent Agenda "G" above.

ORDINANCE BOOK NO. 21 - PAGE 273

I. MOTION SETTING A PUBLIC HEARING ON AUGUST 24, 2004, TO AMEND THE CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

Summary: The consideration of a motion to set a public hearing on August 24, 2004, to consider amending the Annual Consolidated Action Plan for the Community Development Block Grant and HOME programs.

City Council approved the 2004 Action Plan for the CDBG and HOME programs on April 13, 2004. Noted in that plan was the need for later amendment to allocate an additional $161,843 in HOME funds for the new American Dream Downpayment Initiative (ADDI).

Staff requested proposals from outside agencies to operate the ADDI program, and the Asheville Regional Housing Consortium Board has reviewed the proposals submitted and made recommendations for allocating the funds. Since this constitutes a substantial amendment to the Action Plan, a public hearing is required.

Details of the proposed allocation will be provided prior to the public hearing.

Pros:

- The public hearing is necessary in order to utilize the additional funds

Cons: None noted

City staff recommends City Council set a public hearing on August 24, 2004, to consider amending the 2004 Action Plan.

J. BUDGET AMENDMENT FOR MOUNTAIN HOUSING OPPORTUNITIES NORTHPOINT COMMONS

This item was removed from the Consent Agenda due to a conflict of interest.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA DUE TO A CONFLICT OF INTEREST

ORDINANCE NO. 3147- BUDGET AMENDMENT FOR MOUNTAIN HOUSING OPPORTUNITIES NORTHPOINT COMMONS

Vice-Mayor Mumpower moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

Summary: The consideration of a budget ordinance, in the amount of $25,000, to recognize repayment by Mountain Housing Opportunities (MHO) of a HOME Predevelopment Loan and to budget those funds toward the construction of the same project, Northpoint Commons.

Mountain Housing Opportunities was awarded $25,000 in HOME funds as a Predevelopment Technical Assistance Loan in the 2001 Consolidated HOME and CDBG Action Plan. Such loans are due for repayment when permanent funding for the project is available but are forgivable if the project does not go ahead. The 2002 Action Plan provided for $395,000 for project construction, including the anticipated proceeds of the loan repayment.

Since the project is now moving forward, the loan has been repaid. A budget ordinance is required to recognize receipt of the $25,000 and to budget it to construction of Northpoint Commons.

Community Development staff recommends adoption of the budget amendment, in the amount of $25,000.

Councilman Newman moved for the adoption of Ordinance No. 3147. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

Mayor Worley said that this public hearing was originally scheduled on July 27, 2004, however, the attorney for the owner of the property said that they are working with the City Attorney's Office to negotiate a potential resolution and asked that the matter be continued until August 10, 2004.

Mayor Worley said that the property owner has removed the person from the unfinished basement and has committed to make the remaining repairs prior to September 14, 2004. Therefore, City staff requests that this public hearing be continued until September 14, 2004.

Councilwoman Bellamy moved to continue the public hearing until September 14, 2004. This motion was seconded by Councilman Davis and carried unanimously.

B. PUBLIC HEARING TO CLOSE ROBERTS ROAD EXTENSION

RESOLUTION NO. 04-169 - RESOLUTION TO PERMANENTLY CLOSE ROBERTS ROAD EXTENSION

Mayor Worley opened the public hearing at 5:10 p.m.

Assistant Public Works Director Dave Cole said that this is the consideration of a resolution to close Roberts Road Extension. This public hearing was advertised on July 16, 23, 30 and August 6.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use as a public street Roberts Road Extension.

Closure of this section of right-of-way will not deny any of the abutting properties a reasonable means of ingress or egress. There are two lots that abut this section of right-of-way. They are identified by PIN Nos. 9657.10-35-4414 and 9657.10-35-6577. All abutting property owners have joined in the petition to close.

City staff recommends that City Council adopt the resolution to close Roberts Road Extension.

Mr. David Day, abutting property owner, asked City Council for their support in closing Roberts Road Extension.

Mayor Worley closed the public hearing at 5:15 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-169. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 322

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROPOSED ADDITION TO THE BUNCOMBE COUNTY DETENTION FACILITY LOCATED AT 20 DAVIDSON STREET

ORDINANCE NO. 3148 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROPOSED ADDITION TO THE BUNCOMBE COUNTY DETENTION FACILITY LOCATED AT 20 DAVIDSON STREET

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:16 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Shuford said that this is the consideration of the issuance of a conditional use permit for the proposed addition to the Buncombe County Detention Facility located at 20 Davidson Drive.

The 2025 Asheville City Development Plan and the Center City subsection supports the efforts to group together the governmental uses downtown. These plans also encourage infill development at locations where the infrastructure is in place to service those uses at the least amount of cost. The Smart Growth Policy also supports these common sense efforts.

Asheville City Council approved an earlier version plan for the Buncombe County Detention Center addition on 8-26-03.

Nearly a year ago, the City Council reviewed the Buncombe County Detention Center addition. Since then the County has re-worked and expanded the building and has changed the design significantly. The parcel for the project is bordered by streets on 3 sides; Davidson Street, Marjorie Street and Valley Street (City Exhibit 3 – Location Map). The project requires a conditional use permit because it is a governmental use. The proposed new jail facility will be located on most of the lot, which totals .67 acre. The new structure will be 92,453 square feet and comparable to a 6 story building. The prior proposal contained about 53 thousand square feet (City Exhibit 3 – Elevation Drawings). The proposed facility will share the existing detention center entrance on Davidson Street. A second entrance along the Marjorie Street façade will be used rarely at first but may have greater application with a future addition. The overall height of the building will not exceed the balustrade of the City Hall building. The height issue was a requirement from City Council in the agreements to sell the lot to Buncombe County (City Exhibit 3 – Site Plan).

The new facility will provide two 40-person dorms (one for men and one for women) as part of the work release program. The other portion of the facility will provide three 40 person cell pods as part of the expansion of the prison facilities. The three 40 person cell pods can be retrofitted at a future date to accommodate twice as many prisoners.

Because this is a conditional use permit, if approved, the uses on the site are limited to those applied for during this permit review process. The site plan and building façade elevations are submitted for approval. Deviating from the plan would require a modification of the conditional use permit following an approval process similar to what we are undertaking now.

For Detention Center Facilities in the Central Business District, these additional special requirements also apply. City Council must state if the project meets or does not meet each of the standards for Detention centers, jails and related correctional facilities found in section 7-16-2(c) of this chapter.

Design Standards- The project must comply with the design guidelines for projects located in this area: The project was reviewed by the Downtown Commission for compliance with the design guidelines. The Downtown Commission voted to approve the design and allowed a variance for fewer openings for the street facing facades because of the special nature of the use. The project appears to meet the design guidelines for downtown.

Fencing- No chain link, barbed wire, razor wire or similar fence material shall be used in areas that are visible from adjacent properties or from the public way unless specifically permitted by the City Council. No fenced areas are proposed on the plan.

Lighting- Lights in pedestrian areas and parking lots shall not exceed 16 feet in height. All lights other than those in public pedestrian areas including security lights shall be full cut-off type fixtures, and shall not produce direct glare or light trespass on adjacent properties. Lighting provided as a part of the project will comply with these requirements.

Signage- All signage must be reviewed and approved as part of the conditional use permit application. City Council may attach conditions addressing the location, size, number, and illumination of signs based upon circumstances related to the location and impact of the sign. The detention center additions will share an entrance with the Buncombe County Detention Center located on Davidson Street. No additional signage will be required.

Operational Standards- No outdoor speaker systems shall be permitted. Vehicle entering and or leaving the facility shall not use sirens or emergency lights unless responding to an emergency. No outdoor speaker systems are proposed for the project and vehicles will not use sirens unless responding to an emergency.

Loading and unloading- All loading and unloading areas shall be located internally on the site and screened from view from adjacent properties and public ways. All loading and unloading activities shall take place between the hours of 6:00 am and 9:00 pm unless specifically waived by the City Council. Loading and unloading of inmates will take place as part of in the existing detention facility inside to the building.

Exercise yard – Exercise yards and other outdoor activity areas shall be located internally on the site and screened from view from adjacent properties and public ways. Exercise yards are inside the building and are not visible from adjacent properties or public ways.

Vehicle storage - All vehicles associated with the use shall be stored in an enclosed or screened area. The vehicle storage area may be screened with vegetation, fences, a combination or fences and landscaping material or other means designed to effectively screen the stored vehicles from adjacent properties and the public way. No vehicles will be stored on the property. Parking provided by the parking area at the corner will be used by Buncombe County employees.

City Council must take formal action as set forth in section 7-9-9(c) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2 (c)).

1. **That the proposed use or development of the land will not materially endanger the public health or safety.** The proposed development will comply with all health and safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.** This site is an infill site and given this context the proposal is compatible with the site. In addition the highest point of the roof of the detention center addition will be below the balustrade of the City Hall Building. This will protect the view of City Hall from other vantage points from east and south.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.** The project is within what may be considered the government complex. This is the best location for this special use. Because the design is integrated into the existing detention facility this will minimize any negative spillover to adjacent uses.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.** This area of downtown is quite urban in form. The new structure will be smaller than neighboring buildings and will reinforce this urban fabric by fronting on the street at the sidewalk level. The design of the new facility was approved by the Downtown Commission as a part of the Downtown Design Review for new construction.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.** This detention facility would be ill placed most anywhere else in the downtown area. Expanding the use adjacent to the other detention facility will simplify operations for both. This proposal is more fiscally sustainable in the long run.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.** The project was reviewed by utility and safety providers. No items of concern were noted.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.** The detention center addition is not expected to generate a large number of additional trips or create a traffic hazard.

In summary, the County is seeking to take care of its space needs for the Detention Center by providing a well-designed addition connecting to the main facility. The management of the new facility can be handled in a fiscally conservative manner through shared facilities, access and operations. The location of the expansion in the government complex area of downtown provides some reassurances to the downtown business and residential community. The design will not negatively impact the views of City Hall and County Courthouse.

Pros:

- The proposed addition is appropriately located adjacent to the existing detention facility.
- The proposed design is a seamless match to the existing detention facility.
- Views of City Hall and Buncombe County Courthouse are protected.

Cons:

- Expanding detention facilities is controversial to some people.
- The prime real estate is not available for other office or governmental uses.

The TRC Commission at their July 19, 2004, meeting voted to recommend approval of the Conditional Use Permit with conditions that the outstanding TRC issues are satisfied. Staff also recommends approval of the rezoning request.

Mr. Harry Pilos felt this is probably a good plan, however, the County still owns the Union Transfer Building and he felt they needed to first consider what will happen to that building because it is difficult for private development to build something that is compatible to the growth in that area.

Upon inquiry of Mayor Worley, City Attorney Oast said that Council can't place a condition on this permit unless there was some substantial connection, e.g., geographical. And, as far as the disposition or the use of another property, he felt placing a condition would be a stretch.

Councilman Davis said that there is a subcommittee being formed in the Downtown Commission to look at the governmental use of lands on slopes and in other places in the City. He said that he would be happy to keep the Council informed as work progresses.

After rebuttal, Mayor Worley closed the public hearing at 5:30 p.m.

Upon inquiry of Councilman Dunn, Mr. Jon Creighton, Director of Planning and Development for Buncombe County, explained that this addition will not be the end. When the existing jail was built in the early 1990's they were projecting that around 2002 they would start experiencing over-crowding. Last year the average daily population was 359 and the capacity is 356. Our current projections show that around 2012 we will begin experiencing over-crowding again. As the community grows, we need larger facilities to accommodate the community. It's a fine line of what you can afford and how far can you go out in the future in order to meet those needs.

Upon inquiry of Councilwoman Jones, Mr. Creighton said that the expansion will cost approximately $23 Million. He said that the EMS expansion was cost-prohibitive and will not be in the future expansion area.

Councilwoman Jones was it was discouraging to think that in 10 years we will have doubled the amount of people in the criminal justice system. She wished the $23 Million could be used for our education system and after-school programs that could keep people out of the criminal justice system. She calculated that each bed costs taxpayers $115,000. She was concerned that the schools are not getting the funding that they need, but we find money to build larger jails.

Upon inquiry of Councilman Newman, Mr. Shuford said that there were no concerns that the expansion will adversely impact the other revitalization efforts on other adjacent properties.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that in the 2025 Plan there is a provision made to encourage a Master Plan. Also, there is a provision in the City-County agreement to transfer the property to the County that they work together towards the development of a Master Plan. He agreed that having a better idea of what the County's future plans are on the property that they own in this area and throughout downtown will be helpful as people in invest in our area and we try to maximize other property for private sector purposes, opposed to governmental purposes.

Councilwoman Bellamy felt that it would be nice for people to look forward to some other development coming into Asheville on this side of town that is inviting and welcoming to our City, opposed to the large jail facilities. Mr. Shuford responded that Council has, in their Strategic Operating Plan, asked staff to work on gateway plans and the College Street/Charlotte Street area is a big gateway to our downtown and it will figure prominently in our plans.

Councilman Davis moved for the adoption of Ordinance No. 3148, granting a conditional use permit for the proposed addition to the Buncombe County Detention Facility located at 20 Davidson Drive, subject to the outstanding Technical Review Committee conditions being satisfied. This motion was seconded by Councilman Dunn and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 277

D. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS THE HENDERSONVILLE ROAD AREA TO COMMERCIAL BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT AND INDUSTRIAL DISTRICT

ORDINANCE NO. 3149 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS THE HENDERSONVILLE ROAD AREA TO COMMERCIAL BUSINESS II DISTRICT, COMMERCIAL INDUSTRIAL DISTRICT AND INDUSTRIAL DISTRICT

Mayor Worley opened the public hearing at 5:42 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as the Hendersonville Road area to Commercial Business II District, Commercial Industrial District and Industrial District. This public hearing was advertised on July 30 and August 6, 2004.

The 40 properties make up the Hendersonville Road Area that was annexed on June 30, 2004. They are located in the block bounded by Hendersonville Road to the north, Buck Shoals Road to the south, Old Shoals Road to the west, and Glen Bridge Road to the north. Surrounding land uses are varied with large industrial properties to the north, commercial establishments to the east, residential properties to the south, and commercial businesses to the west. These surrounding properties, as well as the parcels in the annexation area until initially zoned by the City, are subject to Buncombe County's Limestone Township Zoning Ordinance. Only the properties to the east across Hendersonville Road are currently in the City's jurisdiction; they are zoned CBII.

According to Buncombe County Tax information and field observation, there are a variety of land uses within the annexation area. A number of banks, retail businesses, and offices along with a post office and a few multi-family buildings are located along Hendersonville Road to the east of the area. Numerous properties fronting on Glen Bridge Road and Walden Drive in the area's center contain office/warehouse or multi-purpose type commercial buildings. Some large vacant properties are also located along Walden Drive. The Day International Plant is located on the largest and westernmost parcel in the annexation area. The properties fronting Hendersonville Road are presently zoned Community Service (CS) under Buncombe County's Limestone Zoning Ordinance, while the remaining parcels are zoned Employment (EMP), an office/wholesale/industrial district.

The Planning and Development Department recommends an initial zoning of Community Business II (CB-II), Commercial Industrial (CI), and Industrial (IND) Districts for the area as shown on the Exhibit A map. Staff recommends CB-II for the area along Hendersonville Road since it mirrors the zoning to the east across Hendersonville Road and accommodates the existing uses in the proposed district. Commercial Industrial (CI) zoning seems appropriate for the existing commercial and office/warehouse uses along Walden Drive, Glen Bridge Road, and Buck Shoals Road. Vacant properties in the proposed district can also be developed according to the CI zoning district, which allows a wide range of commercial and industrial uses. The Industrial (IND) designation accommodates the existing industrial use of the large Day International plant.

Advantages (Pros)
- The proposed zoning accommodates existing uses in the proposed districts.
- Non-conforming use situations, if any, are minimized.
- CB-II zoning for the west side of Hendersonville Road continues the pattern set by the CB-II zoning across the highway.

Disadvantages (Cons)
- None

In consideration of the above and the adjoining zoning and land uses, the proposed initial zoning appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval of the proposed initial zoning of the properties within the recently annexed Hendersonville Road Area. The Planning and Zoning, by a unanimous vote of 5-0 at its July 7, 2004, meeting, recommends approval as well.

Mayor Worley closed the public hearing at 5:46 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Upon inquiry of Councilwoman Bellamy, Mr. Heard said there will be no non-conforming uses associated with this initial zoning.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3149. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 282

E. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS THE SWEETEN CREEK ROAD AREA TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT, RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, COMMUNITY BUSINESS I DISTRICT, HIGHWAY BUSINESS DISTRICT AND INSTITUTIONAL DISTRICT

ORDINANCE NO. 3150 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS THE SWEETEN CREEK ROAD AREA TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT, RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, COMMUNITY BUSINESS I DISTRICT, HIGHWAY BUSINESS DISTRICT AND INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 5:48 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as the Sweeten Creek Road area to RS-4 Residential Single-Family Medium Density District, RM-16 Residential Multi-Family High Density District, Community Business I District, Highway Business District and Institutional District This public hearing was advertised on July 30 and August 6, 2004.

The 190 properties make up the Sweeten Creek Road Area that was annexed on June 30, 2004. Most of the properties are located on the east side of Sweeten Creek Road south of the Royal Pines subdivision and north of Pensacola Avenue. Included are also properties on the west side of Sweeten Creek Road south of Buck Shoals Road.

Surrounding land uses include primarily single-family residences to the north, east and west that are currently zoned as part of Buncombe County's Limestone Township Zoning Area Properties to the west across Sweeten Creek Road include a number of commercial properties, a place of worship, and a large vacant parcel. Zoning districts for these properties, which are in the current City limits, are Institutional (INST), Commercial Industrial (CI), and Industrial (IND).

According to Buncombe County Tax information and field observation, there are a variety of land uses within the annexation area. Two large condominium developments as well as some large vacant and residential properties are located the north of the area. Further south along Sweeten Creek Road a nursing home facility is located on three lots and further south of that are two large undeveloped properties. Single-family subdivisions occupy land along both sides of Weston Road to the east of the area. South of Weston Road land use is mostly multi-family residential with a commercial properties located south of Buck Shoals Road. The properties are presently zoned a mixture of Single-Family Residential (R-1), Residential (R-2), and Commercial Service (CS) under Buncombe County's Limestone Zoning Ordinance.

The Planning and Development Department recommends initial zonings of Residential Single-Family Medium Density (RS-4), Residential Multi-Family High Density (RM-16), Community Business I (CB-I), Institutional (INST) and Highway Business (HB) Districts for the area.

Staff recommends RM-16 for much of the area on the east side of Sweeten Creek Road since it would accommodate the high density condominium and multi-family developments located in area as well as allowing vacant and single-family lots to be redeveloped for multi-family use. RS-4 zoning appears to be well suited for the single-family lots in the subdivisions along Weston Road to the area's east. INST is a good fit for the three properties along Sweeten Creek road that contain a nursing home and rehabilitation center. On properties immediately to the south, the INST zoning would accommodate the planned mixed use development of two larger vacant parcels and the existing use of two properties containing a BellSouth phone service station and a PSNC pumping station, respectively, and allow for the appropriate redevelopment of the parcels in the future. An individual parcel at the five-point intersection of Sweeten Creek Road and Pensacola Avenue was deemed appropriate for CB-I zoning, allowing small scale office/business uses, by the Planning & Zoning Commission. Finally, HB would allow the continued use of four properties in the Sweeten Creek/Buck Shoals/Hendersonville Road triangle as commercial establishments.

According to staff's research, only one non-conforming use would be created, where a duplex currently exists in the area proposed for RS-4 zoning. The proposed zoning designations are also similar to the current Limestone Township Zoning for the area, which remains in effect until zoned by the City.

Based on comments from members of the public at their meeting on July 7, 2004, the Planning & Zoning Commission voted to amend the initial zoning districts proposed by staff for the following six (6) properties:

PIN# 9654.14-43-3218	RM-16 to INST/RS-4
PIN# 9654.14-42-4818	RM-16 to INST/RS-4
PIN# 9654.14-42-4606	RM-16 to INST
PIN# 9654.18-42-2491	CB-II to INST
PIN# 9654.18-42-5531	CB-II to INST
PIN# 9654.18-41-6502	RM-16 to CB-I

Advantages (Pros)
- The proposed zoning pattern accommodates existing land use uses in the area.
- The proposed zoning allows for the appropriate development/redevelopment of large vacant and single-family lots.
- Non-conforming use situations are minimized.

Disadvantages (Cons)
- One non-conforming situation, a duplex in the proposed RS-4 district, would be created.

In consideration of the above and the adjoining zoning and land uses, the proposed initial zoning appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval of the proposed initial zoning for the properties within the recently annexed Sweeten Creek Road Area as proposed. The Planning and Zoning Commission, by a unanimous vote 5-0 of at its July 7, 2004, meeting, has recommended approval of the initial zoning as well. As referenced above, the Planning and Zoning Commission members opted to amend staff's proposed zoning for six (6) parcels based on comments received from members of the public. These amendments are reflected in the current proposed zoning being considered by City Council.

Mayor Worley closed the public hearing at 5:55 p.m.

Upon inquiry of Vice-Mayor Mumpower, Mr. Heard said that any property owner that had a concern had their concerns satisfied at the Planning & Zoning Commission meeting.

Upon inquiry of Councilman Newman, Mr. Heard explained that said that the residential capacity allowed in the Institutional District is 16 dwelling units per acre.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3150. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 216

F. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS THE HEATHBROOK AREA TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3151 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS THE HEATHBROOK AREA TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 6:07 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as the Heathbrook area to RS-8 Residential Single-Family High Density District. This public hearing was advertised on July 30 and August 6, 2004.

The unzoned properties make up the Heathbrook Area that was annexed on June 30, 2004. They are located along Heathbrook Circle in the Biltmore Park Subdivision north of Long Shoals Road. Surrounding land uses include single family residential to the north and vacant/common area to the east, south, and west. The area is completely surrounded by RS-8 zoning.

According to Buncombe County Tax information and field observation, there are single-family homes located on all of the lots except two, which are used as common open space for the subdivision.

The Planning and Development Department recommends an initial zoning of Residential Single-Family High Density (RS-8) District for the properties. The intent of the RS-8 District is to establish a high density per acre for single-family dwellings where public infrastructure is sufficient to support such development.

Advantages (Pros)
- Continues the zoning pattern of properties surrounding the annexation area, which are zoned RS 8.
- Single-family homes are a permitted use in the RS-8 District.
- No non-conforming use situations would be created.

Disadvantages (Cons)
- None

In consideration of the above and the adjoining zoning and land uses, the proposed initial zoning appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval of the proposed initial zoning of the unzoned properties known as the Heathbrook Annexation Area The Planning and Zoning, by a unanimous vote of 5-0 at its July 7, 2004, meeting, recommends approval as well.

Upon inquiry of Councilwoman Bellamy, Mr. Heard said there will be no non-conforming uses associated with this initial zoning.

Mayor Worley closed the public hearing at 6:10 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3151. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 289

G. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTIES KNOWN AS A PORTION OF THE DEAVERVIEW AREA TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3152 - ORDINANCE TO ZONE RECENTLY ANNEXED PROPERTIES KNOWN AS A PORTION OF THE DEAVERVIEW AREA TO COMMUNITY BUSINESS I DISTRICT

Mayor Worley opened the public hearing at 6:11 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department, said that this is the consideration of an ordinance to zone recently annexed properties known as a portion of the Deaverview area to Community Business I District. This public hearing was advertised on July 30 and August 6, 2004.

The unzoned properties are part of the Deaverview Road Area that was annexed on June 30, 2004. They are located at the intersection of Deaverview Road and Pisgah View Road. Surrounding land uses and zoning include single family residential and a mobile home park to the north that are not zoned, a church and convenience store zoned CB-I, unzoned residential and vacant properties to the south zoned, single-family residential and a mobile home park to the west that are not zoned.

According to Buncombe County Tax information and field observation, there are a convenience store, restaurant and associated parking located on the two parcels at the northwest corner of the intersection. The third lot across the street has a single-family home constructed on it.

The Planning and Development Department recommends an initial zoning of CB-I for the three properties. The purpose of the CB-I District is to provide areas for medium-density business and service uses serving several neighborhoods.

Rezoning the properties to CB-I would allow the owners of the convenience store and restaurant to continue their operations and allow the owner of the single-family home to continue that use or redevelop the property for uses permitted in the CB-I District.

Advantages (Pros)
- Continues the zoning pattern of properties directly east across Pisgah View Road, which are zoned CB-I.
- The convenience store located on two of the parcels is a permitted use in the CB-I District.
- The property owner of the third parcel can redevelop the property for use permitted in the CB-I District or continue the residential use.

Disadvantages (Cons)
- None

In consideration of the above and the adjoining zoning and land uses, the proposed initial zoning appears to be consistent with the intent and purpose of the Unified Development Ordinance.

Staff recommends approval of the proposed initial zoning of the three unzoned properties in the Deaverview Road Annexation Area. The Planning and Zoning, by a unanimous vote of 5-0 at its July 7, 2004, meeting, recommends approval as well.

Upon inquiry of Councilwoman Bellamy, Mr. Heard said there will be no non-conforming uses associated with this initial zoning.

Upon inquiry of Mr. James Carpenter, Mr. Heard explained that Mr. Carpenter's property is not in the zoning area.

Mayor Worley closed the public hearing at 6:18 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3152. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 292

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

Vice-Mayor Mumpower announced a farewell ceremony Thursday, August 12, 2004, for the North Carolina Army National Guard's 105th Military Police Company headquartered in Asheville, N.C. The ceremony will occur at 11:30 a.m. at the Trinity Baptist Church at 216 Shelburne Road.

Vice-Mayor Mumpower announced that on Saturday, August 21, 2004, there will be a community day at the Deaverview Community Housing Development, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

Vice-Mayor Mumpower announced upcoming vacancies on various boards and committees.

Vice-Mayor Mumpower thanked City Manager Westbrook and his staff for a well-designed and easy to read budget book.

Councilwoman Jones acknowledged the passing of Ms. Thelma Caldwell, former Executive Director of the YWCA, who was an important figure in this community who made a positive impact on hundreds of women and children.

The following claims were received by the City of Asheville during the period of July 16-29, 2004: CP&L (Water), BellSouth (Water), Mission Hospital (Streets), Kyle E. Corn (Police), Don Farrow (Water), Kelly Snead (Water) and Joe Bowman (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Fred English urged City Council to help in any way possible for the visually impaired citizens in our community.

Closed Session

At 6:23 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Eugene Ellison, Howard McGlohon, Eagle/Market Street Development Corporation and the City of Asheville – G.S. 143-318.11 (a) (3); and (2) to establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate – G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:45 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Dunn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 7:45 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 17, 2004 - 3:00 p.m.

Worksession

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT AGENDA:

Exchange of Interests in Real Property with Buncombe County

Summary: The consideration of a resolution authorizing the Mayor to convey the City's interest in property on Millbrook Road to Buncombe County in exchange for easements over County-owned real property located at Hominy Creek Park and Recreation Park.

The City and Buncombe County have negotiated an exchange of the City's interest in property on Millbrook Road for greenway easements over the County's property at Hominy Creek Park and Recreation Park. The property on Millbrook Road (PIN Nos. 9638.07-67-0634 and 9638.11-67-1425) includes two contiguous lots owned by the County and City comprising 1.4 acres. The property has a tax value of $50,000. The County proposes to donate the property with restrictions to the Buncombe County Rescue Squad for a new facility.

The proposed greenway easements are over property owned by the County at Hominy Creek Park (PIN No. 9637.01-16-5732) comprising 1.5 acres and at Recreation Park. (PIN No. 9668.13-04-6364) comprising 1.5 acres. The proposed Hominy Creek Greenway will connect Hominy Creek Park to Amboy Road Park. The Azalea Park Greenway will connect Azalea Park to Recreation Park and Swannanoa River Road (NC 81). The total value of the greenway easements would be approximately comparable to the City's interest in the Millbrook Road property.

The positive aspects of this transaction are:

- It is mutually beneficial to the City and the County.
- The County will be able to donate the land to the Rescue Squad for a needed facility.
- The City will acquire needed greenway easement at no cost.
- It is an opportunity for local government collaboration for the benefit of the community.
- It involves only publicly owned property and does not remove any property from the tax base.
- The City receives real estate interests of comparable value for its interest in the Millbrook Road property as opposed to donating it.

A negative aspects is:

- The property on Millbrook Road will remain in public ownership and not be returned to the tax base.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Planning & Development staff recommend adoption of the resolution authorizing the Mayor to convey the City's interest in property on Millbrook Road to Buncombe County in exchange for easements over County-owned real property located at Hominy Creek Park and Recreation Park.

Offer to Purchase Property at the Corner of Bartlett and Nelson Streets

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Bartlett Street and Nelson Street in the East Riverside community.

A bid has been received from Ray Quate, in the amount of $4,000, for the purchase of a parcel of land at the corner of Bartlett Street and Nelson Street in the East Riverside Community.

The land at the corner of Bartlett Street and Nelson Street is a rectangular shaped parcel comprising 0.13 acre+ (37'X151.9'). It is generally level at street grade and slopes up gradually to the rear. It is covered with grass. The long narrow shape renders the parcel unsuitable as a homesite. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. Based on an opinion letter dated July 28, 2004, by L. Ted Prosser, the value of the cut-out parcel is $4,000. The bid from Ray Quate, owner of an adjacent parcel is in the amount of $4,000. Mr. Ouate plans to renovate the building on the adjoining parcel with attention to preservation of historic architectural characteristics. The main floor on Depot Street will be three artist's studios and on the second floor will be five apartments with inside parking. Some of the apartments will be one bedrooms and are expected to be within the affordable range. He plans to assemble the subject parcel with the property he owns to provide access to the parking and a buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
5. The sale of this lot to Mr. Quate will facilitate the proposed re-development by providing necessary access.

Planning & Development staff along with Parks & Recreation staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

Offer to Purchase Property located on Courtland Avenue (Lot #11)

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Courtland Avenue.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel located on Courtland Avenue comprising approximately 0.14 acre (PIN No. 9649.17-01-0636). The Fair Reuse Value for the parcel, based on an appraisal dated April 21, 2004, by Gwen M. Keller is $6,000.00. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development.

Ross B. Parkinson has submitted a bid to purchase the property in the amount of $6,000, and he proposes to build a single-family residence for his home.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale of this lot will afford the opportunity for infill development.

Approval of the resolution will establish a minimum price of $6,000 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids for property located on Courtland Avenue.

Offer to Purchase Property located on Courtland Avenue (Lot #12)

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Courtland Avenue.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel located on Courtland Avenue comprising approximately 0.15 acre (PIN No. 9639-20-91-9684). The Fair Reuse Value for the parcel, based on an appraisal dated April 21, 2004, by Gwen M. Keller is $6,000.00. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development.

Samuel Koerber has submitted a bid to purchase the property in the amount of $6,000, and he proposes to build a single-family residence for his home.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale of this lot will afford the opportunity for infill development.

Approval of the resolution will establish a minimum price of $6,000 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids for property located on Courtland Avenue.

Pack Square Renaissance Project Budget

Summary: The consideration of a resolution approving the Pack Square Renaissance Project budget as adopted by the Pack Square Conservancy.

The agreement for the Pack Square Renaissance development between the Pack Square Conservancy (PSC) and the City requires that the Asheville City Council approve the budget for the project. In early July, the PSC adopted a revised budget for the project that represents the current cost projections based on the approved design.

Please note that in approving the PSC budget, there is absolutely no commitment on the City's part to any funding participation beyond what we have committed to in the agreement.

The revenue to pay for construction costs will come from private donations and grants secured by the Pack Square Conservancy.

City staff recommends City Council approve the resolution approving the PSC budget for this project as adopted by the Pack Square Conservancy.

After Ms. Carol King, President of the Pack Square Conservancy, explained the revenue sources, Councilwoman Bellamy asked if the campaign report could be put in writing.

Mayor Worley asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

DOWNTOWN SOCIAL ISSUES FINAL REPORTS

Panhandling

Planning & Development Director Scott Shuford said that the Downtown Social Issues Taskforce is making recommendations to further deal with panhandling in the downtown area. The recommendations are relatively simple, combining a public relations campaign with the collection of funds to be given to those non-profit agencies that help the homeless. This approach has been used in many other cities in the United States and Canada. The Asheville Downtown Association Foundation has been identified as the appropriate organization to collect and distribute funds from the locked boxes and boxes placed in businesses.

Legal staff has advised that if Council direct staff to permit the locked boxes, it will start a precedent to allow other groups to put out collection boxes on the sidewalk. Otherwise, the City would be open to litigation under the First or Fourteen Amendment of the Constitution. To avoid this situation, the City could collect these funds itself but that would then require additional staff time in administration and coordination. In other cities where boxes have been put out on the street, there have not been large amounts of funds collected. Thus it would not seem worthwhile for the City to take on this function. Staff is therefore recommending that the collection of funds as a part of the campaign to divert money from the panhandlers be kept to the downtown businesses. This same recommendation was echoed in the public input and focus groups on this recommendation.

Advantages

- All of the panhandling recommendations, with the exception of the request for a greater police presence and locked boxes in some sidewalk locations, do not require any public funding or subsequent City Council action; civic groups in the community would undertake most of the action items.
- The recommendations build on the ordinance passed by City Council in November 2002.
- Reducing the amount of money given to panhandlers is an important part of reducing the panhandling activity in the community.
- The public relations campaign is a positive way for our community to relate to visitors that Asheville is an urban place with urban problems, but that the community does care about its homeless population and is working proactively to alleviate those conditions.

Disadvantages

- Approval of locked boxes on City sidewalks for the purpose of collecting funds will result in the possibility of other groups pursuing this strategy.

- There have been concerns raised by the public about the lock boxes being a target for vandalism and robbery. The intent of the Task Force is that the lock boxes be burglar proof and repainted frequently.
- Coordination of the public relations campaign and money collection/distribution will be a challenge, but it has been accomplished in other cities. Again, this will be the responsibility of a private non-profit.

City staff recommends City Council accept the Downtown Social Issues Task Force's Panhandling report and directs the City Manager to bring back to Council, at a later date, recommendations for changes to City ordinances, where appropriate.

Mr. Dwight Butner, member of the Downtown Social Issues Task Force sub-committee on panhandling, presented City Council with their research and final recommendations on panhandling.

He then briefly described the following recommendations, along with action steps for each one:

1, Through the Asheville Downtown Association and the Asheville Downtown Association Foundation, implement a comprehensive program entitled "Real Change vs. Spare Change". The first goal of this program is to direct funds being donated to panhandlers to those institutions currently addressing the consequences of poverty and homelessness, drug and alcohol abuse. The second goal in this program is to make panhandling more difficult and less rewarding by redirecting the funds away from the panhandlers themselves, instead to the agencies established which address the conditions fostering panhandling behaviors. The third goal of the program is to distribute information about the availability of support services not only to the panhandlers themselves but to the public at large and to raise awareness of the potential consequences of donating directly to an individual. The fourth goal of this program is to provide the entire downtown community with a vehicle through which they can individually and collectively address panhandling and the various other social issues affecting downtown. The steps to implement this program follow:

A. Locate four locked collection boxes throughout downtown to receive both money and feedback cards. Collection displays will also be located throughout downtown businesses and offices that choose to participate.

B. Develop information brochures for distribution detailing the services, locations and hours of operation of the various relief agencies, while at the same time urging individuals to make contributions at the various collections boxes for the benefit of the disadvantaged.

C. Implement a public relations campaign through the use of posters and rack cards that encourages downtown visitors and residents to make donations for the benefit of the homeless in the collection boxes for distribution to the various relief agencies instead of to the panhandlers themselves.

D. In conjunction with the same campaign establish an urban neighborhood watch program. The vehicle for this program will be feedback cards providing downtown business owners and residents a means to pass on information to the police, Quality Forward, and the various relief agencies about activities and behaviors that they observe in downtown. These postcard size documents can be dropped in the locked collection boxes or mailed to the Downtown Association.

2. Maintain the current panhandling ordinance but review the enforcement process for effectiveness. Based upon the level of current enforcement, devise strategies to improve the implementation of the ordinance.

In conclusion, several examples of the types of programs we are suggesting are included in the various appendices. We were particularly impressed with the programs instituted in Baltimore, Maryland and Jacksonville, Florida. but there were many examples of the strategies employed in various parts of the country. We cannot stress enough the necessity of implementing a multifaceted approach to this and all the social issues facing downtown. It is unlikely that these issues will go away and it is imperative that we institute programs that will have a lasting impact on the conditions, which we'll continue to face.

Upon inquiry of Councilman Davis, Mr. Butner said that the money collected will go to Asheville Downtown Association and they will re-direct funds to those institutions currently addressing the consequences of poverty and homelessness, drug and alcohol abuse.

During discussion, Mr. Butner responded to various questions and comments from Council, some being but are not limited to: are more cities implementing panhandling laws; is there a reluctance in the court system to enforce the ordinances; what communities have locked collection boxes; are the collection boxes financially viable; and if collection boxes are not used, is there an alternative plan.

Upon inquiry of Councilwoman Jones, City Attorney Oast explained his First Amendment concerns. He felt that any attempt to regulate panhandling or the ability to give money are subject to First Amendment concerns.

Councilwoman Jones felt City staff could craft the program to meet the goals of the Downtown Social Issues Task Force and the City's goals without opening up the possibility of other groups pursuing this strategy of locked collection boxes.

Councilwoman Bellamy hoped that staff take into consideration and support the service providers who are trying to help people short and long term.

On behalf of City Council, Mayor Worley thanked Mr. Butner and the Task Force for their time and effort in compiling this report on this very important issue.

It was the consensus of City Council to accept the Downtown Social Issues Task Force's panhandling report and direct the City Manager to bring back to Council, at a later date, recommendations for changes to City ordinances, were appropriate, and subject to City Attorney review.

Public Drunkenness

Planning & Development Director Scott Shuford said that public drunkenness was picked by the Downtown Social Issues Task Force at the beginning of its work as an important issue to be tackled. As the center for social services, shelters and public life in general, downtown has the highest concentration of homeless individuals in Asheville. A subpopulation of the homeless community is made up of alcoholics who are often inebriated on the streets. Of this group there is also a subset of people who chronically are being arrested for drunk and disorderly behavior or taken to the emergency room because of their physical state.

These recommendations have the goal of reducing the tolerance for such behavior, while supporting some programs that will help solve the problem over the short and long term. As City Council and the County Commissioners have jointly appointed the Ten Year Plan to End

Homelessness Task Force, some of these recommendations (Numbers 2 & 3) may overlap with that group's work and not require immediate Council action.

Advantages

- Housing First models have been proven to cost the public sector less funds overall, reducing costs in police manpower, jail time and emergency hospital visits.
- A detox center available around the clock would be a vast improvement over the current system where inebriates are taken to either the hospital or the jail.
- The additional sales tax could provide much needed funds to go directly to detox and/or treatment centers.

Disadvantages

- Some restaurant and bar owners are opposed to the potential ½% additional sales tax on beer and wine.
- The recommendation on Inebriate Safety Zones raises some constitutional issues and may be difficult to enforce.
- The recommendation on not allowing closed containers in public parks may be pre-empted by State law.

City staff recommends City Council accept the Downtown Social Issues Task Force's Public Drunkenness report and directs the City Manager to bring back to Council, at a later date, recommendations for changes to City ordinances, where appropriate.

Mr. Pat Whalen, Chair of the Downtown Social Issues Task Force, presented City Council with their final recommends on public drunkenness.

He then briefly described the following recommendations, along with action steps for each one:

1. Recommend that the City of Asheville petition the authority with control over existing ABC local tax collections to dedicate locally collected funds to improve detox and treatment availability and/or seek legislation from the state giving authority to pass a local ½% sales tax on beer and wine with the funds earmarked for such improvements in detox and treatment.

2. Recommend that the City of Asheville establish a Housing First program providing housing for our most difficult, chronic, and expensive to manage alcohol-dependent homeless.

3. Recommend that the City of Asheville, in concert with the County and already existing local service resources, establish an emergency detox/treatment/recovery center similar to the Healing Place in Raleigh or the jail-based public inebriate program in Roanoke, VA.

4. Recommend that the City of Asheville pass an ordinance in which the city recognizes certain Inebriate Safety Zones. These Zones would be limited to streets and adjacent sidewalks in downtown, which experience a combination of heavy pedestrian traffic, substantial vehicular traffic, and substantial on-street parking. It is expected these Area's would be limited to downtown's busiest vehicular and pedestrian arteries where there is on-street parking. These Zones would be selected: 1) because the areas have consistent problems with some individuals presenting themselves in an extremely inebriated condition, with insufficient control of their motor faculties; and 2) because of the heavy car and pedestrian traffic on these streets and the reduced sight lines caused

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by the many parked cars, in these areas such individuals create significant danger for themselves and for innocent third parties, particularly children and the elderly. The special restriction for these Zones would be that individuals with more than 10 convictions involving alcohol or substance abuse related offenses over any twelve-month period, thereby having proven themselves to be a potential danger to themselves and others in such areas, would be prohibited from entering the areas for one year.

5. Recommend that the City of Asheville pass an ordinance against possession or use of alcoholic beverages, whether open or closed, in city parks without permission from the City Parks and Recreation Director or the City Manager.

6. Recommend that the City Council, in light of the seriousness of the problems and dangers to themselves and others created by chronically inebriated individuals, issue a proclamation to the District Attorney's office requesting: that said office prosecute repeat offenders charged with alcohol or substance abuse related offenses to the extent the law allows, that they seek to discourage the use of "time served" as an appropriate sentence for such repeat offenses, and that they seek, recommend, and encourage the longest available jail sentences for repeat offenders, in an effort to reinforce individual responsibility in such repeat offenders, to improve and reinforce the effectiveness of our local police, and to encourage said offenders to take advantage of recovery opportunities created by the community.

During discussion, Mr. Whalen responded to various questions and comments from Council, some being, but are not limited to: concern of a non-elected entity (ABC Board) using taxpayer money; what other cities are using the Inebriate Safety Zones; what percentage of the downtown area is envisioned to have Inebriate Safety Zones; how many beds are in the current Detention Facility; maybe a percentage of beds in the Detention Facility should be set aside for chronic offenders; and how much consensus was there on a local ½% sales tax on beer and wine.

Councilman Davis spoke about the need for enforcement by the City.

Mayor Worley explained how this issue and the panhandling issue tie into the Ten Year Plan to End Homelessness.

Upon inquiry of Vice-Mayor Mumpower about a timeframe on staff recommendations, City Manager Westbrook said that this is a complex problem in which the City will have to work with Buncombe County and other agencies. He felt it would take approximately 3-4 months before he could bring back final recommendations for changes. Or, he said he could bring back the priorities in all other departments and let City Council prioritize them if Council feels the 3-4 month timeframe is too long.

After a brief discussion initiated by Councilman Newman, it was the consensus of Council to come back to a worksession with a list of staff's priorities and possibly also a list of things the City can do short-term regarding this issue. Also, in the interim, the City Manager will begin dialogue with Buncombe County.

On behalf of City Council, Mayor Worley thanked Mr. Whalen and the Task Force for their time and effort in compiling this report on this very important issue.

At 4:55 p.m., Mayor Worley announced a short break.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which have been scheduled on August 24, 2004. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Provision for Public Safety Plans for Certain Temporary Uses

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for public safety plans for certain temporary uses.

This code amendment provides for public safety plans for certain temporary uses. Certain temporary uses, such as a motorcycle rally last year, result in significant public safety concerns and public expenses. The proposed amendment would require the submittal of a public safety plan and a way for public expenses associated with the temporary use to be recouped.

The amendment has been routed to the Coalition of Asheville Neighborhoods, CREIA, and the Council of Independent Business Owners (CIBO) for review and comment. Based on comments from CIBO, the amendment has been revised to clarify to what types of uses public safety plans may be required and to include language about coordination with non-City emergency management operations.

On August 4, 2004, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment as well.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that he solicit comments on this amendment from the Buncombe County Tourism Development Authority and the Economic Development Commission.

Mayor Worley expressed concern of how the City will distinguish between different groups. City Attorney Oast said that he would research this issue and address it prior to formal adoption of the ordinance.

It was the consensus of City Council to continue the public hearing that is scheduled for August 24, 2004, in order to give City staff ample time to respond to concerns raised.

Technical Corrections and Clarifications

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purposes of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance.

Working with the Unified Development Ordinance (UDO) on a daily basis, the Planning & Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff has compiled a list of these issues and proposes the following amendments to correct these situations and make the UDO a clearer document for staff and public use. The proposed amendments deal with a variety of issues throughout the ordinance.

Pros –

- The UDO will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con –

- None.

The Planning and Zoning Commission recommended approval of these code amendments on August 4, 2004, by a unanimous vote of 6-0. City staff recommends approval of the proposed code amendments.

Mr. Heard briefly explained the clarifications to the ordinance.

City staff recommends approval of the proposed code amendments to the Unified Development Ordinance for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance.

City Attorney Oast responded to Councilman Dunn who was concerned about changing the word "church" to "places of worship." He strongly recommended Council retain the words "places of worship."

Councilman Dunn and Councilwoman Bellamy said that they would like to vote on the amendment to Section 7-8-21 (b) to change "Churches" to "Places of Worship" separately.

It was the consensus of Council to have two separate ordinances prepared – one with the amendments presented and one with the amendment to Section 7-8-21 (b) to change the word "Churches" to "Places of Worship."

Mayor Worley asked that the record show that City Council has received this information and instructed the City Manager to place this public hearing on the next formal City Council agenda. City Attorney Oast said that he would research whether another public hearing would be required to separate out the amendment to Section 7-8-21.

CONSIDERATION OF CONDITIONAL USE ZONING AS A DEVELOPMENT TOOL

Planning & Development Director Scott Shuford said that at the July 27, 28804, City Council meeting, concern was raised about the frequency of use of conditional use zoning (CUZ) as a development tool; separate but related concerns were raised about the potential for CUZ to be considered "spot zoning" and its arbitrary use by staff for "control" purposes. This report addresses these issues, provides possible alternatives to CUZ, and makes several specific recommendations.

When adopted in early 2000, staff anticipated that CUZ would generally be more frequently used than "straight" rezoning. Staff research concerning CUZ found that most communities with this development tool end up using it as their predominant rezoning tool. This is due to its chief advantage over straight rezoning: It allows the establishment of a known use and site plan as opposed to the potential of an extensive list of uses and site design limited only by standard setbacks, height, and landscaping/buffer requirements.

However, in Asheville, CUZ activity in 2003 and 2004 has not reflected that pattern (due to time constraints, I did not research back further). The following table illustrates a summary of Planning and Zoning Commission reviews of rezonings, CUZs, and conditional use permits (CUPs) over those two years. In 2004, it should be noted that while five of the rezoning cases were "initial" zonings of property (one case involved NCDOT conversion property off College

Street near the tunnel and the other four were zoning of recently-annexed areas), rezonings would still outnumber CUZs this year even if these five cases were discounted.

ZONING ACTIVITY BY TYPE – 2003 & 2004

YEAR	REZONING	CUZ	CUP
2003	19	8	2
2004 (TO DATE)	20	8	3

"Spot zoning" potential. CUZ was established by the City in February 2000. Please note that concerns about "spot zoning" were raised at that time. "Spot zoning" is a difficult issue, especially in a community like Asheville where property development has occurred over such a long period of time and where our growth management policies promote infill and adaptive reuse.

One thing to keep in mind is how the NC Supreme Court handled this issue in the 1980s in what is known as the *Chrismon* case. The Court found that spot zoning had occurred in a particular situation but noted an important factor – there was a public benefit associated with the particular case. This allowed the Court to find that spot zoning was not problematic or illegal where a public benefit was secured, but where there was only a private benefit, spot zoning was inappropriate and illegal. If we can demonstrate that a particular rezoning or CUZ-ing promotes an existing public policy, it is not automatically a legal concern even if it appears to be (or actually is) spot zoning.

Having said that, however, we should approach this issue with a great deal of caution. First, the public benefit needs to be clear and substantial in relationship to the private benefit. Second, there should be some evidence that the proposed use is relatively similar to surrounding uses or that the intent of the proposed zoning takes differences between surrounding uses and those allowed in the proposed zoning into account (e.g., zoning a single lot in a neighborhood to Neighborhood Business).

Taking the Roberts Street CUZ from last month as an example, using the above information it is clear that the proposal did not represent illegal spot zoning because it was supported by a wide range of City policies and plans and because the uses in the surrounding area were relatively similar in impact and scale.

Arbitrary use. He would like to think that this concern is mitigated somewhat by the information contained under the frequency of use table above, but the following information is also provided for your consideration. Of the nine CUZ cases in 2004, two could have possibly been supported by staff as straight rezonings: The Biltmore Pointe development in Oakley and the 673 Sand Hill Road case. However, conditions imposed by Council allowed a number of neighborhood concerns and compatibility issues to be addressed.

Using maps, he explained how staff would not have supported straight rezoning proposals for the following cases for the listed reasons:

- West Asheville Baptist Church temporary buildings (institutional encroachment)
- Trinity United Methodist Church parking lot (commercial encroachment)
- Liberty Road office/residential reuse of an existing house (nonresidential encroachment; illegal spot zoning)
- Charlotte Street parking lot (commercial encroachment)
- Forsythe Street church conversion (too dense residential zoning)
- Roberts Street NCD mixed use project (potential to create a compelling precedent for NCD zoning of the entire corridor; size of the parcel)

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We did not support the CUZ for the office use on Arlington Street.

Alternatives.

Greater or entire reliance on straight rezoning – Staff can certainly adopt this approach but, as indicated above, there will be fewer cases that we can support and fewer opportunities to resolve neighborhood issues while allowing beneficial development to occur. It is our strong impression that the development community accepts and embraces CUZ as a development tool and that neighborhoods have greatly benefited from its careful application.

Pros:
- Less staff discretion (also a con)
- Less legislative discretion (also a con)
- Greater range of uses allowed for property owner (also a con)

Cons:
- Less staff discretion (also a pro)
- Less legislative discretion (also a pro)
- Greater range of uses allowed for property owner (also a pro)

Parallel zoning code – During your budget discussion, we proposed the development of a parallel zoning code that would basically allow new urbanist development by right in selected areas while still allowing the option for property development under the existing UDO provisions. Having such a code in effect would have potentially allowed the Liberty Road, Forsythe Street, and Roberts Street cases to be uses by right.

Pros:
- Promotes a desired land use pattern and mix of uses
- Allows choice in style of development (also a con)
- Could reduce the number of CUZ cases

Cons:
- Choice can result in incompatible mixture of new urbanist and suburban developments
- Potential compatibility issues if applied over too much of the City

Comprehensive review of zoning pattern of much, if not all, of the City – This approach could be taken to effect a comprehensive zoning/rezoning of the City to attempt to eliminate conflicting zoning patterns and allow a more frequent use of straight rezoning. Based on my practical experience, such efforts rarely fully accomplish the goal due to changes in market forces, technology, and attitudes about development over time. For example, the process that implemented the UDO was intended to result in such an outcome (and can arguably be said that it has achieved that outcome to an extent).

Pros:
- Could eliminate conflicting zoning patterns
- Allows a more frequent use of straight rezoning

Cons:
- Time-intensive
- Repeats fairly recent UDO process
- Loses effectiveness over time

Conditional zoning – Charlotte and other cities in NC have obtained legislative authority for *conditional zoning* which is very similar to CUZ except the action happens in one step instead of two (CUZ requires approval of both a rezoning and a CUP). Developers are held to specific site plans and uses approved by the governing boards just as in CUZ, but the process is legislative, not quasi-judicial. Having this tool would allow us to stop requiring sworn testimony and for Council members to not be restricted in their discussions of cases outside the hearing by the prohibition of *ex parte* communications. Staff is very interested in obtaining such authority for Asheville in order to simplify our procedures and to increase the ability of Council to get relevant information.

Pros:
- Simpler procedure
- Allows more flexibility in information gathering

Con:
- Could be used even more often than CUZ or straight rezoning (possibly a pro)

City staff recommends that until we are able to replace CUZ with conditional zoning that we continue to utilize CUZ as a zoning tool due to its ability to provide development flexibility and address compatibility issues. We remain interested in pursuing the parallel code as a companion to CUZ. We do not recommend elimination of CUZ or undertaking another comprehensive rezoning effort.

There was a brief discussion surrounding the report.

Councilman Newman was pleased with the conditional use zoning process, however, he wasn't pleased that City Council is not able to talk or listen to people outside of the public hearing.

It was the consensus of City Council to (1) continue to utilize the CUZ as a zoning tool; (2) work to obtain legislative authority for conditional zoning; and (3) instruct City staff to pursue the parallel code as a companion to the CUZ.

DEVELOPMENT REVIEW PROCESS TEAM

Building Safety Director Terry Summey said that this is the consideration of appointing members to serve on the "2004 Development Review Process" Team.

As part of this year's budget approval process, City Council postponed action on some recommended Building Safety Department permit fee changes, including an adjustment in the affordable housing rebate program, in order to allow for the independent evaluation of our permitting process. At the 2002 City Council retreat, staff presented a summary of our successes in implementing the year 2000 recommendations of that Development Process Review Team. That team was established in 1999 to evaluate the development review process that existed at that time. The team was led by former Mayor Russ Martin and included the following team members:

- Brett Cannady
- Dale Groce
- Ted Prosser
- Ron Butler
- Rod Hudgins
- Ben Slosman
- Patti Glazer
- Danie Johnson
- Pat Whalen

The 2004 Development Review Process Team, once appointed, would meet frequently in order to develop recommendations for your consideration in a timely fashion. The team would clearly identify problems and concerns, to receive information and reports from staff regarding these issues, and to develop recommendations for improving our processes. These issues and recommendations, once finalized, will be forwarded to Council for your consideration and action, on or before Council's September 28th Council meeting.

City staff recommends contacting the members of the 1999 team to determine their willingness to serve on the 2004 Development Review Process Team, with Marvin Slosman replacing his late father, Ben. This will ensure continuity of the review team and allow for comparative analysis of the changes made to our processes since 2000. Additionally, John Mark Stroud of the Asheville Chamber has expressed an interest in serving on the 2004 Team. The following is a proposed list of members recommended by Councilman Dunn and City staff:

Task force volunteers recommended by Councilmember Dunn:
- Brian Anderson (owner of Anderson Family Homes)
- Larry Buckner (Manager of Blossman Gas – Plbg. Dept.)
- Brett Cannady (Contractor)
- Chamber of Commerce (as given to Jim Westbrook)
- John Van Dyke (works for George Morosani)
- Samartha Forrest (she is legislative co-chair of Asheville Board of Realtors - Program Director; she is an attorney by profession)
- Buddy Gaither (CEO of "Milko")
- Russell Knight (residential contractor)
- Bill Newman (Taylor/Murphy)
- Nancy Padgett (she was nominated to serve as a Rep. for Homebuilders Association by Steve Royster – President of H.A.)
- Bill Stamey (builder)
- Tim Turner (land surveyor)
- Winston Pulliam (Pulliam Properties)
- Terry Vorst (builder)
- Representative to be appointed by the Asheville Architect's AIA Chapter

Other possible task members very involved with the development and permitting processes:
- Kirk Boone or Bob Galloway (KCB Construction Co.)
- Johnny Chandler (Buncombe Construction; Project Manager)
- Harry Giezentanner (affordable housing – modular)
- Rick Grant (Beverly-Grant; developer/contractor)
- Steve Grigg or Danny Shope (Grigg Electric)
- Al Knapp (White and Williams; mechanical contractor)
- Carroll Hughes (Spaceplan Architects)
- Jane Mathews (Mathews Architecture)
- True Morris (Mission/St. Joseph Hospitals; Engineering Dept. Director)
- Ron Moser (affordable housing)
- Allen Roderick (Heartwood renovations)
- Tom Vorst (general contractor)

Staff Member support to the Process Review Team:
- Building Safety Department (Terry Summey)
- Engineering Department (Cathy Ball)
- Fire Department (Greg Grayson)
- Planning Department (Scott Shuford)
- Water Department (David Hanks)

Staff recommends that Council appoint the Process Review Team.

Councilman Dunn spoke in support of appointing new people.

Councilwoman Bellamy suggested each person submit an application and that Council hold interviews for this significant Task Force.

Councilwoman Jones felt this was going to be more of a focus group and didn't understand how fee review got included into this process since we don't include fee review in other groups.

Building Safety Director Terry Summey suggested two more people and felt that the Task Force could be as many people as are interested – the list is not inclusive. He will then break them into different focus groups and bring back recommendations to Council at their September worksession. At this point he would like to get direction from Council to start the process.

Councilman Newman did not want the focus group's intent to be misinterpreted. It is a focus group of the development community formed to give City Council feedback on the development and permitting process.

It was the consensus of Council to appoint former Mayor Russ Martin as the Chair of the focus group and if he felt an outside facilitator would be useful that the City use it's resources. City staff will verify if the following members are interested in serving on the focus group: the 1999 Development Process Team Members, John Mark Stroud, City staff members outlined above, Councilman Dunn's suggested members, other suggested members outlined above, and others who may be interested. After staff compiles the report from the focus group, they will bring it back to Council at the September worksession. At that time City Council may need to delegate individual issues to an existing appropriate committee for further study, or to solicit applications to appoint a new committee.

BOARDS/COMMISSIONS

It was the consensus of City Council to reappoint Sherry Fitzpatrick and Mary Robertson to the Americans with Disabilities Act Compliance Committee. At the suggestion of Councilwoman Bellamy, it was the consensus of City Council to discuss at a future worksession ways to expand the role of the ADA Compliance Committee..

It was the consensus of City Council to instruct the City Clerk to readvertise for the vacancy on the Asheville-Buncombe Fair Housing Commission.

It was the consensus of City Council to instruct the City Clerk to arrange interviews with Eric Zetterholm and David Brown for the Planning & Zoning Commission. In addition, Cindy Weeks is a candidate, however, it is not necessary for her to be interviewed.

It was the consensus of City Council to instruct the City Clerk to (1) arrange interviews with Kimberly Campton and Maureen Grozier for the at-large position the River District Design Review Committee; (2) appoint Richard Hall to the member of RiverLink Board of Directors; (3) reappoint Ken Fulford as a design professional; (4) reappoint Hunt Mallett, as a owner of property within the District); (5) appoint Jane Mathews as a design professional; (6) re-advertise for an owner of property within the District; and (7) re-advertise for a member of the RiverLink Board of Directors.

It was the consensus of City Council to instruct the City Clerk to (1) arrange interviews for Victor Trantham and Ripley Hotch for the vacancy of an owner/operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units; and (2) re-advertise for the individual who is involved in the tourist business but who does not own or operate a hotel, motel or other taxable tourist accommodation. In addition, City Attorney Oast was instructed to review the language of the statute for an interpretation of the "individual who is involved in the tourist business but who does not own or operate a hotel, motel or other taxable tourist accommodation." It was also City Council's consensus to discuss, at a future worksession, what the role of the City's representatives on the Buncombe County Tourism Development Authority should be and then ask the City Manager to arrange a meeting with our representatives to outline Council's expectations of their representatives.

CLOSED SESSION:

At 7:25 p.m., Councilwoman Bellamy moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, or fitness of an individual, public officer or employee. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (6); and to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, specifically, the Personnel Privacy Act, N. C. Gen. Stat. sec. 160A-168. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (1); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (4). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:00 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:00 p.m.

Magdalen Burleson
CITY CLERK

Charles R Worley
MAYOR

Tuesday – August 24, 2004 - 5:00 p.m.

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Col. Ray Green, Veteran of the US Air Force, led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 10, 2004, AND THE WORKSESSION HELD ON AUGUST 17, 2004

B. RESOLUTION NO. 04-170 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY THE CITY'S INTEREST IN PROPERTY ON MILLBROOK ROAD TO BUNCOMBE COUNTY IN EXCHANGE FOR EASEMENTS OVER COUNTY-OWNED REAL PROPERTY LOCATED AT HOMINY CREEK PARK AND RECREATION PARK

Summary: The consideration of a resolution authorizing the Mayor to convey the City's interest in property on Millbrook Road to Buncombe County in exchange for easements over County-owned real property located at Hominy Creek Park and Recreation Park.

The City and Buncombe County have negotiated an exchange of the City's interest in property on Millbrook Road for greenway easements over the County's property at Hominy Creek Park and Recreation Park. The property on Millbrook Road (PIN Nos. 9638.07-67-0634 and 9638.11-67-1425) includes two contiguous lots owned by the County and City comprising 1.4 acres. The property has a tax value of $50,000. The County proposes to donate the property with restrictions to the Buncombe County Rescue Squad for a new facility.

The proposed greenway easements are over property owned by the County at Hominy Creek Park (PIN No. 9637.01-16-5732) comprising 1.5 acres and at Recreation Park. (PIN No. 9668.13-04-6364) comprising 1.5 acres. The proposed Hominy Creek Greenway will connect Hominy Creek Park to Amboy Road Park. The Azalea Park Greenway will connect Azalea Park to Recreation Park and Swannanoa River Road (NC 81). The total value of the greenway easements would be approximately comparable to the City's interest in the Millbrook Road property.

The positive aspects of this transaction are:

- It is mutually beneficial to the City and the County.
- The County will be able to donate the land to the Rescue Squad for a needed facility.
- The City will acquire needed greenway easement at no cost.
- It is an opportunity for local government collaboration for the benefit of the community.
- It involves only publicly owned property and does not remove any property from the tax base.
- The City receives real estate interests of comparable value for its interest in the Millbrook Road property as opposed to donating it.

A negative aspects is:

- The property on Millbrook Road will remain in public ownership and not be returned to the tax base.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Planning & Development staff recommend adoption of the resolution authorizing the Mayor to convey the City's interest in property on Millbrook Road to Buncombe County in exchange for easements over County-owned real property located at Hominy Creek Park and Recreation Park.

RESOLUTION BOOK NO. 28 – PAGE 324

C. RESOLUTION NO. 04-171 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT THE CORNER OF BARTLETT AND NELSON STREETS

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Bartlett Street and Nelson Street in the East Riverside community.

A bid has been received from Ray Quate, in the amount of $4,000, for the purchase of a parcel of land at the corner of Bartlett Street and Nelson Street in the East Riverside Community.

The land at the corner of Bartlett Street and Nelson Street is a rectangular shaped parcel comprising 0.13 acre+ (37'X151.9'). It is generally level at street grade and slopes up gradually to the rear. It is covered with grass. The long narrow shape renders the parcel unsuitable as a homesite. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority which is now a part of Murray Hill Park. Based on an opinion letter dated July 28, 2004, by L. Ted Prosser, the value of the cut-out parcel is $4,000. The bid from Ray Quate, owner of an adjacent parcel is in the amount of $4,000. Mr. Ouate plans to renovate the building on the adjoining parcel with attention to preservation of historic architectural characteristics. The main floor on Depot Street will be three artist's studios and on the second floor will be five apartments with inside parking. Some of the apartments will be one bedrooms and are expected to be within the affordable range. He plans to assemble the subject parcel with the property he owns to provide access to the parking and a buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.
4. A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
5. The sale of this lot to Mr. Quate will facilitate the proposed re-development by providing necessary access.

Planning & Development staff along with Parks & Recreation staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

RESOLUTION BOOK NO. 28 – PAGE 326

D. RESOLUTION NO. 04-172 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS FOR PROPERTY LOCATED ON COURTLAND AVENUE (LOT #11)

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Courtland Avenue.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel located on Courtland Avenue comprising approximately 0.14 acre (PIN No. 9649.17-01-0636). The Fair Reuse Value for the parcel, based on an appraisal dated April 21, 2004, by Gwen M. Keller is $6,000.00. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development.

Ross B. Parkinson has submitted a bid to purchase the property in the amount of $6,000, and he proposes to build a single-family residence for his home.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale of this lot will afford the opportunity for infill development.

Approval of the resolution will establish a minimum price of $6,000 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids for property located on Courtland Avenue.

RESOLUTION BOOK NO. 28 – PAGE 327

E. RESOLUTION NO. 04-173 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE FOR UPSET BIDS FOR PROPERTY LOCATED ON COURTLAND AVENUE (LOT #12)

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer of purchase for upset bids for property located on Courtland Avenue.

The subject property is an RS-8 Residential Single-Family High Density District zoned parcel located on Courtland Avenue comprising approximately 0.15 acre (PIN No. 9639-20-91-9684). The Fair Reuse Value for the parcel, based on an appraisal dated April 21, 2004, by

Gwen M. Keller is $6,000.00. The proposed land use for the property in the Head of Montford Redevelopment Plan is for residential development.

Samuel Koerber has submitted a bid to purchase the property in the amount of $6,000, and he proposes to build a single-family residence for his home.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- The sale of this lot will afford the opportunity for infill development.

Approval of the resolution will establish a minimum price of $6,000 and initiate the sale of the property through the upset bid process as provided in N. C. G. S. sec. 160A-269.

Planning & Development staff recommends adoption of the resolution authorizing advertisement for upset bids for property located on Courtland Avenue.

RESOLUTION BOOK NO. 28 – PAGE 328

F. RESOLUTION NO. 04-174 - RESOLUTION APPROVING THE BUDGET FOR THE PACK SQUARE RENAISSANCE PROJECT AS ADOPTED BY THE PACK SQUARE CONSERVANCY

Summary: The consideration of a resolution approving the Pack Square Renaissance Project budget as adopted by the Pack Square Conservancy.

The agreement for the Pack Square Renaissance development between the Pack Square Conservancy (PSC) and the City requires that the Asheville City Council approve the budget for the project. In early July, the PSC adopted a revised budget for the project that represents the current cost projections based on the approved design.

Please note that in approving the PSC budget, there is absolutely no commitment on the City's part to any funding participation beyond what we have committed to in the agreement.

The revenue to pay for construction costs will come from private donations and grants secured by the Pack Square Conservancy.

City staff recommends City Council approve the resolution approving the PSC budget for this project as adopted by the Pack Square Conservancy.

RESOLUTION BOOK NO. 28 – PAGE 329

G. RESOLUTION NO. 04-175 - RESOLUTION AMENDING THE 2004 SCHEDULED CITY COUNCIL MEETINGS TO DELETE THE SEPTEMBER 7, 2004, WORKSESSION

RESOLUTION BOOK NO. 28 – PAGE 332

H. RESOLUTION NO. 04-176 - RESOLUTION REAPPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The terms of Sherry Fitzpatrick and Mary Robertson, as members on the Americans with Disabilities Act Compliance Committee expired on August 22, 2004.

At City Council's worksession on August 17, 2004, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Sherry Fitzpatrick (representing the disabled community representative) and Mary Robertson (representing the disabled community) as members of the Americans with Disabilities Act Compliance Committee, to each serve an additional three-year term respectively, terms to expire August 22, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 333

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Bellamy moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNNAMED ALLEY OFF SOUTH FRENCH BROAD AVENUE

RESOLUTION NO. 04-177 - RESOLUTION PERMANENTLY CLOSING AN UNNAMED ALLEY OFF SOUTH FRENCH BROAD AVENUE

Mayor Worley opened the public hearing at 5:07 p.m.

Public Works Director Mark Combs said that this is the consideration of a resolution of intent to close permanently close an unnamed alley off South French Broad Avenue. This public hearing was advertised on July 30, August 6, 13 and 20, 2004.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, the adjoining property owners have requested the City of Asheville permanently close to public use as a public street an unnamed alley off South French Broad Avenue.

Public Works Department staff has researched and determined that this alley is not a City maintained street. Closure of this alley will not deny any of the abutting properties a reasonable means of ingress or egress. There are six lots that abut this section of right-of-way. They are identified by PIN Nos. 9648.05-29-1708, 9648.05-29-0747, 9648.05-29-0716, 9648.05-29-0668, 9648.05-19-9786 and 9648.05-19-9645. All abutting property owners except Bost Bakery (9648.05-19-9645) have joined in the petition to close. This closing is subject to the retention of easements extending the full length and width of said alley by Bell South and Progress Energy for the operation and maintenance of public utilities.

City staff recommends that City Council adopt the resolution permanently closing an unnamed alley off South French Broad Avenue.

Mr. John Ellis urged City Council to permanently close the unnamed alley.

Mayor Worley closed the public hearing at 5:10 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-177. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 334

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED BETWEEN ZILLICOA ROAD AND MONTFORD AVENUE, IDENTIFIED AS CAMPUS CREST AT ASHEVILLE, TO CONSTRUCT A 152-UNIT APARTMENT COMPLEX

ORDINANCE NO. 3153 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED BETWEEN ZILLICOA ROAD AND MONTFORD AVENUE, IDENTIFIED AS CAMPUS CREST AT ASHEVILLE, TO CONSTRUCT A 152-UNIT APARTMENT COMPLEX

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:11 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of the issuance of a conditional use permit for property located between Zillicoa Road and Montford Avenue, identified as Campus Crest at Asheville, to construct a 152-unit apartment complex (City Exhibit 3 – Location Map).

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies. The project utilizes the existing zoning on the lot to create a sustainable medium-density residential development within the City Limits in a location were the existing infrastructure is capable of supporting the proposed use. The project will assist in meeting the demands of student housing for the area. The project proposes shuttle service to UNC-A for its residents and is also within walking distance to the University. The project will also provide a bus shelter and transit stop on Montford Avenue. The project is also located within close proximity of parks, greenway systems (Reed Creek Greenway) and many other viable shopping venues.

Some recent rezoning include: 2002: Broadway Corridor Rezoning to Neighborhood Corridor District; 2003: Rezoning of 2 lots on the corners of Stames and Flint from Neighborhood Business to RM-8; 2004- Conditional Use Rezoning on Catawba Street from RS-8 to RM-8 for the construction of a quadraplex.

On May 28, 2004, Campus Crest Developers, LLC, submitted a conceptual master plan for the construction of a large-scale multi-family development to be located within the Highland Park office complex located off of Zillicoa Street. The property will be subdivided from the main tract to create a 16.85-acre parcel that will house the development.

The property, zoned Institutional, allows for a density of 16 units per acre. Based on the acreage, up to 269 units could be constructed (City Exhibit 3 – Site Plan). The developer is proposing 154 units, a density of approximately 9 units per acre. The development will function and cater towards student housing. Individual bedrooms (each with their own bathroom) will be rented, with its occupants sharing the other common facilities within the unit such as the kitchen, living area, etc.

The project will consist of 11 buildings. Buildings 1-10 will consist of 14, 3-bedroom units; and Building 11 will consist of 14, 2-bedroom units. They will be constructed in a 4-3 story split design (4 stories in the front, 3 stories in the back) with a maximum height of 37-4' feet. Amenities to the complex include: a 2-story clubhouse, a multi-functional sport court, open court yard areas between each building, a designated loading area for shuttle transportation to UNC-A, and transit stop with bus shelter on Montford Avenue. Open space, in excess of the standard City requirement, is shown in multiple locations throughout the development. Sidewalks and trails will provide pedestrian connectivity within the development and to Zillicoa Street and Montford Avenue.

The site plan illustrates proposed access from Zillicoa Street and Montford Avenue with a 462-space parking lot connecting the two ends. (The North Carolina State Building Code-Fire Volume, adopted by the City of Asheville, requires a development of this size to either have 2 points of access to the development (one of which must connect to a public street) or requires all buildings to be sprinklered.)

A 15-foot type "A" buffer is required along the West, East and South sides of the property, all of which are heavily wooded. The project will be heavily buffered from adjoining properties by the preservation of existing vegetation supplemented with additional plant materials as needed.

The site plans presented to the Planning and Zoning Commission on August 5, 2004, were revised to address several Technical Review Committee (TRC) comments and also addresses other site plan changes. These include: an increase in the number of units (from 152 units to 154 units), decrease in number of bedrooms (from 456 bedrooms to 448 bedrooms), clarification of building heights and design, an increase in the number of parking spaces (from 446 spaces to 462 spaces – 14 spaces over the maximum permitted), design change to the parking area to include a loop road, changes to the landscaping, sidewalk connections to the street, addition of a transit stop and bus shelter on Montford Avenue, proposed dumpster location, a shuttle bus loading area, multi-functional sport court, open area courtyards between the buildings, and elevation changes.

The changes to the plans address a majority of the conditions outlined in the TRC staff report (City Exhibit 4 – Original Proposed Building Façade; and City Exhibit 5 – New Conceptual Elevation). For items not yet addressed, detailed plans will need to be resubmitted to the TRC for final review, should Council decide to approve the project.

City Council must take formal action as set forth in section 7-9-9(c)(4) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case (UDO 7-16-2(c)).

1) That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and has the potential of meeting all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The existing site is heavily wooded and straddles a relatively steep ravine that contains a tributary of Reed Creek. Significant grading of the site and containment of the tributary will be necessary to develop the property as proposed. The site, however, has been designed in a manner that somewhat more environmentally sensitive by concentrating the development on the more level areas within the ravine to limit land disturbance at its bank and to preserve existing vegetation around the perimeter of the property. Additionally, the project must comply with all City Standards in regards to maximum clearing and grading, erosion control, and maximum slope for streets.

A condition has also been added to the project for the developer to work with staff to ensure water quality issues in regards to Reed Creek, are addressed through the design and monitoring of stormwater run-off infrastructure.

3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The existing site is heavily wooded. The developers have designed the project so that the buildings along the west side of the property are not closer than 80 feet to the property line. Because the development is being concentrated within the lower areas of the ravine, land disturbance around the immediate perimeter of the property will be minimal to none. The landscape plans provided indicate that all existing perimeter vegetation is to be preserved to meet the City's Landscape requirements, supplementing with additional vegetation, if needed.

Although, this project is not being developed within the Montford Historic District overlay, the architects for the project are working with staff to ensure that the design and architectural features of the buildings are compatible with those found in the surrounding neighborhood.

4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The apartment buildings will be located at least 80 feet away from properties along the south and west sides of the site. Additionally, they are being constructed within the lowest parts of the site, which will assist in providing visual relief from the full scale and height of the buildings. Furthermore, the developers are proposing buildings constructed of high-quality materials and are also working with staff to ensure that the design and architectural features of the buildings are compatible with those found in the surrounding neighborhood.

In addition, the existing vegetation around the perimeter of the property will be preserved, supplementing with additional vegetation as needed, to meet the City's landscape buffer requirement.

5) That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies. The project utilizes the existing zoning on the lot to create a sustainable medium-density residential development within the City Limits in a location were the existing infrastructure is capable of supporting the proposed use. The project will assist in meeting the demands of student housing for the area. The project proposes shuttle service to UNC-A for its residents and is also within walking distance to the University. The project will also provide a bus shelter and transit stop on Montford Avenue. The project is also located within close proximity of parks, greenway systems (Reed Creek Greenway) and many other viable shopping venues.

6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

There is currently no transit service available on Broadway. The subject site is, however, located within walking distance of existing transit service on Montford Avenue. Additionally, the development proposes a new transit stop and bus shelter near the Montford Avenue drive entrance and also proposes a passenger loading area within the development for shuttle service to UNC-A.

The City's TRC, which includes representatives of the Water Resources Department, Fire Department, Engineering Department, Public Works Department, and Planning Department, has reviewed the proposed development.

7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The Campus Crest development is proposed with access to Broadway and Montford Avenue. Montford Avenue is a collector street, and it is appropriate to provide such access for a residential development. The Traffic Impact Analysis submitted for the project predicts only 20% of development traffic using Montford Ave, which is reasonable considering the primary destinations will be UNC-A, downtown, and I-26, all of which are more accessible via Broadway, with its ample lanes, higher speeds, and more direct route. The traffic on Montford Avenue would increase by about 300 cars per day (36 during the peak hour, or one every 1 minute 40 seconds during peak hour).

The design of the Montford Avenue access will be required to use a traffic calming technique called a "driveway link" segment, in which the access is designed to look like a residential driveway, making it further less attractive than the Zillicoa/Broadway driveway, which will look like a public street. This design should further limit the traffic volume using Montford Avenue to those destined in the neighborhood.

At their June 21, 2004, meeting, the TRC reviewed the Conceptual Master Plan and voted unanimously to recommend approval of the project, subject to the conditions outlined in the staff report and the following additional conditions:

1. Construction traffic is to be routed away from Montford Avenue.
2. Traffic calming measures are to be implemented on site.
3. A handicapped accessible route must be provided to the transit stop.

Pros:

1. The project is supported by numerous goals and strategies in the plan relating to infill development, smart growth and transportation policies.
2. The proposed use and development is supported by the future land use and transportation plans for this area.
3. The project will assist in meeting the needs of student housing in close proximity to UNC-A's campus.
4. The site has been designed in a manner that works with the existing topography by concentrating the majority of the development in the lower levels of the ravine. This will reduce the amount of grading needed at the top of the bank where a thick vegetative buffer exists. It will also reduce the over-all visual appearance of the height and scale of the project from neighboring properties.
5. The project, catered towards student housing, is located less than a mile from the campus of UNC-A, making the use of other modes of transportation such as walking, bicycling and shuttle and transit service, more appealing and readily available.
6. The project is located within close proximity of parks, greenway systems (Reed Creek Greenway) and other viable shopping venues.

Cons:

1. The existing site is heavily wooded and consists of a relatively steep ravine with an unnamed tributary of Reed Creek that runs in the center of the property.
2. Due to the existing topography, significant grading of the site will be necessary to develop the site, as proposed.
3. Although the project will have to comply with current stormwater regulations to control the quantity of run-off, it will not address "water quality". Due to the natural topography of the land and lack of any proposed filtration methods, the run-off from the parking lot may contribute to the degradation of Reed Creek.
4. The number of parking spaces proposed for the development seems excessive due to information provided from the UNC-A Facilities Manager who indicated that only 64% of the student population housed on campus at UNC-A own cars.
5. Although a majority of the traffic is likely to use Zillicoa Street to Broadway, an increase of traffic is expected on Montford Avenue. The City, however, will require the developer to design the Montford driveway connection with traffic calming elements that will make it less appealing.

On August 5, 2004, the Planning and Zoning Commission voted unanimously (6-0) to recommend approval of the project subject to the following conditions:

1. Staff and TRC recommendations be met.
2. No fee in lieu of sidewalks be permitted.
3. Placement of electronic pedestrian crossing signals at crosswalks, if permitted by NCDOT; placement of crosswalks of design and/or color to clearly delineate them, if permitted by NCDOT. **(Alternate language suggested by staff: A crosswalk crossing Zillicoa shall be added at Broadway. Material shall be white thermoplastic meeting NCDOT standards.**

Both crosswalks crossing Broadway shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting NCDOT standards.)

4. Placement of transit stop and shelter at the Zillicoa/Broadway entrance; **(Alternate language suggested by staff: A transit pad shall be provided at the intersection of Broadway & Zillicoa to provide for potential future service along Broadway. The pad shall be concrete, 13' long x 8' wide, with cross-section meeting the City's sidewalk specifications. The pad shall be attached to, but shall not overlap, the sidewalk. Location shall be in the south corner of the intersection along Broadway, or other location approved by staff.)**
5. Placement of low-level/impact lighting, but sufficient to accommodate safety; **(Alternate language suggested by staff: All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from surrounding properties; a lighting plan shall be implemented to minimize light trespass.)**
6. Architectural design of the buildings in compliance with Montford area sufficient to satisfy staff (staff had already noted the design was sufficient). **(Alternate language suggested by staff: The developer shall continue working with staff to ensure that the proposed structures are architecturally compatible with the surrounding neighborhood.)**
7. Eliminate one of the Zillicoa Drive entrances, but only if compliant with State Fire Regulations; this included meeting and working with the Fire Marshal on this issue.
8. Developer must cooperate with staff, Parks and Recreation, Asheville Greenway Commission and John Calabria of NCSU Extension Service in development of a plan for water quality and storm water issues. **(Alternate language suggested by staff: Best Management Practices (BMP's) shall be utilized to address water quality issues; at a minimum, the updated EPA water quality standards shall be met, along with any conditions imposed by the Asheville City Engineering office.)**

Based on the seven findings, staff recommends approval of the conditional use permit with the conditions outlined by the Technical Review Committee, Planning and Zoning Commission's recommendation and the following added conditions:

1. The developer shall work with city staff and other independent groups to address water quality issues in the design and monitoring of stormwater run-off infrastructure.
2. All parking spaces over the maximum number of spaces permitted must be constructed with pervious paving and comply with additional landscaping requirements.
3. The dumpster should be relocated to an internal location within the site to reduce its impact on neighboring properties and discourage traffic from proceeding onto Montford Avenue.
4. All buildings must comply with the Institutional District height standards.
5. The developer is required to contact the Corps of Engineers office to determine appropriate permits required for developing over a tributary stream. Any permits required, are to be obtained prior to the issuance of the zoning permit.
6. A sidewalk connection along Zillicoa to Broadway shall be provided in a location approved by staff.
7. The driveway access on Montford Avenue shall be constructed with traffic calming elements as required by the City's Traffic Engineer.

Mr. Albert Sneed, attorney representing the developer, said that the City's Traffic Engineer and the Fire Marshal require the road to go all the way through to Montford. The developer would prefer not to have the road go to Montford. If there needs to be some kind of road to Montford, the developer would like to have a road with a gate on it that the Fire Department could "break down" if they needed to get in the apartment complex.

Mr. Chris Eller, Civil Design Concepts and Engineer of record on the project, said they did try to preserve as many of the existing trees as possible, arranged the buildings in a cluster fashion to preserve a perimeter buffer of trees, and noted the elevation of the buildings are set at an elevation that will minimize impacts to surrounding property owners. They did meet with the neighborhood and they have tried to incorporate many of their concerns. They have agreed to add a bus stop at Broadway as well as the one requested by City staff at Montford. He has met with the Fire Department staff to discuss ways of potentially limiting the access off of Montford. He said the access is more of an operational concern, however, he understands the Fire Department would allow the Montford access to be an ingress only, being gated or bollard controlled. The developer would be open to that or to eliminate the Montford access entirely. This could be a potential compromise to eliminate some of the neighborhood concerns. We have hired an environmental consultant to work directly with the Corps of Engineers and they did get a notification of jurisdictional determination from the Corps of Engineers stating that they concurred with their consultant that there were no U.S. waters or wetlands on the properties of any significance that would require permitting through the Corps of Engineers. The owners have met with representatives from the N.C. State University Extensive Service and looked at potential water quality devices that could be used. We have worked with that group on other projects in the region and feel confident that what the developer is proposing will satisfy and be an extreme enhancement to water quality at this project site. He noted that water quality is not a requirement of the UDO standards, but it has been recommended by neighborhood concerns. The developer has agreed to do water quality in addition to stormwater detention volume control. This will be an additional $30,000 spent to address water quality issue. We have relocated the dumpster to be centrally located in the project. We agreed to put a sidewalk in from Zillicoa (where the current project entry is) down to Broadway and have agreed to do traffic calming measures within the development as well. A Traffic Impact Analysis (TIA) was performed on the project and it concluded that it would have no adverse impacts on the surrounding intersections. The project incorporates many smart growth principles. We feel the project clearly meets the seven standards for conditional use approval.

Mr. Mike Hartnett, partner with Campus Crest Communities, said that early in the process, they started communicating with the neighbors by hosting a reception and then holding another meeting. Two issues repeatedly came up. One was the entrance onto Montford. Our initial conceptual plan did not include an entrance onto Montford, but City staff felt this entrance was required. We are fine with our road ending as a cul-de-sac, or a knock down gate or bollards for emergency entrance only, or a very residentially scaled small entrance. The other issue was how is this property going to impact the Montford neighborhood. There are three tangible items that might affect the neighborhood – traffic, quality of our finished community product, and the behavior of our residents. Regarding traffic, we feel that most of our traffic flow (80%) will be going toward the main entrance on Broadway. Regarding quality of our development, we have spent consideration time and effort on the architecture and design. People will probably never get a real site line on this property from Montford because we will be keeping the existing 80-foot tree buffer along Montford as well as the topography that slopes down onto the property. Regarding management, Campus Advantage is a management company out of Austin, Texas, and he personally feels they are one of the best in the United States. They manage over 5,000 beds in several states. We are confident in their ability to educate the residents on policies and enforce those policies. This will be a high quality housing option for a growing population at UNC-A, which will be managed by nationally recognized firm. This project may free up rental housing inventory throughout the community making options available to other families who are finding it difficult to rent affordably in Asheville. And, this will be a nice infill development within the City limits where there is a lot of urban sprawl going on these days.

Responding to Mr. Sneed, Mr. Hartnett showed pictures from houses across the street to where the project will be constructed (Applicant Exhibits 1, 2 and 3). Again, his plans are to keep the existing 80-foot width of vegetation from Montford right-of-way down to their property line.

Responding to Mr. Sneed, Mr. Hartnett said that the developer is approaching $100,000 already in engineering, architecture, Army Corps of Engineer consultants, and traffic engineer - not including our time as developers.

Mr. Hartnett did not feel this project will have any negative impact on adjacent property owners. They will be building a $15 Million asset, which will be nicely maintained.

Mr. Michael Peter, President of Campus Advantage, which is a student housing management company, said that they manage over 5,000 beds. He explained the credentials of his senior staff. They are involved in several professional organizations that are dedicated to student housing and student development. The cornerstone of our approach is grounded in the fundamentals of student development and residence life. We have a national director of residence life whose sole job is to oversee the social and educational programming that takes place at each one of our properties. At this property we have slated 6 Resident Assistants (RA) living on site. He said an RA is typically a student staff member, with substantial GPA's and student leaders. Each RA will be responsible for approximately 50 residents. We also have a resident director who oversees the RA staff. And, they have an on-site manager. That is just the residence life staff. Using a chart (Applicant Exhibit 4), he showed Council the proposed organizational structure. He said this is different than other student housing because we have staff living on-site 24 hours, 7 days a week. There is interactive staff participation in everything that goes on There is always a RA on call and there is always a RA on duty during the 24-hour period of time. The resident director or the general manager must remain on-site. He said all rental contracts require a guarantor to sign and that guarantor needs to be someone that is responsible for that student (normally a parent). The importance of the guarantor is not only in terms of us collecting rent, but also any violations of the lease will instantly result in a letter to both the tenant and the guarantor of the lease and it outlines what that violation was. We have a zero tolerance drug policy, which is written in our lease and in our rules and regulations. If the issue is drug use, the student will be immediately evicted from the property. We have similar rules regarding conduct and behavior. If certain behavior rises to the level that it requires an eviction, we undergo an eviction. Regarding alcohol, there is no open consumption of alcohol allowed on the property – regardless of age. We have quiet hours every weekday beginning at 10:00 p.m. and the sports court is closed at 10:00 p.m. also. On weekends that time is extended to 11:00 p.m. If we get a call from a resident complaining about noise, the RA will ask the person to turn it down whether it is quiet hours or not. Regarding parking, all our residents will be given a parking permit, which they will pay for each semester for the privilege of parking. Typically the permit is $25-$50 per semester. We enforce the parking in our lots. We will have designated visitor parking. During the day, we have our maintenance team walking the property picking up as well as observing the parking. Regarding recreation, each RA is required to provide one social and one educational event for their pod each month. In addition, the entire RA staff is required to provide a building-wide activity educational and social each month. These units are fully-furnished and the entire program is structured is structured with students in mind, so this not a program that would be enticing to anyone other than the student or the parent of a student. Mr. Peter submitted to Council the Resident Assistant Manual (Applicant Exhibit 5).

Ms. Janice Brummit said that she is on the Board of Trustees at UNC-A, but her statement is not an official UNC-A statement. She explained to Council some of the needs they have on the campus. This fall their enrollment was 2829 students. Currently on campus they have 1,191 beds available. The freshman enrollment is 705 and freshman must live on-campus. Historically our students are well-behaved and they come for an education, not to party. As in any case, there are incidents where students are not well-behaved but we have rules in place to take of those incidents when they do happen. Our student body is very conscious environmentally, morally and socially about what happens in our community. There is a need in our community for affordable housing and this project is close to campus where they can ride their bikes.

Upon inquiry of Councilman Newman about why there hasn't been more of a position from UNC-A, Ms. Brummit said that they are a public institution and this is a private development. Many legal ramifications are associated with when a public institution steps out and endorses a private development. Again, she is not speaking for the Board of Trustees of UNC-A, but when you endorse a project, it becomes an alienation between the community and the University. The University of North Carolina is a good neighbor and we don't want that to be slandered in anyway for any cause. But, we also want to be very cognizant of the fact that our students need a safe environment to live and have easy access to campus. She feels this is a win/win for UNC-A, but she cannot speak for the University, only as a private citizen. She did say that UNC-A is always willing to work with the community for a win/win situation.

Councilman Newman felt there are opportunities to coordinate some of the transportation issues, especially since UNC-A has just hired a transportation planner. He is not asking for an endorsement, but wondered if there would be more opportunities to do some planning together. Ms. Brummit responded that UNC-A is always willing to work with the community for a win/win situation.

Upon inquiry of Councilwoman Jones, Ms. Brummit said that other dormitories are planned on campus, but that still not meet the needs that we have. They anticipate the campus growth over the next 10 years to be about 4,500 student and we don't see that type of growth of housing on campus. The problem with building dorms is timing. Private entities can build a residence much more quickly off campus. Another issue is they have to transplant parking spaces when they build new dorms and this would alleviate some of those issues on our campus.

Mr. Scott Hughes, property owner of 19 Zillicoa, spoke in support of the project noting that he will see the project right out his back window. He spoke highly of UNC-A and in fact his firm has hired a number of UNC-A graduates. UNC-A is land-locked and in need of housing for their students. This project is a great solution for part of UNC-A's housing needs and it's being done with private dollars. City-wide traffic might be reduced if housing for the students remains close to campus. The nature of the property and the planned use should direct much of the traffic to the Broadway area. Buffering will make the development less obvious and on-site management should keep noise and security issues to a manageable level. This is another investment in the lives of the students that come here looking for knowledge and community.

Mr. Sneed summarized an email from Jim Barrett (Applicant Exhibit 6). He said Mr. Barrett is a resident of Montford and an advocate for more affordable housing. He wanted to urge approval of this development for some of the following reasons: (1) Asheville needs more affordable housing units; (2) this development will increase the supply of units for students, thus increasing the supply of affordable units for the entire City. Students currently occupy units around town that could otherwise be used for lower income families; (3) private construction of this complex will create taxable apartments and land and save the taxpayers from having to build one or more at UNC-A; (4) students will be able to bike and walk to campus decreasing the need for cars and other transportation and this should reduce air pollution; and (5) Broadway is an under-utilized four-lane thoroughfare that can accommodate traffic from a multi-family apartment complex. The complex is virtually adjacent to I-26. Broadway is or should be on the City bus route.

Vice-Mayor Mumpower inquired about the reading of emails prior to this public hearing. City Attorney Oast said that since the emails are from people who are not at the public hearing, and also regarding the email that Mr. Sneed read from Mr. Barrett, Council cannot ask questions to those people and in Superior Court that would be hearsay evidence. Mr. Sneed responded that the fact is Mr. Barrett is President of the Affordable Housing Coalition, he is head of Pisgah Legal Services and a resident of Montford.

The following individuals spoke against the conditional use permit and/or offered additional conditions to the permit. Reasons for denial and additional conditions are as follows, but are not limited to: loss of forest will destroy the beauty of the area and allow further air pollution; request to eliminate access on Montford Avenue due to traffic concerns; if access on Montford is necessary, suggestion for a gated or limited access entrance for emergency vehicles only; TIA count was one day instead of three days and relied on data two years old; Montford Avenue is already under strain with traffic with the new Chamber of Commerce building, two schools and the new Health Adventure; it is only an assumption that the majority of trips from this development will go to Broadway, because they will also go to places for entertainment, shopping and jobs and Montford will be the most viable route; hope that staff will work with the developer to assure the site plan on saving the trees and lighting is met; $500 per unit is not affordable housing; there will be at least 600 students in one spot (400 residents and 200 friends) which will cause a lot of noise problems; the Historic Resources Commission should become involved in this development; if the project fails in the next three years, who will be responsible for the project; this is not smart growth; if the City wants infill housing to provide affordable housing close to downtown, why are there expensive condos in downtown Asheville; the developers are using education as a guise to achieve their goal; the development will be on a creek which eventually leads to the French Broad River which we have been trying to clean up; forest provides for a buffer and barrier of sounds from I-26; noise from project will echo up out of the ravine to Klondyke and Montford residents; project is catered to a transient population; request to slow the process to see if there are other options available; Campus Crest is student housing and not mix-use development, the project is not in keeping with the traditional Montford neighborhood pattern; the project will be built on a steep slope in an environmentally sensitive area; only economic development of this project will be to the developers; the Montford Historic District is a tourism attraction but won't stay that way when it starts to look like Tunnel Road; property values will be adversely affected with a 456 person complex in the neighborhood; there are only mild traffic calming devises proposed; the project might not be profitable enough to stay student housing and managed in the way presented, but in a few years it may become low-income housing; heavy traffic and excessive speeding on Montford Avenue is an ever increasing problem and no measures have been taken to remedy these problems; there will be excessive cut-through traffic onto Montford even if the main entrance is on Broadway; speed on Montford Avenue should be lowered since the average speed is 35 mph; traffic study on Montford Avenue by developer is misleading; housing should be integrated into the neighborhood and just concentrated in one area; don't corrupt the neighborhood and disturb the delicate balance of homes with more traffic and people who are not invested in the neighborhood; people invest a lot of money to renovate their homes and their re-sale value will be decreased due to the proximity of large single-family apartments; if there is no Montford access, then students will use other area streets to cut-through to get to Montford; there is documented loud noise calls in the past three years from a 24-unit apartment complex for students and this will be 150 units; there isn't guaranteed oversight for the project; Campus Advantage's website only shows 2-3 active properties under management; and need to look at the bigger picture of Broadway and Montford how they are intertwined:

Mr. Fred English
Mr. Gerald Green, Montford resident
Mr. Tim Schaller, Montford resident (Neighborhood Exhibit 1)
A 20-year resident of Montford
Mr. James Revels, Montford resident
Ms. Linda Palmer, Montford resident
Ms. Dee Eggers, Montford resident
Ms. Terry Walton, Montford resident
Ms. Mary Jo Brezny, Montford resident (Neighborhood Exhibit 2)
Ms. Constance Richards, Montford resident
Mr. Kerry Shackelford, Panola Street resident

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Ms. Elizabeth Hunter, Panola Street resident
Ms. Rebecca Goldson, Montford resident

The following individuals spoke in support of the conditional use permit and/or offered additional conditions to the permit. Reasons for approval and additional conditions are as follows, but are not limited to: the project meets the need of the community; request the developer not grade right up to Zillicoa but leave the stand of mature trees; request the developer enhance the planting on Zillicoa to allow for a vegetation screen; request to eliminate access on Montford Avenue due to traffic concerns; adjoining business on Zillicoa has on-street parking and students will be tempted to use those spaces which will be detrimental to the business; request the developer to internalize the loop system to help protect parking on Zillicoa; encourage the developer to use features in the Reed Creek Greenway Plan regarding creative stormwater management opportunities; Campus Crest project, because of their interest in stormwater mitigation, can be a model that demonstrates how collaboration will produce solutions that balance the goals of all the stakeholders; and recommend Campus Crest meet the EPA's Revised Water Quality Standards:

Mr. Steve Buie, adjoining property owner
Ms. Billie Buie, adjoining property owner
Mr. Kevin Hogan, Pearson Drive resident
Ms. Megan Gordon, Montford resident

When Mr. Schaller began reading a letter that was someone handed to him regarding one of the partners of the Campus Crest project being under federal litigation by the Securities and Exchange Commission for fraud, Mr. Sneed objected. He asked Mr. Schaller if he knew of the contents of the letter of his own personal knowledge. Mr. Schaller replied no. City Attorney Oast questioned the relevance of the information. Mayor Worley sustained the objection. (Neighborhood Exhibit 1)

Ms. Brezny pointed out that the staff report submitted as City Exhibit 3 states that Mr. Barry Lowe is the applicant on the project and he is no longer associated with the project. She felt the entire process is null and void and should have to be re-reviewed. City Attorney Oast responded that the owner is still Highland Park, LLC, and is still behind the application. If Mr. Lowe signed as a representative, then he had the authority to sign on behalf of the owner. The fact that Mr. Lowe is no longer associated with the owner makes no difference.

Responding to Mr. Sneed, Mr. Peter said that Campus Crest manages 9 properties at 9 different colleges. He has been in student housing since 1985 and in March of 2003, Campus Advantage was incorporated. They now employ 150 employees. He pointed out that the rent cost includes a full telecom package, all utilities paid and each unit is fully-furnished.

Responding to Mr. Sneed, Mr. Hartnett said that over the past 2-1/2-3 years he has personally developed and been an owner of 3,000 beds at different universities. He and his construction partners personally guarantee the $11 Million construction loan and they would not do that without the proper due diligence and study of the market.

Upon inquiry of Councilman Newman, Mr. Hartnett said that the only coordination with the other universities is that the university will sometimes allow them a website on their off-campus student housing page. They have no interactive management relationship. Occasionally they get to market and advertise on campus.

Upon inquiry of Councilman Dunn, Mr. Hartnett said that he has been doing student housing for four years. Their properties are well-maintained and range from 95-100% leased with a waiting list.

Upon inquiry of Councilwoman Jones, Mr. Hartnett said that by industry standards this is a relatively small project. He personally likes to develop properties in the 300-450 bed range. It makes good economic sense and you can get a good sense of community there.

When Councilwoman Jones asked about the management team, Mr. Hartnett said that the management of student housing is a critical cog for the success of this project. He has used traditional apartment management people in the past, but student housing is different. The parents and students are your customer and resident lifestyle programming is essential. Campus Advantage was recommended to him by several people in the industry and he flew to Austin, Texas, to check their corporate headquarters and one of their sites. They do satisfaction surveys, the monitor students and parents frequently. They are very interactive on what is working and what isn't working. He was very impressed with their work and feels fortunate to have them as part of their team.

Councilwoman Jones asked about parking for the project. Mr. Hartnett said that their parking standard is one parking space per bed. The national average for student apartments is a one to one ratio. Most universities require freshmen to leave their cars at home and live on campus, but when they become sophomores, they want their car to have the freedom to drive. We think it's an advantage for us as a provider of housing to have one space per resident.

Councilman Newman asked if Mr. Hartnett if it was accurate that 64% of the students on campus have cars. Mr. Hartnett said that the reason that percentage may be low could be because they aren't places to park their car or the places that are available are cost prohibitive.

Councilman Newman asked if Mr. Hartnett would be willing to discuss the amount of parking in the project to minimize the impact. Mr. Hartnett felt that was a technical issue, but conceptually speaking they have discussed parking. We feel strongly that we would like to have one space per bed and enough parking spaces for staff. But, realizing the amount of impervious coverage that we are creating, we have revised our plan and when we go back before staff for final review, we have a number of pervious parking spaces. At the front end of the cars as they go into those pervious spaces, we have rain gardens. Those are some of the systems we are putting into place for the water quality feature.

Responding to Mr. Sneed, Mr. Peter said that if parking is cut, the students will go somewhere else to live if they want to keep their car. Ideally we tried to make accommodations for guests. Since there is always a flux when people go home for the weekend, it's rare that the parking lot is 100% full so we use those spaces for visitors. Our way to manage the use of the lot is through a parking permit process and we regularly tow non-residents.

At 7:15 p.m., Mayor Worley closed the public hearing and announced a short recess.

Mr. Anthony Butzek, the City's Traffic Engineer, explained the reasons why he is recommending keeping the connection on Montford Avenue. Montford Avenue is a collector street, and it is appropriate to provide such access for a residential development to a collector street than filtering through the local streets. We expect the three primary destinations for most people from the development to be UNC-A, downtown and I-26. He feels that 80% of the traffic will use Broadway and the Zillicoa access since Broadway has ample lanes, higher speeds, and is more of a direct route. We do expect there to be some destinations to the Montford area where people would be more likely to use Montford Avenue as that access. Closure of the Montford access would increase trip length somewhat for people destined to the Montford area from this development. They would have to cut through on some of the local streets to get back to the Montford area. The next concern would be the potential use of some of those local streets as cut-throughs. If the Montford access is not provided, there is a lot of potential in this area for cut-through traffic (City Exhibit 6). The nature thing for people to do is use Zillicoa Street to go up to

Montford Avenue. Again, we prefer people to use the collector street rather than use the local streets to make that connection to Montford. The Fire Department would like to have the access on Montford and they have indicated that a majority of their calls would use Montford Avenue opposed to Broadway. Having a gated access is a possibility, but it would increase their response time to have to unlock and re-lock the gates at each call. Access to a public street has been raised as a concern. Zillicoa Street is a private street and the City has no control over the fate of that street, so again, we would like to have this development have access to a public street, such as Montford Avenue. Staff has recommended that a special type of driveway be used on the Montford Avenue connection in order to ensure that it looks more like a driveway, whereas the entrance on Zillicoa would look more like a street, to further demonstrate that Zillicoa is the main access. He explained the "driveway link" concept (City Exhibit 7), referred to as the traffic calming measure, is not traffic calming for Montford Avenue, but it is an intent to discourage the use of the driveway, be less convenient, and to fit in better with the neighborhood.

Upon Vice-Mayor Mumpower of the traffic counts, Mr. Butzek said that the development was required to have a TIA and he has reviewed the results and concurs in general with those results (City Exhibit 8).

Upon inquiry of Councilman Davis, an audience member said that the Housing Authority said there are about 150 units with 400 residents in Klondyke Apartments.

When Vice-Mayor Mumpower asked about the speed limit on Montford Avenue, Mr. Butzek said that the posted speed limit is 30 mph, but the average speed limit is 35 mph.

Councilman Davis asked what the distance is between the two curb-cuts on Zillicoa and if we keep the Montford access do we need both curb-cuts on Zillicoa. Mr. Eller responded that the curb-cut distance is roughly 350-feet. One of the reasons we have both access points is because we don't physically have the room for a fire truck to turn around at the end.

Councilwoman Jones said that with or without this development there are several traffic concerns on Montford Avenue. Mr. Butzek said that there isn't anything currently proposed on Montford to slow traffic down. He did say that Montford certainly qualifies for a neighborhood traffic calming program. We have a significant backlog of streets needing traffic calming that we are working through. His long-term plan would certainly be to get some kind of traffic calming to mitigate on Montford from the Cullowhee to Hill Street. However, there are currently no plans to do that. The biggest challenge to do that now is allocating the amount of money that we have reserved for traffic calming. The Kenilworth Road project is going forward and subsequent to Kenilworth Road we would be looking at all of the priorities to determine which ones were most needing. Council can prioritize that list.

Mayor Worley said that the normal process for Council would be to first institute the neighborhood traffic calming process and if there is the support that meets our traffic calming criteria, then Council can choose to change whatever priorities we want to. Councilwoman Jones was satisfied to let the process move forward in the normal methods and that we are open to allocating those funds in addition to the traffic calming.

Councilwoman Jones confirmed that there was no traffic calming on Montford to go along with this project. Mr. Butzek replied that there is not, but one of the TRC comments was to keep in mind the possibility of traffic calming on Montford Avenue. The final determination was that the traffic impact of this development may not justify this developer being responsible for those costs, but that is certainly a possibility if Council wishes.

Upon inquiry of Vice-Mayor Mumpower of what might be proposed for traffic calming, Mr. Butzek said that he would need to get a lot of neighborhood input. He has heard they don't want speed humps but something that looks better. Beyond that he doesn't know what the neighborhood's will is as far as what Montford Avenue should look like. Montford Avenue also falls into the Historic Resources Commission's jurisdiction and that adds another element of consideration. He does not have an idea of how much the traffic calming on Montford would cost.

Councilman Dunn felt that since the project has yet to be built we have some time to address traffic calming on Montford Avenue.

Upon inquiry of Councilman Newman, Mr. Butzek explained that the 80/20 split for vehicles using Zillicoa vs. Montford certainly contains some subjectivity and there is a margin for error, however, he feels it is a reasonable assumption.

Councilman Newman suggested there be one-way ingress into the development from Montford Avenue, which could be used for emergencies. Theoretically it could cut the traffic on Montford by 50%. Mr. Butzek's most significant concern is the enforcement issue because there is very little way to control that short section of driveway if someone goes the wrong way. He doesn't think it creates a dangerous situation, however, he would not recommend it since enforcement is virtually impossible.

When Councilman Davis asked if the ingress of the driveway could be constructed to make it difficult to exit and hard to make any left turns, Mr. Butzek wasn't able to think of any design pattern for that at this time.

Mr. Sneed questioned if there were no road into Montford from this project, would it be illegal, or is the road just a matter of preference. Mr. Butzek couldn't respond for certain, however, he didn't know of anything illegal about it. The two issues raised by the Building Safety Department was the need to connect to a public street as opposed to a private connection and the need to have two connections. He believed that since the buildings are sprinklered, the two connections are not necessary. He could not respond to whether just connecting to a private street is adequate.

Upon inquiry of Councilman Newman about a shuttle bus, Mr. Butzek said that the traffic study recommended that the developer consider, due to the high percentage of trips will be destined for UNC-A, developing some sort of shuttle system. That is a good recommendation and might reduce the need for residents to have cars. We have not recommended that be a requirement for the project.

Councilman Newman asked if the City performs an analysis of cumulative developments near one another, since projects individually may not produce much traffic, but collectively they could make a big difference in traffic. Mr. Butzek replied no. However, City Engineer Cathy Ball said that anytime a project is considered, we look at the projects that have occurred in the past. For instance, if this project is approved, a developer would have to consider the traffic from this project in looking at the evaluation of the next project. Also, we are looking at Montford Avenue in the in the north area to see what improvements can be made in that area to help with traffic flow as well. We are trying to cumulatively look at the problems and each project has to consider the impact of another project.

Ms. Ball recommended that instead of making a decision on traffic calming on Montford at this meeting, that staff come back at the next worksession and bring Council a comprehensive overview of what is going on with traffic calming, where the priorities lists are and then let Council make that decision at that point in time.

Councilman Newman felt that traffic calming is an important issue, but he thinks that the shuttle bus concept, and things like that actually need to be explored in a much more meaningful specific way. We are dealing with a big student housing development and there are going to be a meaningful percentage of students who don't have cars. UNC-A is already doing some things to partner with the City around transit. We can slow traffic down, but part of the goal needs to be to lower the number of cars and give people some viable transportation choices. There are things that the City can potentially do to help be part of that solution.

Vice-Mayor Mumpower asked if it is possible to maintain access and decrease convenience at the Montford access. Mr. Butzek said that the developer is already proposing speed bumps throughout their development and we can certainly look at that and see if there are opportunities at that particular location to make sure that we are inconveniencing it as much as possible within reason.

When Vice-Mayor Mumpower asked about the buffering on Zillicoa, Ms. Hamel said that our ordinance requires only street trees, however, the developer has been very willing to explore options. If the neighborhood wants additional buffering, the developer seems very open to being able to provide that. Council may wish to add that as a condition to the project, if Council should choose to approve it.

Upon inquiry of Vice-Mayor Mumpower regarding noise, Ms. Hamel said that the City has a noise ordinance. Mr. Hartnett said that they address the noise issue in the way we manage the property. Mr. Peter also said that noise is addressed by the on-site staff and there are reasonable limits that are acceptable.

Upon inquiry of Councilman Davis, Mr. Peter said that in addition to the residence life staff there is typically 7 or 8 full-time employees, e.g., a general manager, bookkeeper, receptionist, maintenance chief, and assistant maintenance chief, who will almost all be hired locally.

When Councilman Davis asked about on-site security provisions, Mr. Peter said that the safety provisions in place involve the front-desk being open from 8:00 a.m. – 10:00 p.m. every day, an RA on-call and another RA on-duty that do regular rounds and note problems on their logs. The logs then go to the general manager. On weekends or during special events we have a budget for additional either off-duty police officers, where allowed, or private security firms.

Upon inquiry of Councilman Davis, Mr. Peter described the outdoor sports court and the amenities inside the clubhouse.

At the request of Councilman Dunn, Mr. Peter reviewed the disciplinary process. He said they do allow each general manager on-site a degree of discretion. If there is a violation write-up, a meeting is scheduled for the resident, along with letters sent to the resident and the guarantor. It depends on the circumstances, but if we had 2 or 3 noise violations from the room, we would begin the eviction process because that affects our ability to market and lease this property. In the lease there is language that addresses violations of the rules and regulations. Additionally, each student is given a student handbook when they move in that spells out the specifics, which they have to sign and which is then incorporated into the lease itself.

Upon inquiry of Vice-Mayor Mumpower, Mr. Peter said that the leases can be year-round, not just by semester.

Councilman Davis asked about provisions for married students and children. Mr. Peter said that because of the structure of the units there is not a single property that has a family. A family could rent at a multi-family development much cheaper and satisfy the needs that they have for children.

Councilwoman Jones said that since each RA has to hold one social and one education event, could they possibly hold one community service event once a semester to further build a relationship with the neighborhood. Mr. Peter said that they would be open to that, however, it is all dependent upon participation. We occasionally have an event, like cleaning up the streets, where the RA's are participating but none of the residents.

Upon inquiry of Councilman Dunn, Mr. Peter said that if they have a student that is no longer enrolled in school and they had violations, they would be evicted.

When Vice-Mayor Mumpower asked about the buffering along Zillicoa, Mr. Eller said that if they could re-route the sidewalk through the trees, they could potentially save at least a 10-15 foot buffer along the upper portion of Zillicoa that directly abuts the Buie property. Mr. Shuford recommended the following condition: "A landscape buffer containing the equivalent landscape material as a Type-D buffer should be provided along the Zillicoa Street frontage; in addition, on-site tree retention shall be in accordance with the master plan provided by the developer." (City Exhibit 9)

Mayor Worley asked if sidewalks can meander through trees as opposed to being constructed right on the road. Mr. Butzek said that is a good suggestion as there is no rule that says sidewalks have to go in a straight line.

Mr. Eller said that it will be challenging to get the Type-D buffer sidewalk because of the topography.

Councilman Newman felt there were too many parking spaces in the project. We might be able to solve the problem of buffering on Zillicoa by eliminating some of the parking in that area.

When Councilman Newman asked about the noise ordinance, City Attorney Oast explained the noise ordinance. He said the first person we look to is the person actually making the noise and if we don't get satisfaction that way, we then look to the property owner. Violations escalate per offense from $50 for the first violation up to $300 for the fourth and subsequent violations.

Councilman Newman asked if we can tailor some specific noise standards to this project and make it part of the conditional use permit, since it is a unique project having this many students in one place. That way, the owner has a good incentive to not have noise ordinance complaints in the first place. City Attorney Oast said that he would have to research that if Council directs him. Under our current noise ordinance, which is pretty effective, our difficulty is with enforcement. The more special requirements you put on a project, the more difficult it will be to enforce. Another issue Council may encounter is that if you base it only on calls received, you may have a problem substantiating the calls. City Manager Westbrook felt it might be best to see what happens in retrospect since we are dealing with the unknown. That may pose more of a penalty than necessary.

Councilwoman Bellamy was concerned if we could defend the ordinance if challenged if we have a $1,500 penalty for one project and a $300 penalty for everyone else. City Attorney Oast said that we might have a problem with that. One thing we could do is monitor the situation for a year after the project is opened and re-visit it to see if any additional measures are necessary.

Councilman Newman said another way might be to look at the noise ordinance as a whole and see if there might need for an amendment to address the kind of situation if there is a chronic violator - there may need to be a different penalty structure.

Mr. Peter stated that if the fines are $300 per incident that is a very sufficient monetary motivation for us to curb what would be any noise problems.

Vice-Mayor Mumpower suggested we bring back the noise ordinance for review at a future worksession since it was last amended in 2000.

Upon inquiry of Councilwoman Bellamy regarding security, Mr. Peter said that they do not currently provide free room and board for police officers with their police cars, but that is an option they can look at.

Councilman Davis felt that there is a good management team in place, but he wasn't sure there was an adequate number of Ra's.

Councilwoman Bellamy wanted to be sure the 80-foot buffer would remain on Montford. Mr. Shuford suggested Council adopt the following condition: "A landscape buffer containing the equivalent landscape material as a Type-A buffer should be provided along the Montford Avenue frontage; in addition, on-site tree retention shall be in accordance with the master plan provided by the developer." We feel that is the most we can get equivalent landscaping material in and still be able to accommodate a meandering sidewalk. (City Exhibit 9)

Councilwoman Jones suggested a condition that the project shall be continuously managed by a professional management firm similar to the one presented tonight be added to the permit, if approved.

Councilman Newman said that this is a project he wants to say yes to, however, an outstanding issue is that we have to manage the traffic. He felt there are some creative things we can do in partnership with UNC-A and the transit system to create some alternatives to take the edge off some of the traffic impacts in the neighborhoods. Therefore, Councilman Newman moved to continue this matter for one month in order to have conversations with UNC-A's transportation planner, the developers, City staff (including the Transit Department) to see if there are any ideas that could be viable to help reduce the traffic impacts associated with this project. This motion was seconded by Councilwoman Jones.

Councilman Davis said that since this is not sanctioned by UNC-A he was unsure that they would come to the table providing transportation solutions. Also, considering the available parking at UNC-A, students will be discouraged from driving over there every time they have a class. He felt this is a very walkable area and there will be bicycle use. From a transportation standpoint, he felt our Transit Commission could work with UNC-A on a shuttle bus system, but these are unknowns at this time and can't probably be solved in one month.

Councilman Newman understands that we won't be able to come up with solutions to solve all of our transportation problems, but his concern is that if we approve the project as proposed tonight, there won't be a lot of incentive for people to sit down and talk. UNC-A is making plans to grow in our community and we should be supportive of that. But, if they are going to grow, then with projects of this intensity and scale, we need to be talking about ways to manage some of the adverse traffic impacts of the growth as it happens.

Mr. Sneed said that if the project is delayed one month, because of marketing, building the project and being ready for school opening, it is essentially put off for a one year.

Mayor Worley agreed with Councilman Newman about the transportation issues. He said we have been working with UNC-A to provide improved transit. That partnership could be expanded and ideally if we could find some sort of funding source, either from UNC-A or the City or in combination, to perhaps expand the frequency of the bus routes. But that partnership is, and should be, with UNC-A, not with this apartment complex or any apartment complex. We are trying to reach out to provide a public service at the private sector level and he thinks we are over-reaching.

Councilman Newman agreed it's not the developer's problem, but if we are going to find solutions that are going to work, it's going to take UNC-A, the City and the private sector creating the incentives to encourage people to use alternatives. He felt all the partners are necessary to maximize the opportunities.

Upon inquiry of Councilwoman Bellamy, Ms. Hamel said that the minimum number of parking spaces, based on the number of units, is 294 spaces and the maximum parking spaces allowed is 448 spaces. The developer is actually 14 spaces over the maximum. Mr. Hartnett said that they are asking for one space per resident and enough parking for staff. He said they have 48 parking spaces that are pervious spaces that they were not required to provide, but they did that to work on stormwater management. He said that they would be willing to reduce their parking spaces to 448 realizing that 48 of those are pervious.

Councilman Newman would prefer to see the reduction of parking spaces less than 448. Again, he wants to create some real alternatives and incentives for students so they will not bring their car. Another consideration for him is the footprint/scale of the project. He said the main footprint is not the buildings, but the parking lot. If we reduced parking spaces, it would at least allow us to have more buffering on Zillicoa. Mr. Hartnett responded that unit density on this property is less an 10-units per acre, which by multi-family standards is quite low. If we were developing the number of units that we could, by right, we probably would end up having that number of parking spaces. He is confident that they will have a shuttle bus agreement, but cannot confirm that right now. He did note, however, that there is a shuttle bus turn-around near the clubhouse.

Vice-Mayor Mumpower felt that dropping the parking spaces down to the maximum makes sense. He was, however, concerned that Council is discussing policy matters and applying them to the project. He was comfortable with providing some opportunity for dialogue and moving forward.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that the previous suggested condition does allow for buffering on Zillicoa. However, there is a row of about 22 parking spaces near Zillicoa and if that row were deleted, you could have an additional 18-feet to add to the Zillicoa buffer area. He did note that the Zillicoa side is the non-residential side, whereas, Klondyke is residential so it is more appropriate for there to be a bigger buffer in that area.

Councilwoman Bellamy asked if we can add a condition to the permit to create dialogue with UNC-A's transportation planner, the developers, City staff (including the Transit Department) to see if there are any ideas that could be viable to help reduce the traffic impacts associated with this project. She said the City can't make UNC-A come to the table, but with this condition on the permit, the developers have to come to the table.

The motion made by Councilman Newman and seconded by Councilwoman Jones to continue the this matter for one month in order to have conversations with UNC-A's transportation planner, the developers, City staff (including the Transit Department) to see if there are any ideas that could be viable to help reduce the traffic impacts associated with this project failed on a 2-5 vote, with Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

Councilman Davis moved for the adoption of Ordinance No. 3253, granting a conditional use permit for property located between Zillicoa Road and Montford Avenue, identified as Campus Crest at Asheville, to construct a 152-unit apartment complex, subject to the following conditions:

1. Technical Review Committee, Planning & Zoning Commission (as stated in the manner by City staff) and City staff recommendations be met.
2. No fee in lieu of sidewalks be permitted.
3. A crosswalk crossing Zillicoa shall be added at Broadway. Material shall be white thermoplastic meeting NCDOT standards. Both crosswalks crossing Broadway shall be upgraded to high-visibility type crossings. Markings may be ladder-style or piano-key style, similar to City markings in the downtown area. Material shall be white thermoplastic meeting NCDOT standards.
4. A transit pad shall be provided at the intersection of Broadway & Zillicoa to provide for potential future service along Broadway. The pad shall be concrete, 13' long x 8' wide, with cross-section meeting the City's sidewalk specifications. The pad shall be attached to, but shall not overlap, the sidewalk. Location shall be in the south corner of the intersection along Broadway, or other location approved by staff.
5. All site lighting shall be equipped with 90-degree cut-off fixtures and oriented away from surrounding properties; a lighting plan shall be implemented to minimize light trespass.
6. The developer shall continue working with staff to ensure that the proposed structures are architecturally compatible with the surrounding neighborhood.
7. Eliminate one of the Zillicoa Drive entrances, but only if compliant with State Fire Regulations; this included meeting and working with the Fire Marshal on this issue.
8. Best Management Practices (BMP's) shall be utilized to address water quality issues; at a minimum, the updated EPA water quality standards shall be met, along with any conditions imposed by the Asheville City Engineering office.
9 The developer shall work with city staff and other independent groups to address water quality issues in the design and monitoring of stormwater run-off infrastructure.
10. The maximum number of parking spaces shall be 448 of which 48 spaces to be pervious paving.
11. The dumpster should be relocated to an internal location within the site to reduce its impact on neighboring properties and discourage traffic from proceeding onto Montford Avenue.
12. All buildings must comply with the Institutional District height standards.
13. The developer is required to contact the Corps of Engineers office to determine appropriate permits required for developing over a tributary stream. Any permits required, are to be obtained prior to the issuance of the zoning permit.
14. A sidewalk connection along Zillicoa to Broadway shall be provided in a location approved by staff.
15. The driveway access on Montford Avenue be a one-way ingress only and shall be constructed with traffic calming elements as required by the City's Traffic Engineer.
16. That the developer shall participate in dialogue with City staff, including the Transit Services Department staff, the Transit Commission and invite UNC-A to participate to discuss the possibilities that exist to help reduce the traffic impacts associated with this project.
17. A landscape buffer containing the equivalent landscape material as a Type-A buffer should be provided along the Montford Avenue frontage; in addition, on-site tree retention shall be in accordance with the master plan provided by the developer.
18. A landscape buffer containing the equivalent landscape material as a Type-B buffer should be provided along the Zillicoa Street frontage; in addition, on-site tree retention shall be in accordance with the master plan provided by the developer.
19. The project shall be continuously managed by a professional management firm at the same level of on-site staffing as presented during this public hearing; to this end, any

change of management company from Campus Advantage shall require prior approval from the City which shall not be unreasonably withheld.

This motion was seconded by Councilwoman Bellamy.

Councilman Dunn asked if, after the dialogue, City staff recommends an action be taken is the developer required to comply with that action. Councilman Davis said the condition only requires dialogue, however, the developer is already making provisions for a shuttle turn-around.

Councilman Newman moved to amend the motion to reduce the amount of parking (448 spaces) in the project by 15%, with the option that once the project is built out, they would have the option of potentially building out the rest of the parking if it becomes apparent that there is a need for it. This motion was seconded by Councilwoman Jones and failed on a 2-5 vote, with a 2-5 vote, with Councilwoman Jones and Councilman Newman voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "no."

The original motion made by Councilman Davis and seconded by Councilwoman Bellamy carried on a 5-2 vote with Mayor Worley, Vice-Mayor Mumpower, Councilwoman Bellamy, Councilman Davis and Councilman Dunn voting "yes" and Councilwoman Jones and Councilman Newman voting "no."

Councilwoman Jones hoped that the Montford neighborhood will be contacted so that they can be present to hear the dialogue regarding transit issues. She also hoped that if we have surplus in the past fiscal year, that Council be willing to considered investing that in the Montford neighborhood, so that we can invest in some infrastructure now so that some quality of life can be improved.

ORDINANCE BOOK NO. 21 – PAGE 294

C. PUBLIC HEARING TO AMEND THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

RESOLUTION NO. 04-178 - RESOLUTION AMENDING THE 2004 CONSOLIDATED COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ACTION PLAN

Mayor Worley opened the public hearing at 9:42 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving an amendment to the 2004 Annual Action Plan in order to allocate new funds for American Dream Downpayment Initiative (ADDI) activities. This public hearing was advertised on August 13, 2004.

On April 13, 2004, Asheville City Council approved the 2004 Annual Action Plan for the CDBG and HOME program funds. The plan indicated the need for future amendment in order to allocate an expected additional award of $161,843 in HOME funds for the ADDI Program. These funds can be used solely for downpayment assistance to first-time homebuyers, with special emphasis on public housing, Section 8, and mobile home park tenants.

Staff requested proposals from outside agencies, including non-profits, public housing agencies, and banks, to implement the ADDI program. Three proposals were received. On August 4, 2004, the Asheville Regional Housing Consortium Board of Directors reviewed the proposals and recommended the following allocations:

1. $30,000 awarded to the Housing Assistance Corporation for Transylvania County.
2. $131,843 awarded to Neighborhood Housing Services of Asheville, Inc., for Buncombe and Madison Counties; with at least $30,000 reserved for public housing and Section 8 tenants referred by the Housing Authority of the City of Asheville.

A public hearing is required and has been advertised for the August 24 2004, Council meeting.

Pro: Adoption of the Amendment will allow the Consortium to expend the funds for downpayment assistance in Buncombe, Madison and Transylvania Counties.

Con: None

Community Development staff and the Consortium Board recommend adoption of the resolution approving an amendment to the 2004 Annual Action Plan in order to allocate new funds for American Dream Downpayment Initiative (ADDI) activities.

Mayor Worley closed the public hearing at 9:45 p.m.

Mayor Worley said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of Resolution No. 04-178. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 336

At 9:46 p.m., Mayor Worley announced a short recess.

D. PUBLIC HEARING TO CONSIDER A REQUEST TO APPLY THE MONTFORD AREA LOCAL HISTORIC DISTRICT OVERLAY TO A SPLIT ZONED PARCEL ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED AT 240 PEARSON DRIVE

ORDINANCE NO. 3154 - AN ORDINANCE TO APPLY THE MONTFORD AREA LOCAL HISTORIC DISTRICT OVERLAY TO A SPLIT ZONED PARCEL ZONED RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT LOCATED AT 240 PEARSON DRIVE

Mayor Worley opened the public hearing at 9:55 p.m.

Historic Resources Director Stacy Merten said that this is the consideration of an ordinance to apply the Montford Area Local Historic District Overlay to a split-zoned parcel zoned RM-8 Residential Multi-Family Medium Density District located at 240 Pearson Drive. This public hearing was advertised on August 13 and 20, 2004.

The 2025 Plan calls for the continued effort for the preservation, enhancement, and management of change within local historic districts. The proposed zoning change will continue to protect the integrity of the historic district while allowing for new development on a relatively large parcel which has recently been further subdivided.

The property under consideration was the original site of the structure known as the Dr. Marion C. Millender House. Dr. Millender was a beloved Asheville physician, who lived there to the age of 104. The house was designed by Asheville architect Wm. Henry Lord for Dr. Millender and his wife Mary Mebane White Millender. Complete in 1907, it is one of the largest residences in Montford and is built in the Shingle style. The two-acre parcel was owned by a member of the Millender family from 1902 until 1969. The Montford Area historic district boundary split the parcel with the line running diagonally in a northwest/southeasterly orientation.

The original 2-acre parcel was recently subdivided in June, 2004. All of the new lots are also split, with a portion of each falling within the current historic district boundary. It appears that a mapping error was made at the time of the original designation as it is customary for historic district boundary lines to follow legally recorded property lines, especially in urban areas.

The applicant, Jim Samsel, wishes to preserve the context of the Millender house as well as the integrity of the district at the edge, now that the original lot has been subdivided. The amendment would also clear up any ambiguity regarding design review for new construction.

Pros: The amendment will clear up any ambiguity as to what portion of any new development would be subject to design review.

Cons: Any new construction will be subject to design review, which will lengthen the review process and increase the cost of construction.

The overlay amendment has been reviewed by the Historic Resources Commission and they recommended unanimously in favor of the amendment. Staff concurs with the applicant's concerns and also recommends in favor of the zoning amendment to extend the boundary of the Montford area local historic district overlay. City staff recommends approval as well.

Ms. Marcia Davis, Tacoma Street resident, urged City Council to support the Montford Historic District Overlay request.

Mayor Worley closed the public hearing at 9:57 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Bellamy moved for the adoption of Ordinance No. 3154. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 302

E. **PUBLIC HEARING TO CONSIDER THE REZONING OF A PORTION OF PROPERTY LOCATED AT 86 CRAYTON ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

ORDINANCE NO. 3155 - AN ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 86 CRAYTON ROAD FROM COMMERCIAL INDUSTRIAL DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Worley opened the public hearing at 9:58 p.m.

Urban Planner Kim Hamel said that this is the consideration of an ordinance to rezone a portion of property located at 86 Crayton Road from Commercial Industrial District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on August 13 and 20, 2004.

Although not specific to the immediate neighborhood, the Future Land Use and Transportation Plan of the 2025 Asheville City Development Plan identifies the intersection of Sweeten Creek Road and Interstate 40 as the dividing point between a Urban/Neighborhood Corridor to the north and a Gateway Corridor to the south. The Sustainable Economic Development Strategic Plan identifies a shortage of industrial zoned properties as one of its top priority issues to be addressed in our area.

Rezoning of a 23.5-acre lot from CI to HB in 2003. The lot is located off of Crayton Road, west of the site, on the opposite side of the railroad right of way.

The subject site is located off of Crayton Road on approximately 4.97 acres. The lot is currently vacant and is split zoned RS-8 (in the front and rear sections of the lot) and CI (located within the center of the lot). Surrounding land uses and zoning include single family residential uses to the north and east zoned RS-8; residential and vacant commercial property zoned Highway Business (HB) and RS-8 located west of the site (with the Highway Business (HB) lot located across a railroad right-of-way); and commercial and residential property zoned Commercial Industrial (CI) and RS-8 to the south.

The subject site is located in a densely developed single-family neighborhood in the Oakley area of East Asheville. The site is accessed from Liberty Street off of Fairview Road, which turns into Crayton Road. Just south of the site a road barrier has been placed across Crayton Road to prevent commercial traffic from entering the residential neighborhood. This came as a request from the community as part of the new I-40 exit at Sweeten Creek. The two commercial lots along the west and south sides of the property are on the south side of the barrier on Crayton Road and are accessed via Sweeten Creek Road.

On July 19, 2004, the Verdi Group received approval from the Technical Review Committee to pursue an 8 lot single-family subdivision on the RS-8 portion of the lot that abuts Crayton Road. The applicant wishes to pursue the rezoning on the Commercial Industrial (CI) portion of the lot to RS-8 in order to continue the same type of single-family development on the remaining portions of the lot. Under the current Commercial Industrial (CI) zoning, single-family dwelling are not permitted.

Pro's:

- Rezoning the split-zoned parcel to RS-8 will provide consistency in the design of the proposed single-family development.
- Rezoning the CI portion of the lot to RS-8 will inhibit the potential of a high impact use being developed adjacent to an established residential area.
- The rezoning of the lot will be keeping in character with established RS-8 zoning north and east of the site.

Con's

- The 2025 plan and Economic Development Strategic Plan stresses concern over losing valuable industrial zoned property. Staff, has however, discussed this application with the Economic Development Director who has no concerns over the proposed rezoning.

Rezoning the CI portion of this property to RS-8 would provide the applicant an opportunity to construct a single-family development (that may include several affordable-housing units) consistent with the subdivision approved by the Technical Review Committee in July 2004. In consideration of the above and the relationship to the adjoining zoning and land uses in the area surrounding site the proposed zoning change appears to be consistent with the intent and purpose of the UDO.

On August 4, 2004, the Planning and Zoning Commission made a unanimous vote to approve the rezoning as requested. City staff recommends approval as well.

Mr. Gerald Green, representing the developer, spoke in support of the rezoning.

Mayor Worley closed the public hearing at 10:02 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3155. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 304

F. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR PUBLIC SAFETY PLANS FOR CERTAIN TEMPORARY USES

Councilman Dunn moved to continued this public hearing until September, 14, 2004, in order to give staff time to research concerns raised at the August 17, 2004, worksession. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

G. PUBLIC HEARING TO CONSIDER TECHNICAL AMENDMENTS AND CLARIFICATIONS TO THE UNIFIED DEVELOPMENT ORDINANCE

ORDINANCE NO. 3156 - AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO CONSIDER TECHNICAL AMENDMENTS AND CLARIFICATIONS

ORDINANCE NO. 3157 - AN ORDINANCE AMENDING SECTION 7-8-21 (B) AND SECTION 7-8-22 (B) TO CHANGE THE WORD "CHURCHES" TO "PLACES OF WORSHIP"

Mayor Worley opened the public hearing at 10:03 p.m.

Mr. Joe Heard, Director of Development Services with the Planning & Development Department said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purposes of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance. This public hearing was advertised on August 13 and 20, 2004.

Working with the Unified Development Ordinance (UDO) on a daily basis, the Planning & Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff has compiled a list of these issues and proposes the following amendments to correct these situations and make the UDO a clearer document for staff and public use. The proposed amendments deal with a variety of issues throughout the ordinance.

Pros –

- The UDO will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con –
- None.

The Planning and Zoning Commission recommended approval of these code amendments on August 4, 2004, by a unanimous vote of 6-0. City staff recommends approval of the proposed code amendments.

City staff recommends approval of the proposed code amendments to the Unified Development Ordinance for the purposes of filling in missing information, correcting mistakes, resolving discrepancies, and clarifying the ordinance.

Mayor Worley closed the public hearing at 10:06 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinances and they would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3156, with the deletion of Section 7-8-21 (b) and Section 7-8-22 (b). This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

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Councilwoman Bellamy was disappointed that in our ordinances we are moving away from using the word "churches." She feels the words "places of worship" is exclusionary.

When Vice-Mayor Mumpower questioned if both the word "church" and "places of worship" could be used, City Attorney Oast requested time within which to research the question.

After a brief discussion, Councilman Newman moved for the adoption of Ordinance No. 3157, amending the following sections: (1) Section 7-8-21(b) is amended by changing "Churches" to "Places of Worship"; and (2) Section 7-8-22 (b) is amended by placing "Places of Worship" under the "Institutional" use category, rather than "Office/business". This motion was seconded by Councilman Davis and carried on a 4-3 vote, with Mayor Worley, Councilman Davis, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Mumpower, Councilwoman Bellamy and Councilman Dunn voting "no."

City Attorney Oast said that since the ordinance passed on a 4-3 vote, it will require a second reading which will be held on September 14, 2004.

ORDINANCE BOOK NO. 21 – PAGE 312

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 04-179 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BAY AREA ECONOMICS FOR A HOUSING NEEDS ASSESSMENT AND MARKET STUDY FOR THE ASHEVILLE REGIONAL HOUSING CONSORTIUM AREA

Community Development Director Charlotte Caplan said that this is the consideration of a resolution authorizing the City Manager to enter into a contract for $50,000 with the Bay Area

Economics for a Housing Needs Assessment and Market Study for the Asheville Regional Housing Consortium Area.

In May 2005, the City must submit to HUD a Five Year Strategic Consolidated Plan for the CDBG and HOME programs, covering the period 2005-2010. A required part of this plan is a detailed Housing Needs Assessment and Market Study covering the four counties that make up the Consortium area: Buncombe, Henderson, Madison and Transylvania.

Under the direction of the Consortium Board, staff issued a request for proposals for this study in June 2004, evaluated the proposals, and negotiated a price with the consultant submitting the most responsive proposal. The proposal recommended by the Consortium Board is Bay Area Economics, a woman-owned company in Silver Spring, Maryland, which will complete the required work for a fixed price of $50,000. No local or minority-owned firms submitted proposals.

Funding for the contract has already been budgeted in the HOME Fund, under Member Government Administration.

Advantages:

- The firm is well qualified to carry out this work
- The price is within the range estimated by the Consortium Board
- Approval of the contract will ensure that the study is completed in time to use it in preparing the Strategic Plan later this year.

Disadvantages: None

City staff recommends City Council authorize the City Manager to enter into a contract with Bay Area Economics, in the amount of $50,000, for a Housing Needs Assessment and Market Study for the Asheville Regional Housing Consortium Area.

Councilwoman Jones spoke in support of the resolution and the Housing Needs Assessment and Market Study.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-179. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 337

B. RESOLUTION NO. 04-180 - RESOLUTION APPOINTING A MEMBER TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Mumpower said that this is the consideration of a resolution appointing a member to the Planning & Zoning Commission.

Sharon Bell has resigned as a member of the Planning & Zoning Commission, thus leaving a vacancy on the Commission until August 14, 2005.

At the City Council worksession on August 17, 2004, City Council instructed the City Clerk to arrange interviews for David Brown and Eric Zetterholm. Cindy Weeks is a candidate, however, it was not necessary to bring her in for an interview.

After Council spoke about the high qualifications of each candidate, David Brown received no votes; Eric Zetterholm received 2 votes; and Cindy Weeks received 5 votes. Therefore, Cindy Weeks was appointed as a member of the Planning & Zoning Commission, to serve the unexpired term of Ms. Bell, term to expire August 14, 2005, or until her successor has been appointed.

RESOLUTION BOOK NO. 28 – PAGE 338

C. RESOLUTION NO. 04-181 - RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Summary: The terms of Ed Metz, Marvin Slosman, Gail McCarthy, Ken Fulford, Hunt Mallett, Laura Webb and Robert Camille, as members of the River District Design Review Committee, expire September 1, 2004.

At City Council's worksession on August 17, 2004, City Council instructed the City Clerk to prepare the proper paperwork to (1) appoint Richard T. Hall (one of two members of RiverLink Board of Directors); (2) reappoint Ken Fulford (one of two design professionals); (3) reappoint Hunt Mallett (one of two owners of property located within the River District); and (4) appoint Jane Mathews (one of the two design professionals). All terms are to expire on September 1, 2007, or until their successors have been appointed.

At the City Council worksession on August 17, 2004, City Council instructed the City Clerk to arrange interviews for Kimberly Campton and Maureen Grozier (at large member).

At the City Council worksession on August 17, 2004, City Council instructed the City Clerk to re-advertise for the vacancy of an owner of property within the River District and the member of the RiverLink Board of Directors.

After Council spoke about the high qualifications of each candidate, Maureen Grozier was appointed, as the at-large member of the River District Design Review Committee, to serve a three year term, term to expire September 1, 2007, or until her successor has been appointed. In addition, Council (1) appointed Richard T. Hall (one of two members of RiverLink Board of Directors); (2) reappointed Ken Fulford (one of two design professionals); (3) reappointed Hunt Mallett (one of two owners of property located within the River District); and (4) appointed Jane Mathews (one of the two design professionals). All terms are to expire on September 1, 2007, or until their successors have been appointed.

RESOLUTION BOOK NO. 28 – PAGE 339

D. RESOLUTION NO. 04-182 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Summary: The term of Victor Trantham, as a member on the Buncombe County Tourism Development Authority, expires August 30, 2004. In addition, Mr. Chris Cavanaugh has resigned, thus leaving an unexpired term until August 30, 2005.

At the City Council worksession on August 17, 2004, City Council instructed the City Clerk to arrange interviews for Victor Trantham and Ripley Hotch to fill the vacancy for the owner/operator of hotel, motel or other taxable tourist accommodation with 100 or fewer rental units.

At the City Council worksession on August 17, 2004, it was the consensus of City Council to re-advertise for the vacancy for the individual who is involved in the tourist business but who does not own or operate a hotel, motel or other taxable tourist accommodation.

After Council spoke about the high qualifications of each candidate, Victor Trantham was reappointed to the Buncombe County Tourism Development Authority to fill the vacancy of the owner/operator of hotel, motel or other taxable tourist accommodation with 100 or fewer rental units, to serve an additional three year term, term to expire August 30, 2007, or until his successor has been appointed.

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VI. OTHER BUSINESS:

CLAIMS

The following claims were received by the City of Asheville during the period of July 30-August 12, 2004: Cherokee Road (Fire), Laurie Fisher (Sanitation), Glenn A. Temple (Sanitation), Jamie Jones (Police), Louise Shade (Streets) and N.C. Dept. of Admin. (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Mike Fryar related to Council a problem that he encountered with the Asheville Police Department regarding a stolen vehicle. City Manager Westbrook said that Mr. Fryar's concern is an administrative issue and he is in the process of working on it.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:23 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – August 31, 2004
East Asheville Community Center
906 Tunnel Road, Asheville, N.C.

7:00 p.m. – Community Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy; Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

The following topics/concerns were raised by residents and addressed by City Council and City staff: need for traffic calming on Avon Road due to cut-through traffic, excessive speeding, and additional traffic; request for trash cans to be placed in an upright position after collection; increase in cut-through traffic in Redwood Forest community; large trucks leaving Super Wal-Mart site deposit mud on Swannanoa River Road and when it rains, the road is slick; re-seeding in areas on Super Wal-Mart site have not taken place; need for strict City enforcement of conditional use permit standards on Super Wal-Mart site; request for City to use eminent domain process on one property owner on New Haw Creek Road in order to obtain easement for sidewalks in that area; any improvements on Fairview Road resulting from Super Wal-Mart project, e.g., sidewalks or overhead lighting; any anticipated changes to the Police Resource Center in Oakley; request for traffic calming in Oakley community; sidewalk at the intersection of U.S. 70 and Riceville Road needs to be cleaned up; request to make Haw Creek more pedestrian friendly; concern that women are not being hired by the City in non-traditional positions; request for City to actively investigate the incident of vandalism at the Super Wal-Mart site; announcement of Kids America Day; request for more police presence near Sondley Estates; request for City assistance in stopping resident on Lynnstone Court from throwing their trash on Avon Road; City should consider regionalism when renegotiating the Water Agreement; and complaint of cars parking on both sides of the road and not leaving enough space for emergency vehicles or school buses to get through, particularly on Beverly Road.

Mayor Worley adjourned the meeting at 8:17 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

Tuesday – September 14, 2004 - 5:00 p.m.

Regular Meeting

Present:	Mayor Charles R. Worley, Presiding; Vice-Mayor R. Carl Mumpower; Councilwoman Terry M. Bellamy (participated via speaker phone); Councilman Jan B. Davis; Councilman Joseph C. Dunn; Councilwoman Diana Hollis Jones; Councilman Brownie W. Newman; City Manager James L. Westbrook Jr.; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson
Absent:	None

PLEDGE OF ALLEGIANCE

US Marine Brownlow Reeves led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

ADDITIONS TO THE AGENDA

At the request of City Manager Westbrook, City Council added the following actions under Other Business: (1) an ordinance regarding permit and fee waivers to repair structures in designated areas flooded by the effects of Hurricane Frances; (2) a resolution designating the City of Asheville's agent to the N.C. Division of Emergency Management; and (3) an agreement with Complus, Inc., to resolve all issues regarding the Complus Agreement dated October 25, 2001.

At the request of Vice-Mayor Mumpower, City Council added an item to Other Business regarding when City Council will discuss the City's response to the recent disaster from Hurricane Frances.

HURRICANE FRANCES

On behalf of City Council, Mayor Worley thanked City staff, Buncombe County staff, State of North Carolina and Federal Emergency Management Agency for their work in our area during the recent flooding as a result of Hurricane Frances.

Councilman Dunn also thanked our citizens for working together through the tremendous hardship they have encountered over the past week.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 17-23, 2004, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Mayor Worley read the proclamation proclaiming September 17-23, 2004, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Mr. Marvin Vierra who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING SEPTEMBER 27-OCTOBER 1, 2004, AS "THE MEDIATION CENTER WEEK"

Mayor Worley read the proclamation proclaiming September 27- October 1, 2004, as "The Medication Center Week" in the City of Asheville. He presented the proclamation to The

Honorable Earl J. Fowler who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 24, 2004, AND THE COMMUNITY MEETING HELD ON AUGUST 31, 2004

B. RESOLUTION NO. 04-183 - RESOLUTION AUTHORIZING THE PURCHASING DIRECTOR TO DISPOSE OF CITY-OWNED PERSONAL PROPERTY BY PUBLIC AUCTION

Summary: The consideration of a resolution authorizing the Purchasing Director to dispose of City-owned personal property by public auction.

This resolution authorizes the City's Purchasing Division to hold a public auction to dispose of motor vehicles, off-road equipment, and other miscellaneous property declared as surplus by various City departments. The auction is to be held Saturday, October 2, 2004, at 10:00 a.m. in the Public Works Complex, 161 S. Charlotte Street.

Pros:

- Auction returns revenue to the City for items of property that are no longer of economical use in carrying out the City's mission
- Combining surplus vehicles in the same venue with other surplus items generates demand for items that could not be sold by themselves and for which the City would otherwise have to pay to have disposed of

Cons:

- Greater staff resources are required to conduct a local public auction than for an on-line electronic auction
- Selling surplus vehicles at a local public auction rather than through an on-line electronic auction may result in a slightly lower price for the vehicles (this is outweighed by the revenue gain from other items)

Staff recommends adoption of the resolution, which authorizes disposal of surplus property by public auction.

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C. ORDINANCE NO. 3158 - ORDINANCE AMENDING CHAPTER 20 OF THE CODE OF ORDINANCE REGULATING TREES

Summary: The consideration of an ordinance amending Chapter 20 of the Code of Ordinances to clean up amendments.

On September 28, 1999, Ordinance No. 2621 was adopted to split the Tree and Greenway Commission into two separate commissions – Asheville Tree Commission and Asheville Greenway Commission. When the Commission was split, the changes were made to Chapter 2, but not to Chapter 20 (which regulates trees). This housekeeping amendment will amend Chapter 20, sec. 20-3, so as not to conflict with the Tree Commission membership.

Staff recommends City Council adopt an ordinance amending Chapter 20 of the Code of Ordinances of the City of Asheville regarding the Tree Commission membership.

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ORDINANCE BOOK NO. 21 – PAGE 317

D. RESOLUTION NO. 04-184 - RESOLUTION RENAMING THE FRENCH BROAD RIVER PARK – PHASE IV AS "CARRIER PARK"

Summary: The consideration of a resolution renaming the French Broad River Park – Phase IV as Carrier Park as recommended by the Asheville Parks and Recreation Department and its Advisory Board.

For almost one year, Parks and Recreation staff has worked with a sub-committee made up of representatives from RiverLink, the West Asheville community, and various user groups at the park to solicit names. The following top three names were submitted to the Advisory Board for approval before being submitted to City Council:

RiverLink Park
Tahkeyostee Park
Carrier Park

At the June meeting of the Parks and Recreation Advisory Board, the Board unanimously voted to recommend to City Council that the French Broad River Park – Phase IV be renamed as "Carrier Park." The name "Carrier Park" was selected based upon the fact that the Carrier family was an influential family in the West Asheville area and the park site was the former location of the Carrier airstrip.

Pros:

- By having an official name, staff will be able to give to the general public specific directions for finding this park in relationship to other parks along the French Broad River.
- This name recognizes a historic family in the West Asheville community.
- This name represents a direct tie to a former use of the property.

Cons:

- There may be some resentment from the former racing community for not naming the park after an influential former driver.

The Asheville Parks and Recreation Department and the Parks and Recreation Advisory Board recommend that City Council adopt the resolution approving the renaming the French Broad River Park – Phase IV as Carrier Park.

Mr. Fred English felt City Council should name the park in memory of Bob Pressley.

RESOLUTION BOOK NO. 28 – PAGE 346

E. RESOLUTION NO. 04-185- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED FEDERAL AVIATION ADMINISTRATION GRANT AGREEMENT, PROJECT NO. 3-37-0005-29

Summary: The consideration of a resolution authorizing the Mayor to approve an amended Project No. 3-37-0005-29 Grant Offer from the Federal Aviation Administration (FAA) in an amount not to exceed $4,073,492, if additional FAA funding becomes available prior to October 1, 2004.

The Asheville Regional Airport Authority (Authority) has solicited and received construction bids for several of the projects associated with the Project No. 3-37-0005-29 Grant Offer approved by City Council on August 10, 2004. The final bid for the "Expand Apron (includes rehabilitation) Project" was substantially higher than anticipated. The Authority has requested additional federal funding from the FAA to allow the Authority to proceed with this project. The FAA has indicated that there is a possibility that additional grant funding, in the amount of $1,309,000, may become available prior to September 30, 2004, but the Authority would need to be in a position to have a new Grant Offer executed and submitted back to the FAA within a short period of time of receiving the new Grant Offer, due to the Federal Fiscal Year ending September 30, 2004.

The only change in the Grant Offer that Council approved in August for Project No. 3-37-0005-29 will be for the total grant funding provided by the FAA, which was originally $2,764,492.

Project No. 3-37-0005-29 consists of: construct service road (Perimeter Road, Phase III), update Airport Master Plan Study (Terminal Area Plan and Forecast), expand apron (includes rehabilitation), expand maintenance building, and install perimeter fencing.

Staff recommends adoption of the resolution authorizing the Mayor to approve an amended Project No. 3-37-0005-29 Grant Offer from the FAA in an amount not to exceed $4,073,492, if additional FAA funding becomes available prior to October 1, 2004.

RESOLUTION BOOK NO. 28 – PAGE 347

F. RESOLUTION NO. 04-186 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY AT THE CORNER OF BARTLETT STREET AND NELSON STREET TO RAY QUATE

Summary: The consideration of a resolution authorizing the Mayor to convey property at the corner of Bartlett Street and Nelson Street to Ray Quate, in the amount of $4,000.

On August 24, 2004, City Council directed the City Clerk to advertise for upset bids on property at the corner of Bartlett Street and Nelson Street. The advertisement ran in the Asheville Citizen-Times on August 27, 2004, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Ray Quate in the amount of $4,000.00 was not upset and the sale to Ray Quate should be approved.

The land at the corner of Bartlett Street and Nelson Street is a rectangular shaped parcel comprising 0.13 acre+ (37'X151.9'). It is generally level at street grade and slopes up gradually to the rear. It is covered with grass. The long narrow shape renders the parcel unsuitable as a homesite. The subject parcel is a cut-out from a 5.73 acre property acquired from the Housing Authority, which is now a part of Murray Hill Park. Based on an opinion letter dated July 28, 2004, by L. Ted Prosser, the value of the cut-out parcel is $4,000. The bid from Ray Quate, owner of an adjacent parcel is in the amount of $4,000. Mr. Quate plans to renovate the building on the adjoining parcel with attention to preservation of historic architectural characteristics. The main floor on Depot Street will be three artist's studios and on the second floor will be five apartments with inside parking. Some of the apartments will be one bedroom and are expected to be within the affordable range. He plans to assemble the subject parcel with the property he owns to provide access to the parking and a buffer.

The proposed renovations are consistent with the Strategic Plan policies of encouraging a strong small business environment and increasing the supply of affordable housing.

The positive aspects of the transaction are:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.

- It will transfer responsibility for maintenance to the private sector.
- A small parcel will be assembled with an adjoining parcel to provide a more efficient land use.
- The sale of this lot to Mr. Quate will facilitate the proposed re-development by providing necessary access.

Planning & Development staff along with Parks & Recreation staff recommends City Council authorize the Mayor to convey property at the corner of Bartlett Street and Nelson Street to Ray Quate, in the amount of $4,000.

RESOLUTION BOOK NO. 28 – PAGE 348

G. RESOLUTION NO. 04-187 - RESOLUTION ACCEPTING STEGALL LANE AS A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Stegall Lane, in the Chunns Cove area, as a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Stegall Lane is a developer-constructed street that has an average paved width of 20 feet and a length of 0.21 miles. Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Stegall Lane will be added to the official Powell Bill list. A two-year warranty, from the time of Council acceptance, will be required by the developer to cover major failures in the roadway.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes will be constructed on this roadway increasing the tax base in the City of Asheville.

Cons:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council accept Stegall Lane in the Chunns Cove area as a City maintained street.

RESOLUTION BOOK NO. 28 – PAGE 349

H. RESOLUTION NO. 04-188 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE TRACT I ON CHOCTAW STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an Offer to Purchase property on Choctaw Street.

A bid has been received from Tilman and Sabrina Jackson, in the amount of $17,400, for the purchase of Choctaw Street, Tract 1, PIN No. 9648.10-25-5447, in the East Riverside Redevelopment Project. This bid amount is not less than the appraisal value of $17,400.

Choctaw Street Tract 1 is a residential zoned lot on the north side of Choctaw Street and opposite the intersection with Congress Street comprising 0.224 acre. The parcel is level with the street and sloping up toward the rear line. It is covered with natural vegetation consisting of grass, small trees and brush.

The Jackson's own the adjoining property where they reside. There are no improvements planned for the subject property at this time.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the tax appraisal.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. G. S. 160A-269.

Community Development staff recommends adoption of the resolution directing the City Clerk to advertise an Offer to Purchase property on Choctaw Street.

RESOLUTION BOOK NO. 28 – PAGE 350

I. RESOLUTION NO. 04-189 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. FOR RADIO SYSTEM MAINTENANCE

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of September 1, 2004, through August 31, 2005, has increased by three percent.

The renewal agreement reflects a monthly increase of $1,247.11 and covers additional equipment purchased by the City that has come out of warranty during the past year. The total monthly cost of this service is $12,408.50.

Funds have been appropriated in Account No. 110-1100-415-3001 C44108.

Advantages to the contract: By keeping the radio system in optimal condition the City is able to provide communication services to several outside agencies, thereby improving interagency communications. This ties back to Council's goal of partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Disadvantages to the contract: None noted.

City staff recommends City Council authorize the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system for the term of September 1, 2004, through August 31, 2005.

RESOLUTION BOOK NO. 28 – PAGE 351

J, ORDNANCE NO. 3159 - BUDGET AMENDMENT TO PROVIDE FUNDING FOR WATER SYSTEM IMPROVEMENT PROJECTS

Summary: The consideration of a budget amendment to the 329 (Water Bond Capital Projects Fund) to reprogram funds to provide additional funding for Annexation Projects and establish funding for Water System Improvement Projects.

There are two new Water System Improvement Projects that require funding. The Bee Tree/Black Mountain Conversion is needed in order to abandon the costly parallel 16-inch water mains that run through the Grovestone property. It will also allow abandonment of the Black Mountain pump station, which would result in savings in operational costs of $60,000/year. The estimated cost of this project is $500,000. The Lutheridge Pumping Station and Reservoir will allow conversion of the Mills River Water Treatment Plant to seasonal operation, which will provide an estimated savings of up to $750,000 per year. Even if seasonal operation is not implemented, the Lutheridge project will allow a reduction in flow from the Mills River Treatment Plant saving up to $100,000 annually in operational costs. The estimated cost of this project is $585,791.

There is insufficient funding in Annexation 2002 (Haywood Rd and CM Doan Area) and Annexation 2003 (Old County Home, Old Haw Creek, and Bell Area). Street restoration costs for Annexation 2002 were more than expected, so additional funding of $45,109 is needed. Annexation 2003 was only partially funded and additional funding of $196,000 is needed at this time.

Funding for the projects listed above will be provided with excess funds from closed out projects, deleted projects, and investment earnings. Excess funds from the following closed projects will be used: $83,231 from Revenue Bonds 2001 General Operations; $351,996 from NCDOT US 74 Phase I; $89,940 from Bee Tree Spillway; $40,629 from NCDOT Brevard Rd 240 to 40; $43,349 from Master Plan Sand Hill; and $69,379 from Critical Needs II. Annexation 2001 is being funded in the 335 fund (Water Major Capital Projects Fund), so the $104, 220 that was budgeted for this will be reprogrammed to fund the projects listed above. Finally there is $544,156 in investment earnings generated from the 2001 Revenue Bonds that will be reprogrammed.

Pros:

- Reprogramming funds for the Black Mountain and Lutheridge Projects will improve the water system as well as reduce annual operating costs.
- Annexation 2002 and 2003 will improve water service and enhance fire protection in newly annexed areas.

Cons: None noted.

Staff recommends that City Council approve a budget amendment to reprogram funds to provide adequate funding for Annexation Projects and establish funding for two new Water System Improvement Projects.

ORDINANCE BOOK NO. 21 – PAGE 318

K. RESOLUTION NO. 04-190 - RESOLUTION AUTHORIZING THE EXCHANGE OF A PORTION OF CITY-OWNED REAL PROPERTY LOCATED OFF MCDOWELL STREET ALONG TOWN BRANCH FOR A PORTION OF REAL PROPERTY LOCATED AT 7 MCDOWELL STREET

Summary: The consideration of a resolution authorizing the Mayor to convey a portion of property off McDowell Street in exchange for a portion of real property located at 7 McDowell Street.

The City and Weston Partners LLC (Weston) have negotiated an exchange of a portion of City owned property off McDowell Street for a portion of the property at 7 McDowell Street on which Weston has a contract to purchase from Victoria Investment Company.

The City's property (PIN No. 9648.10-25-8816) and Weston's property (PIN No. 9648.10-26-8282) share a common boundary line that zigzags back and forth across Town Branch. Weston's property backs up to the east bank of Town Branch and is improved with a medical office building, parking and trees along the creek bank. The City's property lies on the west bank with trees along the creek bank and the remainder of the property in grass. It is part of East Riverside Park, which follows the meanderings of Town Branch from the Southside/Asheland/McDowell intersection to the old Glenn Rock Hotel property. The portions of the properties to be exchanged are those areas where the City's and Weston's properties extend across the creek in an unusable fashion.

The parcels to be conveyed by the City include a 0.003 acre triangle and a 0.085 acre long narrow piece almost entirely covered by a storm drainage easement for a total of 0.088 acre. Weston's parcel is a 0.032 acre triangle. The City's Real Estate Manager has estimated the value of the City's property at $4,100 and the value of Weston's parcel at $4,200. All of the areas to be exchanged are on the creek bank and unsuitable for construction or any sort of economic use.

The positive aspects of the transaction are:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- By incorporating land on the west bank into the park, it will allow greater flexibility for greenway construction on the City's property.
- It will conform the boundary line to the creek as a natural divide and provide a more logical and usable land ownership pattern.

Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on September 1, 2004.

Approval of the resolution will authorize the exchange of the properties as provided in N. C. G. S. 160A-271.

Planning & Development staff and Parks & Recreation staff recommend adoption of the resolution authorizing the Mayor to convey a portion of property off McDowell Street in exchange for a portion of real property located at 7 McDowell Street.

RESOLUTION BOOK NO. 28 – PAGE 352

L. RESOLUTION NO. 04-191 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MARTIN ALEXIOU BRYSON, PLLC, FOR TRANSPORTATION PLANNING AND ENGINEERING SERVICES FOR THE LONG-RANGE TRANSPORTATION PLAN

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Martin Alexiou Bryson, PLLC in the amount of $74,000 for professional transportation engineering and planning services.

The City of Asheville is the Lead Planning Agency for the French Broad River Metropolitan Planning Organization (MPO). The MPO staff works cooperatively with the State of North Carolina to develop and maintain a travel demand model for the region. This model is a computer-based simulation of existing and future travel patterns. Developing and refining the computer travel model is an ongoing, regional project. The model is an essential tool in developing a long-range multi-modal transportation plan for the Asheville urban area.

The State of North Carolina recently completed an extensive process to develop a new travel model for the Asheville area. The model is state of the art in terms of software, complexity, and the effort spent to collect accurate input data. The consulting firm of Martin/Alexiou/Bryson (MAB) developed this model for the N. C. Dept. of Transportation and the MPO.

The MPO is now ready to use the travel demand model to develop the Long Range Transportation Plan and Congestion Management System for the MPO. This will involve testing a variety of solutions to meet our transportation needs in the future. The model will be used to test the effectiveness of various strategies to reduce congestion, manage travel demand, and improve air quality in the Asheville region and French Broad River basin.

This funding for the contract with MAB is a part of the adopted budget for 2004-2005. No budget amendment is required. Eighty percent (80%) of the funding will come from federal funds provided to the MPO. The City of Asheville match for this contract is twenty percent (20%) in the amount of $14,800.

This effort fulfills one of the tasks in the Council's Strategic Operating Plan. This task is identified in the Planning Focus Area under Goal #2: "A multi-modal and congestion management transportation program." This item is part of Objective A, Task 1: "Update long-range transportation plan to incorporate multi-modal uses of transportation options including congestion management plan."

PROS:

- This contract is in support of an identified task in the Council's Strategic Operating Plan and is part of the approved budget and approved Planning Work Program for the MPO.
- Eight Percent (80%) of the funding comes from the federal government.
- The project fulfills federal requirements for local transportation planning.
- Martin Alexiou Bryson is a very capable firm with demonstrated credibility in our region.

CONS:

- The City of Asheville must provide twenty percent (20%) of the funding for this contract, even though the effort will benefit the entire region.

City staff recommends City Council authorize the City Manager to execute a contract with Martin Alexiou Bryson, PLLC in the amount of $74,000 for professional transportation engineering and planning services.

RESOLUTION BOOK NO. 28 – PAGE 353

Mayor Worley said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

ORDINANCE NO. 3160 - ORDINANCE TO CLOSE AND VACATE THE DWELLING LOCATED AT 1086 HENDERSONVILLE ROAD

Mayor Worley said that this public hearing was originally scheduled on July 27, 2004, however, the attorney for the owner of the property said that they are working with the City Attorney's Office to negotiate a potential resolution and asked that the matter be continued until August 10, 2004.

On August 10, 2004, City staff requested that this public hearing be continued until September 14, 2004.

Mayor Worley opened the public hearing at 5:28 p.m.

Housing Code Coordinator Jeff Baker said that this is the consideration of an ordinance to close and vacate the dwelling located at 1086 Hendersonville Road. This public hearing was advertised on July 16, 2004.

The dwelling at 1086 Hendersonville Road (PIN 9656.05-08-6459) is a wooden structure containing nine dwelling units. Since December of 1998, following the first complaint, City staff has repeatedly worked with the property owners to bring the dwelling into compliance with the Housing Code, to no avail. As of July 27, 2004, the dwelling remained in non-compliance with the Housing Code.

A hearing was held on November 19, 2003, and an Order issued to the owner to render all nine dwelling units compliant with the Housing Code by February 2, 2004. The owner failed to comply with the Order and to date has not completed the required electrical repairs. In addition, with clear notice that they were renting the dwelling units in violation of the Housing Code, the owners exacerbated their non-compliance by renting the unfinished and un-permitted basement.

Prior to the previously scheduled hearing on July 27, 2004, the owners entered an agreement with the City which specified that a negotiated penalty would be paid and all outstanding work would be completed on or before September 14, 2004, or the Housing Division would proceed with enforcement as though there had been no agreement. As of September 10, 2004, there had been no request for a final inspection as required by the negotiated agreement. On September 13, 2004, a request for a final inspection was requested. City inspectors did inspect the dwelling on September 13, 2004, however, they failed the inspection. Therefore, until such time as the dwelling is made to comply with the Housing Code, the dwelling must be closed and vacated as required by the Findings of Fact and Order.

In order to effect this provision the City Council must adopt an Ordinance authorizing the Housing Code Coordinator to cause the dwelling to become vacated and closed.

Staff recommends adoption of an ordinance ordering the dwelling located at 1086 Hendersonville Road vacated and closed until brought into compliance with the City's Housing Code.

Mr. Jeff Baker then reviewed with Council a chronology of events, which began on December 18, 1998, showing various pictures of violations. He then reviewed the summary of the most critical violations as of July 19, 2004 – most of which have not been corrected to date. He explained the process, which ends with either a final inspection or a fine for failure to comply. The fine is $250 and $50 per day after that. The fine for Ms. Tate (the owner) had accrued to $8,400, however, in an effort to work with the owner, the City reduced the fine to $5,000 and entered into a Memorandum of Understanding, which stated that repairs were to be finished by September 13, 2004. They paid the $5,000, however, the repairs were not made. Now, the fine is $8,400 plus 40 days of accrual ($2,000). If compliance is gain, then the matter is settled. If compliance is not gained and if Council approves this ordinance, they will proceed with eviction per state law and place a lien on the property. They are still trying to work with the owner. At this time we are only looking at evicting people from Units 3, 4, 5 and 9.

Mr. Bill Lewis, attorney representing Ms. Tate, said that Ms. Tate is working on the repairs; however, she has run into financial constraints, e.g., $6,000 for a sewer line and $5,000 for the City's fine associated with the Memorandum of Understanding. He said Ms. Tate hired an electrician and was under the impression that all the electrical repair work had been done. He showed Council an invoice to Ms. Tate from Doug Grindstaff Electric Company Inc. dated April 19, 2004. Ms. Tate has requested that City Council postpone taking action on this ordinance for an additional 30 days, as she needs additional time to work on the violations.

Vice-Mayor Mumpower noted that at least Ms. Tate was showing a good faith effort on the electrical violations. When he asked what efforts were made in the other areas to correct violations and if Ms. Tate understands the seriousness of the issue, Mr. Lewis replied that Ms. Tate has contacted a plumber and even though she is limited in her ability to move around because of health issues, he felt she does understand the seriousness.

Councilman Dunn felt that Ms. Tate has had ample time, since 1998, to repair these violations and was concerned that she is now only starting to make an effort on the critical repairs.

When Councilwoman Bellamy asked about the number of tenants currently living in the 9-unit apartment building, Mr. Lewis said that he believed two of the units are not occupied.

Upon inquiry of Councilwoman Bellamy, Mr. Baker said that Ms. Tate is in violation of the Housing Code that was adopted on July 1, 1994, and then amended on October 14, 2003. He said that Ms. Tate did not mention any financial difficulties during the five-year grace period, which began in 1994.

Upon inquiry of Councilwoman Bellamy, Mr. Baker said that time and time again Ms. Tate has asked for extensions and he felt that the City has allowed her adequate time, since 1998, to do the minimal amount of repair work to maintain the property. In addition, through the Housing Code Program, they have tried to encourage people into good management practices and help them understand how to operate their rentals. He has encouraged Ms. Tate to get in touch with the Carolina Real Estate Investment organization in order for them to help her manage her rentals. The City has been proactive in helping Ms. Tate to manage what is great property.

Upon inquiry of Vice-Mayor Mumpower, Assistant City Attorney Martha McGlohon said that the ordinance before Council does not need to be amended to reflect only specific units to be vacated because State law requires the City to comply with the Findings of Fact and Order issued by the Director of Inspections, which state the four units to be vacated.

Upon inquiry of Councilman Newman, Mr. Lewis said that the property has been up for sale, but it has been taken off the market now. It is his understanding that Ms. Tate will try to keep the property and bring it into compliance.

At 6:02 p.m., Mayor Worley closed the public hearing.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Dunn moved for the adoption of Ordinance No. 3160. This motion was seconded by Councilwoman Jones and carried unanimously.

Upon inquiry of Councilman Davis of what happens to the property now, City Attorney Oast said that hopefully the units can be brought into compliance and staff can come back to Council with a request to repeal the Ordinance.

ORDINANCE BOOK NO. 21 – PAGE 321

B. PUBLIC HEARING RELATIVE TO REZONING 58.63 ACRES OF PROPERTY LOCATED OFF OF RACQUET CLUB ROAD, VALLEY SPRING ROAD AND LANCE ROAD, IDENTIFIED AS THE RAMBLE AT BILTMORE FOREST, FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT

ORDINANCE NO. 3161 – ORDINANCE REZONING 58.63 ACRES OF PROPERTY LOCATED OFF OF RACQUET CLUB ROAD, VALLEY SPRING ROAD AND LANCE ROAD, IDENTIFIED AS THE RAMBLE AT BILTMORE FOREST, FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT

Mayor Worley opened the public hearing at 6:06 p.m.

Planning & Development Director Scott Shuford said that this is the consideration to rezone 58.63 acres of property located off of Racquet Club Road, Valley Spring Road and Lance Road, identified as The Ramble at Biltmore Forest, from RS-2 Residential Single-Family Low Density District to RS-4 Residential Single-Family Medium Density District and Institutional District. This public hearing was advertised on September 3 and 10, 2004.

Mr. Shuford said that the 2025 Asheville City Development Plan recommends expansions and new development in areas where infrastructure is in place to service this development. The Institutional zoning may allow expansion of existing retirement communities in the area, which serves older citizens of Asheville. The proposed RS-4 area would provide another housing product. A wide variety of housing choices are recommended for the Asheville community. The site is well situated to meet needs for transportation and community services.

The Technical Review Committee of the City of Asheville recently reviewed final plans for Gerber Village Phase I, which is located less than a mile away.

The property is located in the extraterritorial jurisdiction (ETJ) area in the southern portion of the City. The 1,000 plus acre parcel is located south of the Blue Ridge Parkway and west of Hendersonville Road and represents one of the last large land tracts in the ETJ area. Although City Council is not reviewing any specific development plan as a part of this rezoning request, the developer has committed to implementing some unique stormwater management systems throughout the entire development. Access to this large parcel will be improved by several connection points to the north and southwest with access to Hendersonville Road.

The initial rezoning request for a 59acre portion of the large parcel was to rezone it Institutional District. The Planning and Zoning Commission was concerned about compatibility of the uses permitted in Institutional District and the surrounding residential areas. The developer offered the Institutional and RS-4 change to the request. This revised configuration of the zoning designation works with their development goals.

The current rezoning request seeks to provide approximately 37 acres as Institutional zoning and approximately 23 acres as RS-4 District. The proposed RS-4 rezoning area provides a transition area of compatible uses for the surrounding RS-2 and RM-6 zoned residential areas. The Institutional portion of the rezoning request is located adjacent to the Deerfield Episcopal Retirement Community which is zoned RM-16. This arrangement will provide suitable buffering and screening to the surrounding community. In addition the Institutional District requires a height transition area when the neighboring parcels are residentially zoned. In those instances, the height of the building must match the residential height maximums within 100' of the residentially zoned property.

Residential Single Family Low Density District (RS-2) is developed to set aside areas for low density housing where environmental constraints are high or view sheds and watersheds are to be preserved. This district is also intended to stabilize and protect the districts residential character. Very limited non-residential uses are allowed in this district.

Residential Single Family Medium Density District (RS-4) is intended to establish medium density single family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living. Limited other non-residential uses are also allowed in this district.

Institutional District is established to reserve land for the development of major educational and medical facilities and other complementary and supporting uses such as health related developments, office developments and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses. Residential density in the Institutional District is 16 units per acre. If the zoning change is accepted, the height transition area will apply within a 100' distance from residentially zoned property as described above.

The Limestone Township district to the east of this rezoning consideration is zoned R-2 which allows in conjunction with new water and sewer service lines, up to 12 multi-family residential units per acre or roughly 4 units per acre for single family residential development. Any future project in this area will need to be reviewed by the Buncombe County Planning Department and meet their requirements.

Pros:

- The arrangement of the zoning will provide a suitable transition from the low-density residential character of the surrounding area.
- May allow expansion of retirement housing in this area.
- Access to Hendersonville Road may be improved through future development.
- New development here will strengthen the area tax base.
- Future development will be reviewed to meet City and County requirements for access and landscaping, setbacks, etc.

Cons:

- Access can be challenging onto Hendersonville Road from Racquet Club Road.
- Any uses allowed in the Institutional District will be permitted here and some of these uses would require suitable landscaping buffering from neighboring uses.

The request for Institutional District allows uses by right that are already located on neighboring properties in the vicinity. Any development that may be proposed on this site will be subject to the requirements of the City of Asheville Unified Development Ordinance including review for landscaping, site access and setbacks. In addition any structures located within 100 feet of residentially zoned property will be limited to 40 feet in height. This will assure that any development does not over-shadow nearby residential uses. The RS-4 District will provide a suitable transition area between activity on the Institutional portion of the parcel and surrounding residential uses. Furthermore, development of this site will strengthen the area tax base. The site is well situated close to services and to public transit. Wide shopping choices are also located nearby.

The Planning and Zoning Commission at their September 1, 2004, meeting voted 4-0 to recommend approval of the request to rezone the parcel area to Institutional and RS-4. Planning staff recommends approval of the rezoning request as well.

Mr. and Mrs. Robert Harroff, area property owners, spoke against the rezoning in that any change from RS-2 to RS-4 will decrease the value of their property, and also the value of the properties in the adjoining Lance Tract.

Mr. Anthony Walgate, area property owner, fully supported the rezoning.

Mr. Robert Fitch, resident in Crowfields, said that Biltmore Farms management has had great communication with them and have made modifications to address their concerns. Because they are reasonably pleased with their response, the consensus of the Executive Committee of Crowfields is in favor of the rezoning.

At 6:14, p.m., Mayor Worley closed the public hearing.

Upon inquiry of Councilman Newman, Mr. Shuford said that he is not aware of any concerns regarding traffic on Hendersonville Road, however, one of the main problems on that road is the lack of synchronization of the traffic signals and we have funding for that and hope to have it completed in the near future.

When Councilman Newman asked if the City has specific plans for Deerfield, Mr. Shuford said that while it does appear that this would make a lot of sense for the Deerfield Episcopal Retirement Community to expand into this area, should Council rezone the property to Institutional, he cautioned Council that the property can be used for any use allowed in the Institutional classification. The same applies to the RS-4 zoning classification requested. While we have received plans from Biltmore Farms, he has no information that would be useful to council's consideration of the rezoning.

Councilman Newman pointed out that South Asheville is growing fast and wondered at what point will traffic levels on Hendersonville Road become problematic. Mr. Shuford replied that in all likelihood, any development on the 37-acre tract would probably be a Level III review, so Council will have an opportunity to determine whether it is appropriate for the area. Also, a project the size of The Ramble, even though it is mostly large lot/low-impact single-family development, is going to require a Traffic Impact Analysis that will require the developer, no doubt, to do some off-site improvements. Those may include installation of traffic signals and other improvements to the street network to make sure an adequate level of service is maintained.

Councilman Davis said that the existing traffic signals are very close together at where an entrance may be located and he feels it make take some effort to get the signals functional so as not to cause additional traffic problems in that area. Mr. Shuford said that he would take that concern to the Technical Review Committee meeting.

Vice-Mayor Mumpower initiated discussion regarding the fairness of religious-related properties not paying taxes. City Manager Westbrook said that the Buncombe County Tax Assessor is working through the court system and other means to make sure that the non-religious components of a property are properly taxed.

Mr. Shuford acknowledged Vice-Mayor Mumpower's concern that the issue of potential for residential development on this industrial tract to be problematic to our City tax base, however, this particular venue is not the appropriate place to address that issue. If the project comes to Council as a

Level III project then that would be a good time to address those issues. He felt the issue is probably a bigger issue than just this particular rezoning. It may be a policy issue with regard to these types of developments where the use is primarily residential in nature and yet the way they are treated in terms of the provision of services and their paying for those services is a little out of kilter.

City Attorney Oast said that Vice-Mayor Mumpower's concern is a tax policy question, not a land use question. He said these-type issues have been litigated through the courts. To the extent that it bears on land use, it is something we can raise with out legislative delegation. However, this is a rezoning request and it may be fair to presume that it may be developed as an extension of Deerfield, but that is something City Council should not take into consideration in their deliberations.

Councilman Davis said that Deerfield was voluntarily annexed into the City about three years ago. He wondered why the City would want to voluntarily annex that type of property into the City when City residents will have to pay a portion of their services without any enumeration. He felt this issue needs to be addressed.

City Attorney Oast said that the question before Council is a land use question and not a tax policy question and the request should be evaluated as such.

Mr. Shuford pointed out that this property is in our extraterritorial jurisdiction area and it is not annexed into the City at the current time. As a result, Council's decision about this really has no affect on the City's tax base. At the point in time it would come into the City may be the appropriate time to address that issue.

Upon inquiry of Councilman Davis, Mr. Shuford said that it was his understanding that the developer asked if Biltmore Forest had an interest in voluntarily annexing them and Biltmore Forest was not.

Vice-Mayor Mumpower felt a policy discussion in the near future is necessary. Mr. Shuford agreed that Council should talk about this in general. Council's policy discussion could generate changes to the standards for approval for conditional use permits, for example, that would help guide staff when we run into these types of situations.

Upon inquiry of Councilman Dunn, City Attorney Oast said that this is a broader policy concern and since it the property is in the extraterritorial jurisdiction area, the time for that to enter into Council's consideration is when Council annexes.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Ordinance No. 3161. This motion was seconded by Councilman Davis.

Councilman Newman wondered what the right timing would be for dialogue about the tax issues. Further frustration is with the conditional use zoning process. The fact that once we get a specific development brought to us, we are further prohibited from talking to the developers. He would support the rezoning but hoped that in a future worksession Council look at the broader policies that are in front of them. In addition, he hoped that before specific detailed developments are brought forward to Council that we can talk to developers about our concerns of infrastructure and the fairness questions around these kinds of developments.

Mayor Worley asked staff to research what Council's options are, particularly in the conditional use process and bring that report back at an appropriate worksession where we can start getting into that policy discussion and see what tools might be available and what our limitations are on those tools.

The motion made by Vice-Mayor and seconded by Councilman Davis carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 323

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR PUBLIC SAFETY PLANS FOR CERTAIN TEMPORARY USES

ORDINANCE NO. 3162 - AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE FOR PUBLIC SAFETY PLANS FOR CERTAIN TEMPORARY USES

Mayor Worley said that this public hearing was continued from the August 24, 2004, meeting in order to give staff time to research questions that arose from the August 17, 2004, worksession.

Mayor Worley opened the public hearing at 6:37 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide for public safety plans for certain temporary uses. This public hearing was advertised on August 13 and 20, 2004.

This code amendment provides for public safety plans for certain temporary uses. Certain temporary uses, such as a motorcycle rally last year, result in significant public safety concerns and public expenses. The proposed amendment would require the submittal of a public safety plan and a way for public expenses associated with the temporary use to be recouped.

The amendment has been routed to the Coalition of Asheville Neighborhoods, Carolina Real Estate Investment Association, and the Council of Independent Business Owners (CIBO) for review and comment. Based on comments from CIBO, the amendment has been revised to clarify to what types of uses public safety plans may be required and to include language about coordination with non-City emergency management operations.

On August 4, 2004, the Planning and Zoning Commission recommended approval of the proposed code amendment by a vote of 6-0. City staff recommends approval of the proposed code amendment as well.

Mr. Shuford said that he has sent the amendment to the Buncombe County Tourism Development Authority and they have no concerns.

Mayor Worley closed the public hearing at 6:39 p.m.

Mayor Worley said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Davis moved for the adoption of Ordinance No. 3162. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 – PAGE 325

IV. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3157 – AN ORDINANCE AMENDING APPROPRIATE SECTIONS OF THE CODE OF ORDINANCES REGARDING CHURCHES AND OTHER PLACES OF WORSHIP

Mayor Worley said that the first reading of Ordinance No. 2157 was held on August 24, 2004, which amended Sections 7-8-21 (b) and 7-8-22 (b) regarding places of worship.

Mayor Worley explained there has been a lot of misinformation regarding this amendment and all it was intended to do was to bring two sections of the Unified Development Ordinance (UDO) in conformity with the rest of the UDO. He read the definition of "places of worship" from the UDO, which specifically includes churches. Because this is the second reading of an ordinance, public comment will not be taken.

Councilman Newman agreed that this is purely a technical housekeeping amendment to make the UDO consistent with the other 24 places in the UDO where we describe religious institutions. It doesn't change any land use or community development process.

Councilwoman Bellamy moved to waive the rules and allow public comment. This motion was seconded by Councilman Dunn and failed on a 2-5 vote, with Councilwoman Bellamy and Councilman Dunn voting "yes" and Mayor Worley, Vice-Mayor Mumpower, Councilman Davis, Councilwoman Jones and Councilman Newman voting "no."

Vice-Mayor Mumpower felt this was becoming a more divisive issue than it should. He felt that since both terms ("churches" and "places of worship") have been used in the UDO and the use of both is inclusive and reasonably covers the spectrum of spiritual frameworks, he would be supportive of using both terms.

Councilman Dunn spoke in support of using both terms, at the very least for a little tradition to continue.

Councilman Newman moved to adopt on the second and final reading Ordinance No. 3157, amending Sections 7-8-21 (b) and 7-8-22 (b) regarding places of worship. This motion was seconded by Councilwoman Jones.

Councilman Newman appreciated the community's underlying concerns to want to fight to maintain the integrity of those institutions, but this is not what is happening. This will have no impact on the health and vitality of churches in our community. Frankly he could support using both terms, however, the amendment by staff makes sense and he will support it.

Mayor Worley stressed that the definition in the UDO of "places of worship" specifically includes churches. He felt it was important to be consistent in the UDO and that is why staff has brought these amendments to Council. They are nothing more than housekeeping, not substantive, changes.

Councilwoman Bellamy felt that the amendment deleting the two references to "churches" affects the spirit of the UDO. She felt that the amendment lessens the significance of churches.

Councilwoman Jones felt it was important not to elevate on religion above another and when one is pulled out and defined and the others aren't included, that is what is happening. The City Attorney has advised Council that if that happens, it opens the City up for lawsuits. We should use our limited resources in the City, not for legal battles, but for making this place a better community, e.g. investing in our water structure, parks, affordable housing, etc. From her perspective, she feels like this captures theologically her Christian tradition.

Councilman Davis said that the term "places of worship" is very inclusive of churches, however, he would not be opposed to using both terms.

Councilman Newman said the City is facing some big important issues, most notably the future of our water system. When Council went through their strategic planning process, Councilman Dunn hoped that this Council could come together and spend the next year focused on the really big important issues – things that will really make a difference in peoples lives. He was not opposed to using both terms, but wondered if we need to be spending our time working on this amendment issue, or some of the other issues.

Upon inquiry of Vice-Mayor Mumpower, City Attorney Oast said that the intent of the amendment was to make all the terms internally consistent and if Council wanted to go with an alternate wording for all of them, then it would not be necessary to send this back to the Planning & Zoning Commission. Regarding the definition, City Attorney Oast said that our Code provides that if a term is not defined, then you rely on the dictionary definition.

Upon inquiry of Councilwoman Jones, City Attorney Oast said that his review of the law indicates that an ordinance that singles out one place of religious assembly and regulates it either more or less strictly than another place of religious assembly may be constitutionally invalid. Similarly, ordinances that attempt to itemize different types of places of worship may be challenged if they leave something out, however inadvertently.

Councilman Davis made a substitute motion to amend Ordinance No. 3157, to replace the words "churches" and "places of worship" with "churches and other places of worship" throughout Chapter 7 of the Code of Ordinances. This motion was seconded by Vice-Mayor Mumpower and carried on a 6-1 vote, with Councilwoman Jones voting "no."

ORDINANCE BOOK NO. 21 – PAGE 312

V. NEW BUSINESS:

A. RESOLUTION NO. 04-192 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR THE DEVELOPMENT OF NATIONAL GUARD FACILITIES AND CITY RECREATIONAL FACILITIES AT RICHMOND HILL, AND FOR THE CONVEYANCE OF CERTAIN REAL PROPERTY INTERESTS TO THE STATE

Parks & Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the Mayor to enter into an agreement with the North Carolina National Guard for the development of a new Armory at Richmond Hill Park.

The Parks and Recreation Department, along with other City departments, has been working for several months with the North Carolina National Guard for the development of a new Readiness Center to be located on approximately 15 acres at Richmond Hill. The current location of the Armory on Shelburne Road is not meeting the needs of the National Guard Armory and will be closed. This property will revert back to the City of Asheville. In an effort to try to address the Armory's needs and to enhance Parks and Recreation's services at Richmond Hill, the following issues have been agreed upon as part of the overall agreement between both parties.

1. The National Guard Armory will appropriate approximately $7 million to the overall project.

2. The National Guard Armory will develop the entrance road to both the Armory facility and the proposed ballfield complex to meet City standards.
3. The National Guard Armory will rough grade four baseball/softball fields and one multi-purpose soccer/football field.
4. As part of the overall construction of the new Armory facility, a gymnasium will be available for public use operated by the Parks and Recreation Department.
5. Landscaping around the Armory facility will meet the requirements of the Unified Development Ordinance.
6. The entire Armory facility will be fenced.
7. A shared parking area will be constructed at the Armory site for the Armory's use and as overflow parking for the park area.
8. The final design of the Armory facility will be approved by the City of Asheville.
9. All conditions outlined through the conditional use zoning process will be implemented.
10. The master plan will be developed over time to provide enhanced recreation opportunities.

This is an excellent opportunity to provide much-needed recreation facilities in the Richmond Hill area as well as a state-of-the-art Readiness Center for Asheville. In August, 2000, a community meeting was held in the Richmond Hill area. The information gathered from this meeting was used to develop the master plan for this 187-acre property. Another community meeting was held on March 19, 2003, with over 75 people attending to share their issues and concerns. Staff has tried to address these issues to the best of their ability. In addition, this issue was discussed at the Planning & Zoning meeting on April 2, 2003, and the Conditional Use Permit was approved by City Council on April 22, 2003. The agreement will allow for development in accordance with the conditional use permit. The development of the property is contingent on obtaining adequate access across some intervening land owned by a private party, and this contingency will be recognized in the agreement; the City is currently negotiating for the acquisition of that property.

Pros
- Excellent opportunity to develop a recreation complex in Northwest area of City at a low cost.
- Construction of a new Readiness Center will add to the economic development of the community.

Cons
- Concerns have been expressed by some residents in the area about increased traffic.
- A number of trees and vegetation will be disturbed for the construction of this site.

City staff recommends City Council authorize the Mayor to enter into an agreement with the National Guard Armory to develop a Readiness Center and associated park features as outlined by the Conditional Use Permit.

Upon inquiry of Vice-Mayor Mumpower, Mr. Brinson said that the agreement is contingent upon the finalization of the property entrance area, which we are currently in negotiations with the land owner. The National Guard is ready to start their design work and begin development almost immediately.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-192. This motion was seconded by Councilman Dunn and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 354

VI. OTHER BUSINESS:

ORDINANCE NO. 3163 - ORDINANCE AMENDING THE 2004-05 ANNUAL OPERATING BUDGET TO AUTHORIZE PERMIT AND FEE WAIVERS TO REPAIR STRUCTURES IN DESIGNATED AREAS FLOODED BY THE EFFECTS OF HURRICANE FRANCES BEGINNING SEPTEMBER 6-8, 2004

City Attorney Oast explained the ordinance as follows: The City of Asheville adopted the 2004-05 Annual Operating Budget on June 22, 2004, providing for certain permit fees for building and related activities. Following the eye of Hurricane Frances touching down in the state of Florida, substantial rainfall felled upon the City of Asheville, beginning September 6, 2004, through September 8, 2004, causing major flooding of commercial and residential properties. Many of the commercial and residential structures were completely submerged in water. Before re-occupancy of such structures, the City of Asheville must first issue appropriate building and related permits. In an effort to minimize the substantial financial and emotional loss already suffered by certain City of Asheville residents and businesses, staff of the City of Asheville is of the opinion that it is in the best interest of the City to waive building and related permit fees for owners of such properties. NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT (1) Building permit fees for structures suffering flooding damage due to the effects of Tropical Storm/Hurricane Frances from September 6-8, 2004, within the jurisdiction of the City of Asheville, be and are hereby waived beginning on September 9, 2004. Eligibility for this waiver will be limited to structures located within or contiguous to the 100 year flood plain as shown on applicable Flood Insurance Rate Maps for the City of Asheville; (2) The Building Safety Director is further authorized to expedite the processing of permits for repairs to flood damaged structures by waiving the requirement for a City of Asheville Privilege License for N.C. Licensed Contractors; and (3) This budget ordinance amendment will expire on January 1, 2005.

Councilman Newman moved for the adoption of Ordinance No. 3163. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 21 - PAGE 327

RESOLUTION NO. 04-193 – RESOLUTION DESIGNATING CITY OF ASHEVILLE'S AGENT TO THE N.C. DIVISION OF EMERGENCY MANAGEMENT

City Manager Westbrook said that the N.C. Division of Emergency Management requires a resolution designating the City's agent. This resolution will designate William F. Schaefer, Jr., Finance Director, as the primary agent and Cynthia A. Fortune, Finance Operations Manager, as the secondary agent.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Dunn moved for the adoption of Resolution No. 04-193. This motion was seconded by Vice-Mayor Mumpower and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 357

RESOLUTION NO. 04-194 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH COMPLUS, INC., TO RESOLVE ALL ISSUES REGARDING THE COMPLUS AGREEMENT DATED OCTOBER 25, 2001

Transit Services Director Bruce Black said that this is the consideration of a resolution authorizing the City Manager to sign an Agreement with Complus Data Innovations to terminate an existing contract.

Complus Data Innovations (Complus) currently provides contracted services to Parking Enforcement. Complus locates the addresses of persons with delinquent parking citations, sends out notices to those people, and attempts to collect the past due amount from them. The City Of Asheville has now implemented an in-house citation processing and collections system better integrated with the existing systems and software of the City. The new program is expected to save administration costs and increase efficiency and collections. The services of Complus Data Innovations are no longer needed by the City.

Currently, the City Of Asheville pays Complus a fee based on a percentage of all citations collected. That fee is 14% on all in-state citations and 22% on all out-of-state citations. The current contract is not set to expire until February of 2005.

The total fee paid to Complus in Fiscal Year 2004 amounted to $149,546. The total fee for Fiscal Year 2005 to the expiration of the contract is projected to be slightly over $88,000. The City has proposed a contract buy-out to Complus, and they have accepted the proposal. The buy-out price is $70,000.

Pros:

- The level of service (i.e. timeliness of notices etc.) to the public will increase
- The number of collected citations will increase
- The City of Asheville will save money in the administration of its parking program.

Cons:

- Parking Service will have to develop the capacity to look-up delinquent license plate numbers. This is being done at this time, and provisions have been made for the interim.

Staff requests that City Council approves the resolution authorizing the City Manager to sign an Agreement with Complus Data Innovations to terminate an existing contract.

When Vice-Mayor Mumpower asked if Complus was in violation of their contract, Mr. Black replied no, just that they are problematic.

Mayor Worley said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Vice-Mayor Mumpower moved for the adoption of Resolution No. 04-194. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 28 – PAGE 358

MISCELLANEOUS

At the request of Vice-Mayor Mumpower and after a brief discussion, it was the consensus of Council to have a status report on the City's response to the recent disaster at the next worksession. City Manager Westbrook explained the City's preparation for Hurricane Ivan.

Vice-Mayor Mumpower announced current vacancies on our current boards and commissions, with the application deadline.

Vice-Mayor Mumpower thanked those who participated on Saturday, September 11, 2004, at the Deaverview Community Housing Development, which is a project associated with the overall For Our Kids Program, which he and Councilwoman Bellamy share responsibilities in.

CLAIMS

The following claims were received by the City of Asheville during the period of August 13-26, 2004: Wilma Anderson (Police), Johnny Buckner (Sanitation), Dr. Eleanor Radford (Water), and Sue Buchanan (Water).

The following claims were received during the period of August 27-31, 2004: Norm Inche (Sanitation), Kizzy Allen (Sanitation), David Greenbaum (Water) and Heather Carrigan (Water).

The following claims were received during the period of September 1-9, 2004: Sandy Shaw (Streets), Roy Tipton (Fire), Fred Friedman (Water), Mildred Whitener (Sanitation), Robert Hensley (Water) and Lorraine Sweeney (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Walter Plaue was concerned about a trend he sees in the City of Asheville for an elitist community. He explained how the property in the City is being taken off the tax rolls by tax-exempt organizations, thus forcing the working people to pay all the taxes. He urged Council to give some thought on what direction the City of Asheville should be moving.

Mr. Fred English was concerned that the Pack Square Conservancy was using tax money for the Pack Square Renaissance Project, which he understood they were not going to use. He was opposed to the plans to change the lanes on College Street.

CLOSED SESSION

At 7:48 p.m., Councilman Newman moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff concerning the position to be taken by or on behalf of the public body in negotiating the price or other material terms of a contract for the acquisition of real estate. The statutory authorization is contained in N. C. Gen. Stat 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Eugene Ellison and Howard McGlohon; City of Asheville; and Eagle Market Streets Development Corporation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Jones and carried unanimously.

At 8:55 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:55 p.m.

Magdalen Burleson
CITY CLERK

Charles R. Worley
MAYOR

CAuth

DEPARTMENT OF CULTURAL RESOURCES

DIVISION OF ARCHIVES AND HISTORY

ARCHIVES AND RECORDS SECTION

CERTIFICATE OF AUTHENTICITY

This is to certify that the micrographic images appearing on this film are true and accurate reproductions of records originated during the normal course of business by the

BUNCOMBE COUNTY

CITY OF ASHEVILLE, CITY COUNCIL

and consist of *MINTES*

The records begin with VOLUME: 72 YEAR: APRIL 3, 2001

PAGE: 244

and end with VOLUME: 74 YEAR: September 14, 2004

PAGE: 463

It is further certified that the above records were microfilmed in conformity with the provisions of the ***General Statutes of North Carolina*****, chapter 8-45.1 and 8-45.4,** ***"Uniform Photographic Copies of Business and Public Records as Evidence Act"*****; that the microphotography processes accurately reproduce the records so microfilmed; that the film forms a durable medium for reproducing the original, if necessary; and that the film used conforms to American National Standards Institute,** ***Photographic Films-Specifications for Safety Film, ANSI IT9.6-1996*** **and American National Standards Institute,** ***Imaging Media (Film)-Silver Gelatin Type-Specifications for Stability, ANSI NAPM IT9.1-1996.***

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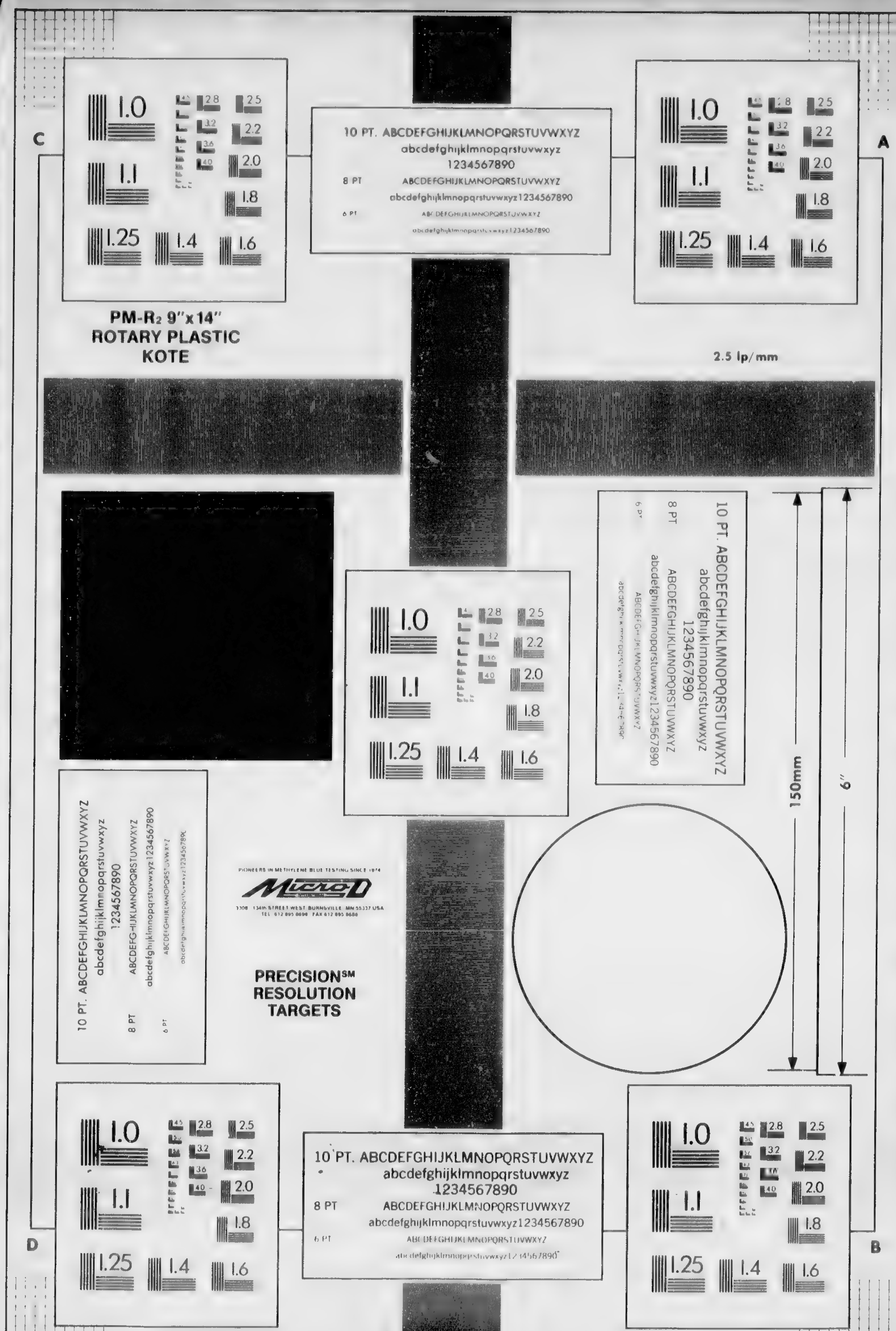

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OF
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Department of Cultural Resources
Division of Historical Resources
Archives and Records Section

SPLICING AUTHENTICITY CERTIFICATE

This is to certify that the following records of
BUNCOMBE COUNTY
CITY OF ASHEVILLE, CITY COUNCIL, MINUTES
consisting of MINUTES
beginning with VOLUME: 76
PAGE: INDEX
and ending with VOLUME: 76
PAGE: 463

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Linda D
Equipment Operator

END OF
RETAKE